

**SUPPLEMENTAL BOARD BOOK
OF
NOVEMBER 5, 2020**



**Leslie Bingham, Vice-Chair
Paul Braden, Member
Sharon Thomason, Member
Leo Vasquez III, Member**

Texas Department of Housing and Community Affairs

PROGRAMMATIC IMPACT

Fiscal Year 2019 (September 1, 2018, through August 31, 2019)

Owner Financing and Down Payment	
<ul style="list-style-type: none"> 30-year, fixed interest rate mortgage loans Mortgage credit certificates Down payment, closing cost assistance Homebuyer education 	
Programs:	
<ul style="list-style-type: none"> Homebuyer Assistance Program (HBA)* Single Family Homeownership 	
Expended Funds:	\$1,693,834,604
Total Households Served:	9,605

Energy Related Assistance	
<ul style="list-style-type: none"> Utility bill payment assistance Energy consumption education Weatherization for energy efficiency 	
Programs:	
<ul style="list-style-type: none"> Comprehensive Energy Assistance Program (CEAP) Weatherization Assistance Program (WAP) 	
Expended Funds:	\$147,270,662
Total Households Served:	162,668

Multifamily New Construction	
<ul style="list-style-type: none"> Affordable rental units financed and developed 	
Programs:	
<ul style="list-style-type: none"> 9% Housing Tax Credits (HTC) 4% Housing Tax Credits (HTC) Multifamily Bonds Multifamily Direct Loan Program* 	
Expended Funds:	\$108,945,178
Total Households Served:	7,062

Homelessness Services	
<ul style="list-style-type: none"> Shelter building rehabilitation, conversion, operations Essential services e.g., health services, transportation, job training, employment services 	
Programs:	
<ul style="list-style-type: none"> Emergency Solutions Grant Program (ESG) Homeless Housing and Services Program (HHSP) 	
Expended Funds:	\$12,162,959
Total Individuals Served:	71,350

Multifamily Rehab Construction	
<ul style="list-style-type: none"> Affordable rental units financed and rehabilitated 	
Programs:	
<ul style="list-style-type: none"> 9% Housing Tax Credits (HTC) 4% Housing Tax Credits (HTC) Multifamily Bonds 	
Expended Funds:	\$56,792,063
Total Households Served:	2,503

Supportive Services	
Provides administrative support for essential services for low income individuals through Community Action Agencies	
Program:	
<ul style="list-style-type: none"> Community Services Block Grant Program (CSBG) 	
Expended Funds:	\$31,103,729
Total Individuals Served:	561,906

Owner Rehabilitation Assistance	
<ul style="list-style-type: none"> Home rehabilitation, reconstruction Manufactured housing unit replacement Accessibility modifications e.g., ramp, grab bar installation 	
Programs:	
<ul style="list-style-type: none"> Homeowner Rehabilitation Assistance Program (HRA)* Amy Young Barrier Removal Program 	
Expended Funds:	\$11,384,025
Total Households Served:	251

Rental Assistance	
<ul style="list-style-type: none"> Short, long term rent payment help Assistance linked with services Transitional assistance Security, utility deposits 	
Programs:	
<ul style="list-style-type: none"> Tenant-Based Rental Assistance (TBRA)* Section 8 Housing Choice Vouchers Section 811 	
Expended Funds:	\$11,021,909
Total Households Served:	1,932

Single Family Development	
<ul style="list-style-type: none"> Single family development, reconstruction, rehabilitation Do-it-yourself, "sweat equity" construction, rehabilitation Contract for Deed refinance 	
Programs:	
<ul style="list-style-type: none"> Single Family Development Program (SFD)* Contract for Deed (CFD) 	
Expended Funds:	\$3,769,888
Total Households Served:	85

Total Expended Funds:	\$2,076,285,016
Total Households Served:	817,362
All FY2019 data as reported in TDHCA's 2020 State Low Income Housing Plan and Annual Report (SLIHP).	
Note: Some households may have been served by more than one TDHCA program.	

* Administered through the federally funded HOME Investment Partnerships Program

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
GOVERNING BOARD MEETING

A G E N D A
9:00 AM
November 5, 2020

Meeting Location: In light of the March 13, 2020, disaster declaration by the Office of the Governor, and the subsequent waivers of portions of Tex. Gov't Code, Ch. 551*, this meeting of the TDHCA Governing Board will be accessible to the public via the telephone and web link information, below. In order to engage in two-way communication during the meeting, persons must first register (at no cost) to attend the webinar via the link provided. Anyone who calls into the meeting without registering online will not be able to ask questions or provide comments, but the meeting will still be audible. A recording of the meeting will be made available to the public as soon as possible following the meeting.

Governing Board Webinar registration:

<https://attendee.gotowebinar.com/register/3294713391175995661>

Dial-in number: +1 (415) 655-0052, access code 615-164-369 (persons who use the dial-in number and access code without registering online will only be able to hear the Board meeting and will not be able to ask questions or provide comments). Note, this meeting will be proceeding as a videoconference under Tex. Gov't Code §551.127, as modified by waiver.

If the GoToWebinar terminates prior to adjournment of the meeting (i.e. if the webinar session "crashes") the meeting will be recessed. A new link to the meeting will be posted immediately on the TDHCA Board meetings web page (<https://www.tdhca.state.tx.us/board/meetings.htm>) along with the time the meeting will resume. The time indicated to resume the meeting will be within six hours of the interruption of the webinar. Please note that in this contingency, the original meeting link will no longer function, and only the new link (posted on the TDHCA Board meetings web page) will work to return to the meeting.

CALL TO ORDER

ROLL CALL

CERTIFICATION OF QUORUM

Leslie Bingham, Vice Chair

Pledge of Allegiance - I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

Texas Allegiance - Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.

* The list of Open Meeting laws subject to temporary suspension effective March 16, 2020, is available at: <https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Open%20Meeting%20Laws%20Subject%20to%20Temporary%20Suspension.pdf>

CONSENT AGENDA

Items on the Consent Agenda may be removed at the request of any Board member and considered at another appropriate time on this agenda. Placement on the Consent Agenda does not limit the possibility of any presentation, discussion or approval at this meeting. Under no circumstances does the Consent Agenda alter any requirements under Chapter 551 of the Tex. Gov't Code, Texas Open Meetings Act. Action may be taken on any item on this agenda, regardless of how designated.

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 Application

02005	Brenham Oaks	Brenham
19344	Patriot Place	El Paso

Rosalio Banuelos
Director of Asset
Management

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

02070	Woodview Apartments	Wichita Falls
02174	Gateway Village Seniors	Beaumont
05236	Clifton Manor Apartments I and II	Clifton
05237	Bel Aire Manor Apartments	Brady
05238	Hamilton Manor Apartments	Hamilton
08195	St James Village Apartments	Houston
11120	La Promesa Apartments	Odessa

MULTIFAMILY FINANCE

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

20486	Old Manor Senior	Austin ETJ
20489	Horizon Pointe	San Antonio ETJ

Teresa Morales
Director of
Multifamily Bonds

- d) Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits and an Award of Direct Loan Funds (#20462, Sunland Country Apartments, Harlingen)

- e) Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits and an Award of Direct Loan Funds (#20463, Trinity Oaks, Sulphur Springs)

- f) Presentation, discussion, and possible action regarding a waiver of 10 TAC §11.101(b)(1)(C) of the Qualified Allocation Plan for Cavile Place in Fort Worth, Tarrant County

Marni Holloway
Director of
Multifamily Finance

- g) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 13, concerning the Multifamily Direct Loan Rule, and an order adopting the new 10 TAC Chapter 13 concerning the Multifamily Direct Loan Rule, and directing its publication in the *Texas Register*

LEGAL

- h) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning related properties Twentyfive25 f/k/a The Grove at Trinity Mills (Bond # MF009, CMTS 2529), Solaire f/k/a Heritage Square (Bond # MF011, CMTS 2562), The Finley f/k/a The Highlands (Bond # MF012, CMTS 2535), 600 East f/k/a Stone Ridge (Bond # MF014, CMTS # 2519)

Jeff Pender
Deputy General Counsel

- i) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning related properties Mitay Inc Scattered Site (HTC 92009 / CMTS 1026), 2512 Thorne (HTC 70046 / CMTS 2344), and 1213 Pecan (HTC 70083 / CMTS 912)

BOND FINANCE

- j) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC 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*

Teresa Morales
Director of
Multifamily Bonds

SINGLE FAMILY & HOMELESS PROGRAMS

- k) Presentation, discussion, and possible action on Orders repealing all sections of 10 TAC Chapter 23, Single Family HOME Program, and Orders adopting new 10 TAC Chapter 23, Single Family HOME Program, concerning HOME single family activities, and directing their publication in the *Texas Register*

Abigail Versyp
Director of Single Family &
Homeless Programs

RULES

- l) Presentation, Discussion and Possible Action on the statutory four-year rule review and readoption of 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.406 Fidelity Bond Requirement, §1.407 Inventory Report, and §1.408 Travel; and directing their publication for adoption in the *Texas Register*
- m) Presentation, discussion, and possible action on an order adopting the repeal, and new rule, for 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.401 Definitions, §1.402 Cost Principles and Administrative Requirements, §1.403 Single Audit Requirements, §1.404 Purchase and Procurement Standards, §1.405 Bonding Requirements, §1.409 Records Retention, §1.410 Determination of Alien Status for Program Beneficiaries; and an order and directing their publication for adoption in the *Texas Register*

Brooke Boston
Deputy Director
of Programs

COMMUNITY AFFAIRS

- n) Presentation, Discussion, and Possible Action on the 2021 Section 8 Payment Standards for the Housing Choice Voucher Program (HCVP)

Michael De Young
Director of
Community Affairs

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

- a) Outreach and Activities Report (October-November)
- b) Report on Activities Related to the Department’s Response to COVID-19 Pandemic
- c) Report on the Department’s 4th Quarter Investment Report in accordance with the Public Funds Investment Act
- d) Report on the Department’s 4th Quarter Investment Report relating to funds held under Bond Trust Indentures

Michael Lyttle
Director of
External Affairs

Brooke Boston
Deputy Director
of Programs

Joe Guevara
Director of Financial
Administration

Monica Galuski
Director of
Bond Finance

ACTION ITEMS

ITEM 3: RULES

Presentation, discussion, and possible action on repeal of and proposed new 10 TAC Chapter 2 Enforcement, Subchapter A General, Subchapter C Administrative

Patricia Murphy
Director
of Compliance

Penalties, and Subchapter D Debarment to be published in the *Texas Register* for public comment

ITEM 4: MULTIFAMILY FINANCE

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*

Marni Holloway
Director of
Multifamily Finance

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

EXECUTIVE SESSION

The Board may go into Executive Session (close its meeting to the public):

Leslie Bingham
Vice Chair

The Board may go into Executive Session Pursuant to Tex. Gov't Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee;

Pursuant to Tex. Gov't Code §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer;

Pursuant to Tex. Gov't Code §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't Code Chapter 551; including seeking legal advice in connection with a posted agenda item;

Pursuant to Tex. Gov't Code §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or

Pursuant to Tex. Gov't Code §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

OPEN SESSION

If there is an Executive Session, the Board will reconvene in Open Session. Except as specifically authorized by applicable law, the Board may not take any actions in Executive Session.

ADJOURN

To access this agenda and details on each agenda item in the board book, please visit our website at www.tdhca.state.tx.us or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11th Street, Austin, Texas 78701, and request the information. If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on Twitter.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Nancy Dennis, at 512-475-3959 or Relay Texas at 1-800-735-2989, at least five days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require

interpreters for this meeting should contact Elena Peinado, 512-475-3814, at least five days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado, al siguiente número 512-475-3814 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

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BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
NOVEMBER 5, 2020

Presentation, discussion, and possible action regarding a waiver of 10 TAC §11.101(b)(1)(C) of the Qualified Allocation Plan for Cavile Place in Fort Worth, Tarrant County

RECOMMENDED ACTION

WHEREAS, the Applicant (who expects to file an Application or Applications for low-income housing tax credits in 2021) is seeking a waiver because the existing public housing site is located in the attendance zone of J Martin Jacquet Middle School, which has received a 2019 Texas Education Agency (TEA) Accountability Rating of F and a 2018 Improvement Required Rating;

WHEREAS, pursuant to 10 TAC §11.101(b)(1)(C) of the proposed 2021 Qualified Allocation Plan (QAP) related to Ineligibility of Developments within Certain School Attendance Zones, if the Development Site has the Texas Education Agency (TEA) criteria ratings noted above, the Applicant is ineligible with no opportunity for mitigation;

WHEREAS, this action is conditioned on the cited sections of the 2021 QAP being adopted as currently drafted;

WHEREAS, pursuant to 10 TAC §11.207 of the QAP, Ineligible Applicants under 10 TAC §11.101(b)(1)(C) may request a waiver from the Board in writing at or prior to the submission of the pre-application (if applicable) or the Application;

WHEREAS, further pursuant to 10 TAC §11.207, such a request must establish the waiver is not within the control of the Applicant; and, that by granting the waiver, it better serves the policies and purposes as generally articulated in Tex. Gov't Code, §§2306.001, 2306.002, 2306.359, and 2306.6701;

WHEREAS, the Applicant timely submitted this request for a waiver regarding the aforementioned items;

WHEREAS, the waiver request describes efforts being made by the Fort Worth Independent School District as they work collaboratively with the applicant to address the TEA Accountability Ratings for J Martin Jacquet Middle School, and the Applicant is also committing that it will provide for significant independent and third-party mitigation-related requirements in its Land Use Restriction Agreement (LURA) or (LURAs), should an Application or Applications receive an award, until the school has improved such that any

new Application would not require a waiver or mitigation for school quality under TDHCA rules; and

WHEREAS, staff believes this waiver request would serve the policies and purposes in the sections articulated above and therefore, recommends that the waiver of 10 TAC §11.101(b)(1)(C) of the proposed 2021 QAP, for the development of Cavile Place in Fort Worth, Tarrant County, Texas, be granted based on the current proposed 2021 QAP; with such waiver creating the condition on any award of Tax Credits made by the Department in 2021 providing that mitigation in the form of services as described in their request, and for which provision of such services will be required by the Land Use Restriction Agreement (LURA);

NOW, therefore, it is hereby

RESOLVED, that the Board grants the waiver of 10 TAC §11.101(b)(1)(C) of the proposed 2021 QAP, for the redevelopment of housing under the Choice Neighborhood Grant in Fort Worth, Tarrant County, Texas, based on the current wording of the proposed 2021 QAP; with such waiver creating the condition on any future award of low income housing tax credits that is made by the Department under the 2021 QAP to provide the services described in the Applicant's request for waiver, and for which provision of such services will be required by a Land Use Restriction Agreement (LURA). The granting of this waiver is expressly conditioned on the adoption of 10 TAC §11.101(b)(1)(C) of the proposed 2021 QAP in its current form by the Board and the Governor, and void if the rule is not finally adopted as proposed. Further, the granting of this limited waiver is not an award or a finding of eligibility for award, and is specific to this requestor or an Affiliate of this requestor based on the significant number of units receiving ongoing federal rental restrictions and the proposed mitigation in this waiver request.

BACKGROUND

Cavile Place, is an existing public housing development that is expected to be demolished. Fort Worth Housing Solutions or an Affiliate intends to apply for low-income housing tax credits in 2021, for one or more mixed-income general population multifamily rental developments to be located in the Stop Six neighborhood in Fort Worth, Tarrant County. The proposed development sites are located in the Fort Worth Independent School District (FWISD) in the J Martin Jacquet Middle School attendance zone. J Martin Jacquet Middle School has received a 2019 Texas Education Agency (TEA) Accountability Rating of F and a 2018 Improvement Required Rating. The school also had a 2017 Improvement Required Rating.

The Applicant submitted the request for a waiver of 10 TAC §11.101(b)(1)(C) (relating to Ineligibility of Developments within Certain School Attendance Zones) so that if the proposed site is found eligible, the

Applicant will be able to move forward with an Application for low-income housing tax credits from the Department under the 2021 QAP.

Developments are ineligible to request multifamily funding from the Department under 10 TAC §11.101(b)(1) (relating to Development Requirements and Restrictions) of the QAP if the criteria in subparagraph (C) is met. The rule states in relevant part

“(C) Ineligibility of Developments within Certain School Attendance Zones. Any Development that falls within the attendance zone of a school that has a TEA Accountability Rating of F for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding is ineligible with no opportunity for mitigation.” 10 TAC §11.101(b)(1)(C).

Pursuant to 10 TAC §11.207 (relating to Waiver of Rules), a waiver of this rule may be requested as follows:

“An Applicant may request a waiver from the Board in writing at or prior to the submission of the pre-application (if applicable) or the Application or subsequent to an award...Where appropriate, the Applicant must submit with the requested waiver any plans for mitigation or alternative solutions. Any such request for waiver must be specific to the unique facts and circumstances of an actual proposed Development and must be submitted to the Department in the format required...Any waiver, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved. All waiver requests must meet the requirements of paragraphs (1) and (2) of this subsection.” 10 TAC §11.207.

Subsections (1) and (2) generally address requirements regarding establishing the need for the waiver being beyond the Applicant’s control and how the granting of the waiver better serves the policies and purposes of the Department. The subsections further prescribe that a recommendation for a waiver may be accompanied with an Applicant’s provisions for amenities that serve a similar purpose. Moreover, waivers must address how it may better serve “the policies and purposes articulated in Tex. Gov’t Code, §§2306.001, 2306.002, 2306.359, and 2306.6701 (which are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program)...” 10 TAC §11.207(1) and (2) (relating to Waiver of Rules).

The request addresses the required elements of the waiver rule, and describes how the Applicant and the FWISD staff are working collaboratively to address the TEA Accountability Ratings for J Martin Jacquet Middle School. The Applicant is also committing to significant independent and third-party mitigation-related requirements in the Land Use Restriction Agreement (LURA), should the Application receive an award, which will specify that mitigation efforts are to be required until the school has improved such that any new Application of non-elderly housing/non-supportive housing consisting entirely of efficiency units, without an existing TDHCA LURA would not require a waiver or mitigation for school quality under TDHCA rules.

The request includes a copy of the Memorandum of Understanding between Fort Worth Housing Solutions, the City of Fort Worth, Fort Worth Housing Finance Corporation, the Fort Worth Transportation Authority, the Fort Worth Independent School District, and Tarrant County Community College, through which all parties pledge resources and support for the work undertaken through the Choice Neighborhood Grant to improve the Stop Six neighborhood.

Staff considered both the request and the unique facts and circumstances of the associated “Stop Six Choice Neighborhood Transformation Plan” program in Fort Worth, Tarrant County. The independent and third-party efforts proposed by the Applicant appear to be significant. Such efforts will better the interests of the individuals and families residing at the Development. Furthermore, it is important to acknowledge these efforts are proposed in conjunction with federal support in the form of an award of U.S. Department of Housing and Urban Affairs’ (HUD’s) FY 2019 Choice Neighborhoods Implementation Grant funding. The Grant and associated redevelopment are intended to significantly transform the surrounding neighborhoods, local businesses, and schools as described in the materials provided with the request.

Staff recommends approval of the waiver request for Developments under the Choice Neighborhood Grant, limited to low-income tax credit awards under the 2021 QAP, with mitigation efforts to be included in the LURA until the school has improved such that any new Application of non-elderly housing without an existing TDHCA LURA/non-supportive housing consisting entirely of efficiency units without an existing TDHCA LURA would not require a waiver or mitigation for school quality under TDHCA rules.

**CAVILE PLACE
FORT WORTH, TARRANT COUNTY, TEXAS**

WRITTEN WAIVER MATERIALS PROVIDED HEREAFTER.

October 21, 2020

Mr. Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701



Re: Cavile Place – Request for Waiver of §11.101 (b)(1)(C), Ineligibility of Developments within Certain School Attendance Zones

Dear Mr. Wilkinson:

I am writing on behalf of the proposed development, Cavile Place, to disclose that the site located at 1401 Etta St., Fort Worth, TX, 76105, in the historic Stop Six Choice Neighborhood, is within the attendance zone of J Martin Jacquet Middle School of the Fort Worth Independent School District (FWISD) that received a 2019 Texas Education Agency (TEA) Accountability Rating of F and a 2018 Improvement Required Rating, which is an ineligibility factor in accordance with the Texas Department of Housing and Community Affairs (“TDHCA”) Qualified Allocation Plan (“QAP”) §11.101 (b)(1)(C). The applicant intends to submit an application for 9% competitive housing tax credits in the 2021 application round, and requests a waiver of §11.101 (b)(1)(C) of the QAP based on the fact pattern presented below.

§11.207 of the Draft 2021 QAP outlines a waiver process and states that “An Applicant may request a waiver from the Board in writing at or prior to the submission of the pre-application...” The waiver request “must establish that the need for the waiver is not within the control of the Applicant.” Additionally, “the waiver request must establish how, by granting the waiver, it better serves the policies and purposes articulated in Tex. Gov't Code, §§2306.001, 2306.002, 2306.359, and 2306.6701, (which are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program) than not granting the waiver.”

Stop Six Choice Neighborhood

The \$35 million federal Choice Neighborhood Implementation grant (Exhibit A), awarded April 2020 to the City of Fort Worth and Fort Worth Housing Solutions for the Cavile Place/Stop Six Transformation Plan, is only the second Choice Neighborhoods Implementation grant (San Antonio 2012) in the State of Texas in the 10-year history of the U.S. Department of Housing and Urban Development (HUD) program and was one of only four awarded nationwide this year. The grant will fund implementation of the comprehensive, community-driven, Cavile Place neighborhood Transformation Plan, which focuses on making nearly \$345 million in meaningful investments in the Stop Six Neighborhood to measurably improve outcomes for residents in the areas of housing, education, safety, health, and economic mobility.

The grant requires one-for-one replacement of the 300 public housing units at Cavile Place through mixed-income redevelopment by 2026. The Transformation Plan is to construct six (6) phases of mixed-income housing, totaling 990 total units, in the 2021-2026 timeframe. This intensive and complex undertaking will only be possible with funding from TDHCA’s Low-Income Housing Tax Credit (LIHTC) program. HUD’s Choice Neighborhood program is focused on leveraging collaborative public and private investments to bring holistic neighborhood revitalization to blighted neighborhoods with poor performing schools and a lack of healthcare and economic opportunities. Therefore, what makes for a successful \$35 million federal grant may not seamlessly make for a successful state LIHTC award; and that’s why state finance agencies



across the county have embraced the Choice Neighborhoods program and found pathways to help successfully secure the state funding needed for communities to comply with the mixed-income housing replacement requirements.

Mitigation of School Performance Ratings for J Martin Jacquet Middle School

As previously mentioned, educational improvements are a key transformational requirement of the Choice Neighborhood program, and have a proven success rate across the nation, such as the 95% increase in children enrolled in early learning programs in San Antonio's Choice Neighborhood and a similar 136% increase in Sacramento's Choice Neighborhood, as well as the 100% high school graduation rate achieved in Memphis' Choice Neighborhood. As such, the Fort Worth Independent School District is the lead education partner of Fort Worth's Choice Neighborhood (See attached MOU in Exhibit B), and FWISD Deputy Superintendent Karen Molinar and Jacquet Middle School Principal Kristin Foreman are both actively engaged with the school's performance improvement initiatives and the Choice Neighborhood activities.

Although §11.101 (b)(1)(C) of the QAP does not provide an opportunity for mitigation, the applicant has provided documentation to demonstrate mitigation in line with §11.101(3)(D)(iv)(I) of the QAP, including documentation from the FWISD addressing plans and progress toward the achievement of an acceptable Texas Education Agency ("TEA") rating, and a commitment from the applicant to offer after school learning center onsite providing educational services by a third-party entity until such time that J Martin Jacquet Middle School achieves a rating of A, B, or C.

In Deputy Superintendent Molinar's letter (Exhibit C), she describes the Jacquet Middle School Campus Improvement Plan (CIP), the progress already achieved under the CIP, and additional activities to further improve student and school performance by the time the first Choice Neighborhood family phase of housing is ready for occupancy.

The CIP includes implementation of a Data-Drive Instructional Model, tools to create an instructional environment that aligns to lesson mastery and rigorous assessments, targeted staffing and recruitment strategies, and a pathway to transition Jacquet Middle School to the proven Leadership Academy Network model that features performance-drive teacher compensation plans, additional teacher professional development activities and extended school hours to provide students with intervention and enrichment opportunities.

Despite no TEA scores for the 2019-2020 school year, Jacquet has already shown progress, including a more than 50% improvement over one year in the percentage of students who met or exceeded projected Measures of Academic Progress (MAP) Growth in Math, from 31% to 47%; and a 33% improvement over one year in the percentage of students approaching grade level on STAAR Math Benchmarks.

FWISD is also supporting Jacquet Middle School's improvement plan through new feeder patterns to better foster Community and Parent Engagement, and also through the addition of MAP Growth for Reading that will provide teachers with formative data at key times throughout the school year to monitor student learning progress and inform instructional adjustments in real time.

Additionally, the applicant, is committed to providing onsite educational services (Exhibit D),

by a dedicated local educational partner. Those services will include homework assistance, tutoring, test preparation, assessment of skill deficiencies and provision of assistance in remediation of those deficiencies, research and writing skills, all of which are designed to augment classroom performance.

Furthermore, as part of the Cavile Place/Stop Six Transformation Plan, over 20 education partners ranging from early childhood providers, to out-of-school time providers, to in-school support services, to local post-secondary education institutions have joined together with FWISD to support a robust birth-to-college and career pipeline for the Stop Six community. There are several strategies these partners are working to advance in support of Middle School students, including academic and social/emotional-focused after-school programming, a community-based school attendance campaign, early intervention to address absenteeism, and career exposure opportunities in a variety of fields to spark the interests of young scholars.

We believe that taken together, and in consideration of the related Choice Neighborhood education initiatives, the documentation of mitigation supports a determination that the risk factor that has been disclosed is not of such a nature or severity that should render the Development Site ineligible, as provided for in §11.101(a)(3)(E)(ii) of the QAP, and an application should be allowed to support the significant federal investments committed to the revitalization of this long-neglected neighborhood.

Waiver Requirements

Need for Waiver is Not within Control of Applicant

First, as required by §11.207 of the QAP, the performance of J Martin Jacquet Middle School is not within the control of the applicant.

Granting Waiver Better Serves Policies of TDHCA's Governing Statute

As required by §11.207 of the QAP, "the waiver request must establish how, by granting the waiver, it better serves the policies and purposes articulated in Tex. Gov't Code, §§2306.001, 2306.002, 2306.359, and 2306.6701, (which are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program) than not granting the waiver."

- §2306.001 – Granting of the waiver would best serve TDHCA's purposes as stated in this section by:
 - (1) Assisting the local governments (the City of Fort Worth and Fort Worth Housing Solutions) to (A) improve essential public services for the Cavile/Stop Six residents and (B) overcome financial, social and environmental problems as stated in the HUD-approved [Stop Six Choice Neighborhood Transformation Plan](#).
 - (2) Providing for the housing needs of individuals and families of low, very low and extremely low income and families of moderate income, through the applications for funding over six years, for up to 990 mixed-income units, including 300 replacement units for extremely low income individuals and families.
 - (3) Contributing to the redevelopment of the Stop Six neighborhood and the former government-assisted Cavile Place public housing community. Upon completion, a portion of each phase of the redeveloped housing will be first offered to former residents, who have since been relocated in advance of the demolition of Cavile Place.
 - (4) Assisting in the coordination of federal and state programs affecting local government, by clearing the path for the submission of LIHTC applications, which are essential to complying with the federal housing replacement requirements of Fort Worth's Choice Neighborhood Implementation grant.

- §2306.002 - Granting of the waiver would best serve TDHCA’s policies as stated in this section by supporting:
 - (1) The Stop Six Choice Neighborhood Transformation Plan, which commits to a community-wide revitalization that starts with housing but also includes equally key initiatives to improve education, safety, health, and economic mobility, and thereby restore this neighborhood as a decent, safe, and affordable living environment.
 - (2) Coordination of the federal (committed \$35 million), state and city (committed \$41.8 million; see Exhibit E) resources to assist the Stop Six individuals and families of low income in obtaining a decent, safe, and affordable living environment.
 - (3) Development and diversification of the economy in this neighborhood, including the elimination of unemployment or underemployment, through the Choice Neighborhood initiatives related to job training initiatives in the Transformation Plan. Note that other Choice Neighborhoods has reported very impressive results with their employment initiatives, including a 74% increase in employment of able-bodied adults in San Antonio, a 61% increase in employment in Columbus, OH and a 50% decrease in unemployment of able-bodied adults in St. Louis, MO.

- §2306.6701 – Granting of the waiver would best serve TDHCA’s LIHTC program as stated in this section by:
 - (1-2) Allowing LIHTC application submissions that will preserve and maximize affordable housing through the development of high-quality, mixed-income rental housing for households in a key Fort Worth neighborhood with little to no affordable and suitable private rental housing.
 - (3) Preventing the loss of Cavile’s 300 public housing rental units, which were deemed obsolete and approved for demolition by HUD, by enabling the financial support to redevelop the 300 units and adding another 400+ affordable rental units in the neighborhood.

Additionally, per §11.101(a)(3)(E)(iii) of the QAP, consideration is also given on the basis that the Development is necessary to enable a participating jurisdiction to comply with its obligation to affirmatively further fair housing. This is absolutely the case for the applicant’s project in the historically African-American Cavile Place / Stop Six Choice Neighborhood, the initiatives of which directly align with the recent recommendations for housing, education, health, economic development, transportation, criminal justice and governance by the Fort Worth Task Force on Race and Culture (Exhibit F).

Conclusion

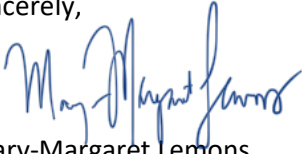
The applicant respectfully requests a waiver of §11.101 (b)(1)(C) of the QAP on the basis that the need for the waiver was beyond the control of the applicant, that by granting the waiver TDHCA better serves its statutory policies and purposes under Tex. Gov’t Code §2306, and that evidence of mitigation of school performance has been provided herein. The FWISD, the City of Fort Worth and the applicant are all wholly committed to the revitalization of this neighborhood, its housing, and its schools. And with the progress already underway regarding school and student performance improvements, it is clear the FWISD and Jacquet Middle School are on the path needed to support the comprehensive Choice Neighborhood revitalization.

We appreciate that HUD recognizes the potential of this neighborhood, which just needs the planned, transformational investments from the federal, state and local governments to re-establish Stop Six as

the viable and thriving heart of Fort Worth's African American community. We respectfully request that TDHCA support this request for a waiver in support of these collaborative efforts.

Please contact me at mmlemons@fwhs.org or (817) 333-3401 with any questions. Thank you in advance for your consideration of this request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mary-Margaret Lemons". The signature is fluid and cursive, with the first name "Mary" being particularly prominent.

Mary-Margaret Lemons
President

Exhibits:

- A – CNI Grant Award Letter
- B – Local Partner MOU
- C – FWISD Letter
- D – FWHS commitment to provide after-school services
- E – City of Fort Worth commitment
- F – City letter on FW Task Force on Race and Culture



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

May 27, 2020

Ms. Mary-Margaret Lemons
President
Fort Worth Housing Solutions
1201 13th Street
Fort Worth, TX 76102

The Honorable Betsy Price
Mayor
City of Fort Worth
200 Texas Street
Fort Worth, TX 76102

SUBJECT: Transmittal of FY 2019 Choice Neighborhoods Implementation Grant Agreement

Dear Ms. Lemons and Mayor Price:

Once again, congratulations on your selection to receive a FY 2019 Choice Neighborhoods Implementation Grant funding award. Your proposal is one of the best that embodies the goals of the Choice Neighborhoods program and shows your capacity to implement your Transformation Plan to transform your selected neighborhood. This letter transmits your FY 2019 Choice Neighborhoods Implementation Grant Agreement.

The Office of Public Housing Investments (OPHI) will administer your grant. Your Team Coordinator will be your primary HUD contact person as you implement your Choice Neighborhoods grant and will be available to answer any questions you may have. By now, your Team Coordinator has contacted you and is available to answer any questions you may have. OPHI is located at the following address:

U.S. Department of Housing and Urban Development
Office of Public Housing Investments
451 Seventh Street SW, Room 5150
Washington, DC 20410

Grant Agreement

Enclosed are one copy of your FY 2019 Choice Neighborhoods Implementation Grant Agreement and the Assistance Award/Amendment form (HUD-1044). These documents memorialize the agreements made between you and your Co-Applicant, as the Grantees, and HUD, and incorporates all documents relating to the grant, including the FY 2019 Notice of Funding Availability (NOFA), your application, and all subsequent documents. Please note that the terms of the Grant Agreement are not negotiable. In order to proceed with the processing of your Grant Agreement, please do the following:

1. Obtain a Board Resolution authorizing the Lead Grantee's Executive Director/executive officer to sign the HUD-1044.
2. The Executive Director/executive officer of the Lead Grantee signs and dates the HUD-1044 form in block 19. The HUD-1044 form serves as the coversheet to the Grant Agreement.
3. The Executive Director/executive officer for both the Lead Grantee and Co-Grantee must sign the signature page in the Grant Agreement document. The signatures of the Executive Director/executive officer of the Lead Grantee and the Executive Director/executive officer of any Co-Grantee(s) must be provided on the same signature page (not separate signature pages).
4. The Lead Grantee and any Co-Grantee must also provide documentation in accordance with the "Conducting Business in Accordance with Ethical Standards/Code of Conduct" requirement found in Section I.A.5 and Section VI.B of the NOFA. In accordance with 2 CFR 200.318(c)(1), all Federal recipients must develop and maintain written standards/codes of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. Before entering into an agreement with HUD, each selected applicant must ensure an up-to-date copy of organization's code of conduct is available in the Code of Conduct e-library. HUD's Code of Conduct website URL is: https://www.hud.gov/program_offices/spm/gmomgmt/grantsinfo/conductgrants. If the code(s) of conduct is on the website and information has not changed, please note that when you provide the other Grant Agreement-related documents.
5. Return the signed Grant Agreement, the HUD-1044 form, a copy of the Board Resolution, and a copy of the Lead Grantee's and Co-Grantee's code(s) of conduct (if necessary) to Ms. Caroline Tatalovich at the address provided above in this letter by no later than **Friday, July 17, 2020**. Please also submit a copy via email to Caroline.C.Tatalovich@hud.gov.

Once the Grant Agreement, copy of the Board Resolution, and copy of the code(s) of conduct are received by HUD, the Assistant Secretary for Public and Indian Housing will sign and date the final signature block on the signature page of the Grant Agreement, which will be the effective date of the Grant Agreement. The original will be kept by the Department and an executed copy will be transmitted to you via e-mail to keep in your records and administer accordingly.

Transformation Plan Revisions

The selection of your organization for a Choice Neighborhoods grant does not necessarily mean endorsement of each detail of the plan proposed in your application. The OPHI staff will be working with you in the coming months to ensure that your Transformation Plan is fully developed, maximally effective, and legally and financially sound. You may expect HUD to work with you to refine your Critical Community Improvements, Supportive Services, and Housing Plans. One item to note in particular is whether the Housing plan as proposed in your application provides replacement housing for all households, including those that earn up to 80 percent AMI. If all replacement units are planned to also have Low Income Housing Tax Credit (LIHTC) equity, you must demonstrate that you will take advantage of recently adopted 'income averaging' provision of the LIHTC while still also ensuring that each phase is mixed-income and provides units for the full range of incomes.

Choice Neighborhoods Guidance

Your Choice Neighborhoods Team Coordinator will be your primary source of guidance and information about your Implementation Grant. In addition, on the Choice Neighborhoods web site (www.hud.gov/cn) HUD has posted information about accessing LOCCS and valuable information on the Choice Neighborhoods budget, mixed-finance development, procurement, and other technical areas. I urge you to familiarize yourself with the website and take advantage of the information posted there.

Drawdown of Funds

Once your Grant Agreement has been executed, you may request HUD to approve the release of grant funds. This will be accomplished through the approval of your Choice Neighborhoods Implementation Grant budget form (form HUD-53236) as part of the Post Application Submissions listed in the Grant Agreement. In accordance with the Grant Agreement, eligible costs for reimbursement include those after the written notification of grant award. The official written notification date of your grant award is April 23, 2020. The initial eligible costs include those for predevelopment and supportive services, as stated in the Implementation Grant Agreement. See Article VI for additional information on Choice Neighborhoods Budget and Funding Requests and Article VII Project Drawdowns.

Authorization in LOCCS

In order to access grant funds, at least two staff members must be authorized for Choice Neighborhoods in LOCCS, HUD's grant payment system. Banking information also must be submitted to HUD. If you are not familiar with LOCCS, please refer to "Grantee Financial Instructions" which is posted on the Choice Neighborhoods website and which provides detailed information about LOCCS access, banking information, and completion of the Choice Neighborhoods voucher.

Expenditure of Choice Neighborhoods Funds

Your grant includes both FY 2018 and FY 2019 Choice Neighborhoods funding. Choice Neighborhoods funding is subject to the requirements established under 31 U.S.C. § 1552. In accordance with this statute, all FY 2018 funds must be expended by September 30, 2025 and all FY 2019 funds must be expended by September 30, 2026. Any funds that are not expended will be cancelled and recaptured by the Treasury and thereafter will not be available for obligation or expenditure for any purpose. Given the statutory requirement, Grantees are asked to comply with their Program Schedule, developed in accordance with the time periods for implementation established in the Grant Agreement, and as approved by HUD.

Again, congratulations to your entire team. We look forward to working jointly with you and your partners in carrying out the transformation of severely distressed public and assisted housing, and we thank you for your participation in the Choice Neighborhoods Initiative.

Sincerely,

**LUCI
BLACKBURN**

Digitally signed by: LUCI BLACKBURN
DN: CN = LUCI BLACKBURN C = US O
= U.S. Government OU = Department
of Housing and Urban Development,
Office of Public and Indian Housing
Date: 2020.05.26 17:53:00 -04'00'

Mindy Turbov
Choice Neighborhoods Director
Office of Public Housing Investments

Enclosures

MEMORANDUM OF UNDERSTANDING

A Memorandum of Understanding in Support of the 2019 Stop Six Choice Neighborhood Transformation Plan

THIS MEMORANDUM OF UNDERSTANDING ("MOU") associated with the 2019 Stop Six Choice Neighborhood Transformation Plan for the redevelopment and revitalization of the Stop Six and Cavile Place Communities is entered into on this 13 day of August 2020, by and between Fort Worth Housing Solutions ("FWHS"), the City of Fort Worth, Texas, Fort Worth Housing Finance Corporation ("FWHFC"), the Fort Worth Transportation Authority ("FWTA"), the Fort Worth Independent School District ("FWISD"), and Tarrant County Community College. The aforementioned entities may be collectively referred to as "Parties" or individually referred to as a "Party."

RECITALS

WHEREAS, the Parties have determined that it is a benefit to the general public to capitalize on the redevelopment of the Cavile Place public housing community and to expand revitalization to the surrounding Stop Six community in order to generate high quality, targeted redevelopment of property in the area; and,

WHEREAS, the coordination, development, and implementation of plans to aid in the redevelopment of Cavile Place and the broader revitalization of Stop Six would assist in securing additional investment in the area resulting in its revitalization; and,

WHEREAS, all Parties recognize the necessity of supporting a coordinating entity to guide the community involvement in support of the 2019 Stop Six Choice Neighborhood Transformation Plan for Cavile Place and Stop Six; and,

WHEREAS, FWHS led a successful Choice Neighborhoods Implementation ("CNI") grant application, which was awarded \$35 million by the U.S. Department of Housing and Urban Development (HUD), to go toward the implementation of Housing, Neighborhood and People strategies for Cavile Place and the greater Stop Six community, and will oversee McCormack Baron Salazar as the Housing Lead and Urban Strategies, Inc. as the People Lead; and,

WHEREAS, the City of Fort Worth served as co-lead on the CNI application and will demonstrate its continuing commitment to support the revitalization of Cavile Place and Stop Six by serving as the CNI Neighborhood component lead and through a commitment of \$14 million, subject to the necessary bond propositions being submitted to and approved by voters at a future bond election, to support the development of the new Neighborhood Hub, and \$8.56 million to support the Housing Plan through CDBG, HOME and UDAG funds and waived permit fees; and,

WHEREAS, FWHFC will demonstrate its continuing commitment to support the Housing Plan portion of the revitalization of Cavile Place and Stop Six through \$1.25 million in low-interest construction to permanent loans and \$1.25 million in forgivable no interest loans for construction of permanent supportive housing units; and,

WHEREAS, FWISD created the Historic Stop Six Initiative ("HSS") to develop a stronger educational foundation for area youth, build stronger families, and revitalize the community, and will demonstrate its continuing commitment to support the revitalization of Cavile Place and Stop Six by serving as the

CNI Education component lead; and,

WHEREAS, FWTA has committed to design, provide and install new transit stops and to modify transit routes and schedules as redevelopment in the Cavile Place and Stop Six communities drives evolving and growing transit needs; and,

WHEREAS, all Parties recognize the need to create a coordinated and community-based process that promotes and facilitates a holistic approach to achieve long-term social and economic advancement of the residents of Cavile Place and Stop Six; and,

WHEREAS, all Parties agree that it is in the best interests of all to enter into this MOU for the duration of the effort and for the successful implementation of the 2019 Stop Six Transformation Plan and its Housing, Neighborhood and People strategies; and,

WHEREAS, the purpose of this MOU is to delineate the scope of this coordinating group and the collaborative responsibilities of the Parties to this MOU.

NOW THEREFORE, in consideration of the foregoing, the Parties hereby agree as follows:

I. SCOPE OF STAKEHOLDER INVOLVEMENT AND GROUP COMPOSITION

Each Party shall have representation through the Coordinating Council, which will work collaboratively on the following activities:

- Execute on the Housing, Neighborhood and People strategies as adopted in the community-driven 2019 Stop Six Choice Neighborhood Transformation Plan
- Formulate additional strategies to address needs for commercial revitalization
- Identify opportunities to support implementation of enrichment programs aimed at
- Identify and pursue opportunities for additional funding needed to complete the Housing, Neighborhood and People goals.

Appointments to the Coordinating Council Executive Committee will include representation from the following stakeholders:

- City of Fort Worth
 - Appoints representative from the Mayor's Office to serve as the Ex-Officio Chair of the coordinating group, District 5 Councilmember as the Co-Chair, and a representative from the City Manager's Office
- Fort Worth Housing Solutions
 - Appoints President/CEO, representative from McCormack Baron Salazar (MBS), and representative from Urban Strategies, Inc., (USI)
- Housing Finance Corporation
 - Appoints the Board President or designee
- Fort Worth Transportation Authority
 - Appoints CEO or designee
- Fort Worth ISD
 - Appoints representative
- Tarrant County Community College
 - Appoints representative

II. PROJECT COORDINATION

All parties agree to work collaboratively to support the Housing, Neighborhood and People strategies and goals identified in the 2019 Stop Six Choice Neighborhood Transformation Plan. However, all Parties retain full autonomy over their respective budget decision-making processes, and major project implementation.

III. MISCELLANEOUS PROVISIONS

- A. **Effective Date.** This MOU shall become effective upon its execution by all Parties.
- B. **Assignment.** No Party shall assign its interest in whole or in part in this MOU without the written consent of the other Parties and HUD (as required per CNI grant regulations).
- C. **Choice of Law.** This MOU shall be governed by the laws of the State of Texas.
- D. **Severability.** Should any portion of this MOU be found to be unenforceable by a court of competent jurisdiction, such determination shall not void the entire MOU but will be limited only to those unenforceable provisions.
- E. **Binding Effect.** This MOU shall be binding upon and inure to the benefit of the parties.
- F. **Counterparts.** This MOU may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- G. **Limitations on Liability.** The Parties hereto agree that nothing herein contained shall be construed to create a joint venture, partnership, or other similar relationship which might subject any Party to liability for the debts and/or obligations of the others, except as otherwise
- H. **Waiver, Acknowledgments and Modifications.** The failure of a Party or Parties to insist on the strict performance of any provision of this MOU or to exercise any right or remedy upon a breach hereof shall not constitute a waiver of any provision of this MOU or limit such Party or Parties' right to enforce any provision or exercise any right. No acknowledgments required hereunder and no modification or waiver of any provision of this MOU or consent to departure therefrom shall be effective unless in writing and signed by the Parties.
- I. **Headings.** The headings used in this MOU are used for convenience only and are not to be considered in construing or interpreting this MOU.
- J. **Entire Agreement.** This MOU and the exhibits hereto constitute the full and entire understanding and agreement between the Parties with regard to the transaction contemplated herein, and no Party or Parties shall be liable or bound to the other in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein.

IN WITNESS WHEREOF, the Parties have hereunto caused this Agreement to be executed, on the day, month, and year first above written.



Betsy Price, Mayor
City of Fort Worth



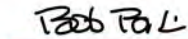
Mary-Margaret Lemons (Aug 19, 2020 13:38 CDT)

Mary-Margaret Lemons, President
Fort Worth Housing Solutions



Fernando Costa (Aug 19, 2020 21:28 CDT)

Fernando Costa, General Manager
Fort Worth Housing Finance Corporation



Bob Baulsir (Aug 21, 2020 08:37 CDT)

Bob Baulsir, President & Chief Executive Officer
Trinity Metro/Fort Worth Transportation Authority



Dr. Kent Scribner, Superintendent
Fort Worth Independent School District



Eugene Giovannini (Oct 2, 2020 16:20 CDT)

Eugene Giovannini, Chancellor
Tarrant County Community College

Karen Molinar
Deputy Superintendent

100 N. University Dr., Ste. SW 212
Fort Worth, Texas 76107
OFFICE 817.814-1952 | FAX 817.814-1955
karen.molinar@fwisd.org



Follow us on
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October 19, 2020

Mr. Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

Re: J Martin Jacquet Middle School – Improvement Efforts Underway to Achieve A, B, or C Rating

Dear Mr. Wilkinson,

The purpose of this correspondence is to provide additional information regarding efforts currently underway to improve the Texas Education Agency (TEA) Accountability Rating for J Martin Jacquet Middle School, which was rated as F in 2019. Fort Worth Independent School District (FWISD) is aware of plans by Fort Worth Housing Solutions (FWHS), its partners, and its affiliates to redevelop its existing Cavile Place public housing community. The 300 units of Cavile Place will be replaced one-for-one with new units in several well-designed, high-quality, sustainable, mixed-income communities. Planned as a six-phase development, the plan will create almost 1,000 total new units for the neighborhood. FWISD is confident that improvement efforts underway will result in the achievement of an A, B, or C rating by the date Cavile Place is anticipated to be available for occupancy.

J Martin Jacquet Middle School is operating under a Campus Improvement Plan (CIP) approved by the Texas Education Agency. The performance objectives identified in the CIP are intended to return J Martin Jacquet Middle School to an acceptable rating status, and include the following:

- Implementation of a comprehensive Data-Driven Instructional Model to improve teacher competency related to disaggregating data and monitoring student progress.
- Provide teachers with high quality targeted professional development and the tools to implement instructional strategies in the classroom to create an instructional environment where lesson activities directly align to the mastery of the lesson objective and formative assessments (checks for understanding) are relevant and rigorous.
- Partnering with Region 11 Educational Service Center to support the development of a Positive Behavior Interventions and Supports (PBIS) team. Jacquet Middle School will establish a PBIS team and implement common language and clear expectations across all school environments.

Fort Worth ISD is committed to meeting the goals and performance objectives listed above. **Specific plans** to meet these goals and performance objectives identified in the CIP and to restore the school to an acceptable rating status include:

- Strategic staffing in place for the 2020-2021 school year to allow the Principal to recruit and retain highly effective teachers, specifically chosen for their track record of achieving significant growth with student populations that mirror the student demographic and characteristic at Jacquet Middle school.
- Passage of the Fort Worth ISD Tax Ratification Election (TRE) will provide additional funding for compensation that will allow the district to transition Jacquet Middle School to the Leadership Academy Network (LAN) model. This is a proven model that was implemented by the District in 2017 to improve achievement at five campuses that were rated Improvement Required for multiple years. Key components of the LAN model include a strategic compensation plan, additional professional learning days for teachers, and extended school hours for students that include three meals a day. Extended hours are used to provide intervention and enrichment opportunities for students.
- Newly aligned feeder patterns (school pyramids) have been organized into four regional support zones. Implementation of a regional support structure allows the District to provide differentiated support and/or interventions for schools in accordance with the Fort Worth ISD School Performance Framework (SPF). With the new structure in place, the District can differentiate resources to support Jacquet Middle School and work at all levels within the feeder pattern to foster Community and Parent Engagement.

Current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan include:

- Percentage of students at Jacquet Middle School who met or exceeded projected NWEA MAP Growth in Math has improved from 31% in 2018-19 to 47% in 2019-20.
- Percentage of students at Approaches grade level on STAAR Math Benchmarks has improved from 33% in 2019 to 44% in 2020.
- Percentage of students at Meets grade level on STAAR Math Benchmarks has improved from 7% in 2019 to 10% in 2020.

The District is adding NWEA MAP Growth for Reading this school year (2020-2021) so that teachers have formative MAP Growth data at beginning of year, middle of year, and end of year to monitor student learning progress and adjust instruction in both reading and mathematics. This aligns with the goals that Jacquet Middle School has set in their Campus Improvement Plan (CIP) and their Targeted Improvement Plan, especially their priority focus on improving Tier 1 instruction with objective-driven daily lesson plans with formative assessments.

Fort Worth ISD is confident that the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance because the team has a proven track record employing similar strategies at prior schools as indicated by the success of the LAN model that was implemented in 2017. All five Leadership Academy schools received Met Standard ratings in 2018.

In addition, the reorganization of the District's Student and School Support Division is designed to provide targeted Principal Supervisor support to each school feeder pattern. The Principal Supervisor will provide regular coaching to the Principal on ensuring instruction from lesson plans are aligned to the tested objective being taught and provide campus leadership with the tools they need to support teachers and increase student achievement.

FWISD is supportive of FWHS' goal to provide high-quality affordable housing within the attendance zone of J Martin Jacquet Middle School. FWISD is committed to achieving a TEA rating of A, B, or C for J Martin Jacquet Middle School by the time Cavile Place is completed and we respectfully request a finding of eligibility for the development site by TDHCA.

Please feel free to contact Sara Arispe, Associate Superintendent of Accountability and Data Quality at 817-814-1603 or Sara.Arispe@fwisd.org with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen C. Molinar". The signature is fluid and cursive, with a large initial "K" and "M".


Karen C. Molinar
Deputy Superintendent



Development Owner Certification Related to School Mitigation

The Housing Authority of the City of Fort Worth, Texas d/b/a Fort Worth Housing Solution commits that until such time as J Martin Jacquet Middle School achieves a rating of A, B, or C it will operate an after school learning center that offers at a minimum 15 hours of weekly, organized, on-site educational services provided for middle and high school children by a dedicated service coordinator or Third-Party entity which includes at a minimum: homework assistance, tutoring, test preparation, assessment of skill deficiencies and provision of assistance in remediation of those deficiencies (e.g., if reading below grade level is identified for a student, tutoring in reading skills is provided), research and writing skills, providing a consistent weekly schedule, provides for the ability to tailor assistance to the age and education levels of those in attendance, and other evidence-based approaches and activities that are designed to augment classroom performance. Up to 20% of the activities offered may also include other enrichment activities such as music, art, or technology.

**The Housing Authority of the City of Fort Worth, Texas
d/b/a Fort Worth Housing Solutions**

By: 
Name: Mary-Margaret Lemons
Title: President

Dated: October 15, 2020





Secretary Ben Carson
U.S. Department of Housing and Urban Development
451 7th Street S.W.
Washington, DC 20410

October 28, 2019

Dear Secretary Carson,

The City of Fort Worth is excited to partner with Fort Worth Housing Solutions in conjunction with numerous other public and private organizations on the Cavile Place/Historic Stop Six Neighborhood Transformation Plan implementation effort, including the FY2019 Choice Neighborhoods Implementation Grant application.

The Historic Stop Six Neighborhood is an important community that is poised for transformation into the vibrant, diverse, resource-rich community envisioned by residents and stakeholders in the Cavile Place/Historic Stop Six Transformation Plan. The City has worked diligently with Fort Worth Housing Solutions for six years on this effort to create the civic, community, and philanthropic partnerships needed to transform this historic neighborhood and improve the life of its residents.

With this letter, we certify that the City of Fort Worth will serve as the Co-Applicant and the Neighborhood Implementation Entity ("Neighborhood Lead") for the FY2019 Choice Neighborhoods Implementation Grant Program for the six-year grant period. Key City responsibilities will include:

- 1) Implementing the Neighborhood component of the Transformation Plan, which includes working to make sure the physical conditions support the achievement of the housing and people strategies; improving and enhancing neighborhood amenities; providing or arranging for quality of life improvements; and improving public safety.
- 2) Coordinating and overseeing the implementation of the Critical Community Improvements Plan, which includes development of the Neighborhood Hub/EnVision Center and Bikeshare stations.
- 3) Attracting public and private capital investments to the neighborhood to improve housing and neighborhood assets.
- 4) Helping to sustain all improvements over time.
- 5) Monitoring the outcomes of the Neighborhood component of the Transformation Plan.
- 6) Ensuring residents, community stakeholders, and supportive service providers remain active in the process.
- 7) Managing the Neighborhood component of grant budgets, schedules, and reporting.

The City's support is further evidenced by its status as Co-Applicant with Fort Worth Housing Solutions and by the City's commitment of both monetary resources and of City staff.

For the Neighborhood Strategy, the City commits or has previously committed the following funding:

NEIGHBORHOOD SERVICES

THE CITY OF FORT WORTH ★ 200 TEXAS STREET ★ FORT WORTH, TEXAS 76102
817-392-7540 ★ WWW.FORTWORTHTEXAS.GOV/NEIGHBORHOODS ★ Fax 817-392-7328

- 1) Other Street and Transportation Improvements (2017-2019) funded by General Capital Project Funds, Street Improvement Supplement Funds, Bond Programs, PayGo, and Neighborhood Improvement Program: \$17,467,832
- 2) Water and Sewer Improvements (2017-2019) funded by Bond Programs, Clean Water State Revolving Funds (SRF), and Water/Sewer Capital funds: \$6,245,845
- 3) Drainage Improvements (2017-2019) funded through the stormwater utility: \$128,400
- 4) Bunche Park Improvements (completed June 2019) funded through Community Development Block Grant ("CDBG") funds: \$500,000
- 5) Other previously committed neighborhood leverage includes:
 - a. Neighborhood Improvement Program (2017-2019): \$1,460,000
 - b. Cowtown Brush Up Program (2017-2019): \$41,005
 - c. Homeowner Assistance (2017-2019): \$1,297,717 for the following programs:
 - i. Priority Repair Program: \$550,773
 - ii. Lead Abatement Program: \$216,990
 - iii. Weatherization Program: \$193,550
 - iv. Preserve-A-Home: \$194,165
 - v. Homebuyer Assistance Programs: \$142,239

For the Neighborhood Community Center (Hub), the City commits \$14 million, subject to the necessary bond propositions being submitted to and approved by voters at a future bond election, to support the development of the new community center. The \$14 million represents roughly half of the total development cost and includes investments towards finishes, materials, and equipment for City departments located at the community center such as the Library, Police, Code, and Neighborhood Services departments.

The City commits \$8,560,000 to support the Housing Plan through the following:

- 1) \$3.25 million in CDBG funds over the grant period in the form of low-interest, Major Project loans;
- 2) \$3 million of HOME Investment Partnerships Program ("HOME") funds in the form of low-interest loans;
- 3) Up to \$1.2 million in the form of waived permit fees as part of the Neighborhood Empowerment Zone ("NEZ") program; and
- 4) \$1,110,000 in Urban Development Action Grant funds ("UDAG") in the form of grants over the grant period.

The Fort Worth Housing Finance Corporation (FWHFC), a public instrumentality of the City, commits \$2.5 million to support the Housing Plan through the following:

- 1) \$1.25 million in the form of low-interest construction to permanent loans; and
- 2) \$1.25 million in the form of forgivable no interest loans for construction of permanent supportive housing units.

All loans, whether made by the City or the FWHFC, will be secured by mortgage liens, evidenced by promissory notes and loan agreements, and subject to applicable federal regulations and acceptable underwriting.

In addition, the City commits to pursue future funding in the amount of \$1.5 million, subject to the necessary bond propositions being submitted to and approved by voters at future bond elections, for public improvements which will support the implementation of the Housing Plan. The City has also planned an additional \$15,315,654 in infrastructure improvements in the neighborhood, subject to the necessary bond propositions being submitted to and approved by voters at a future bond election. These improvements directly support the Transformation Plan.

CDBG: The first housing commitment above also demonstrates our CDBG leverage commitment of \$3.25 million.


For the People Plan, the City commits the following funding through its Fort Worth Public Library:

- 1) **Current Funding:** The Fort Worth Public Library currently operates the COOL (Cavile Outreach Opportunity Library) Library, located within the existing Cavile Place Apartments in the Cavile Place/Historic Stop Six Neighborhood. The COOL Library provides materials including books, media, DVDs, magazines, and audio books, computer access, story times, crafts, programming, printing, faxing, scanning services and the Red Swan Senior Citizen program. It currently serves just under 5,000 residents per year and approximately 600 library patrons are thought to be Cavile Place residents. The value of library services provided to this neighborhood is currently \$148,309.
- 2) **Future Funding:** Once relocation of Cavile Place residents is finalized and our COOL Library is closed, we expect these 600 Cavile Place residents to continue to access Fort Worth Public Library locations throughout the City that provide additional opportunities for patrons to access media, technology, and community programming. This represents a total value of approximately \$889,854 (or \$148,309 per year for six years). We additionally plan to have the library become a part of the Community Center/Neighborhood Hub and will fund our library capital, fixtures and furniture, and opening day collection of books from the \$14M in capital for the Community Center/HUB within the Neighborhood Plan.

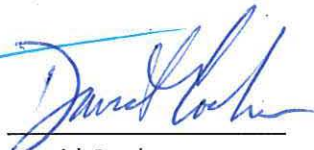
The total committed leverage from the City and the FWHFC for the Transformation Plan is \$41,876,654. All commitments are contingent upon award and receipt of a FY2019 Choice Neighborhoods Implementation Grant and subject to appropriation and the necessary bond propositions being submitted to and approved by voters at future bond elections. The City and FWHFC would consider additional future funding for housing if City Council and FWHFC determines that additional funding is available through their budget processes.

Please do not hesitate to call us with any questions regarding these commitments.

Sincerely,



Betsy Price
Mayor
City of Fort Worth



David Cooke
City Manager
City of Fort Worth



Fernando Costa, FAICP
General Manager
Fort Worth Housing Finance
Corporation



October 19, 2020

Mr. Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

Re: Allocation of TDHCA tax credits for housing in Stop Six neighborhood

Dear Mr. Wilkinson:

As you may know, the City of Fort Worth is working with Fort Worth Housing Solutions and other partners to transform the Stop Six neighborhood with the help of a \$35 million Choice Neighborhoods implementation grant from the U.S. Department of Housing and Urban Development (HUD). We would like to describe the importance of this redevelopment effort, in connection with the allocation of TDHCA tax credits, to promote fair housing in this historically African-American neighborhood and to implement recommendations from our Task Force on Race and Culture.

Fort Worth Task Force on Race and Culture

In June 2017, following local and national police incidents and protests, the Fort Worth City Council appointed a diverse, 23-member group of community leaders and citizens to form the Fort Worth Task Force on Race and Culture. Over an 18-month period, the Task Force held community listening sessions and heard many impassioned comments about the variety and extent of racial discrimination in the community. Based on the information gathered from those sessions along with additional research, the Task Force created and the City Council adopted a set of recommendations to address the wide array of disparities affecting the quality of life in Fort Worth. These disparities were found to pertain directly or indirectly to seven general topics: housing, education, health, economic development, transportation, criminal justice, and governance. Only later, when Fort Worth Housing Solutions re-initiated planning efforts for the Cavile Place/ Stop Six Neighborhood, would it become so evident how well these Race and Culture priorities align with those of the HUD Choice Neighborhoods initiative.

Stop Six Choice Neighborhood

Fort Worth's HUD-approved Stop Six Neighborhood Transformation Plan, seeded with HUD's April 2020 Choice Neighborhoods implementation grant, specifically addresses each of the Race and Culture topics, to bring \$345 million in meaningful investments and improved outcomes for neighborhood residents, as follows:

- **Housing** – The 300-unit, 70-year-old, obsolete Cavile Place public housing will be demolished and replaced with 990 high-quality, newly constructed mixed-income rental units in six phases of housing for individuals and families of low, very low and extremely low income and families of moderate income.
- **Education** – Former Cavile Place residents have undertaken individual family assessments and are provided with case management services to increase the high school graduation rates from the current 73% to 100%, to increase the percentage of children enrolled in early learning programs from the current 41% to 70%, and to increase the percentage of children reading at or above

CITY MANAGER'S OFFICE

CITY OF FORT WORTH ★ 200 TEXAS STREET ★ FORT WORTH, TEXAS 76102
817-392-6111 ★ Fax 817-392-6134

grade level from the current 18% to 75%. A key partner in the education initiatives is the Fort Worth Independent School District, which also participates in the Stop Six Choice Neighborhood governing body, whose focus is to ensure target goals are met in the time frames required.

- **Health** – The same case management services mentioned above will ensure residents have access to quality primary and mental health care from the current 84% to 95%.
- **Economic Development** – Key components of the Stop Six transformation include attracting businesses and employers to the neighborhood and ensuring the case managers connect residents with those employment opportunities, with the goal of ultimately tripling average household incomes through job training and improvements to families' earning potential.
- **Transportation** – The public transit authority is member of the Stop Six Choice Neighborhood governing body, with a key focus on ensuring access to public transportation with thoughtful routes to serve the needs of the growing and evolving neighborhood.
- **Criminal Justice** – The Fort Worth Police Department has been actively involved in all aspects of the neighborhood planning, to ensure safe neighborhood amenities are incorporated and that social justice and equity is designed into Stop Six.
- **Governance** – The comprehensive Stop Six Choice Neighborhood Transformation Plan has been community-driven from the outset, with government and community leaders sharing their collective visions and ideas for the neighborhood. This ongoing collaboration and inclusion is a steadfast commitment of both the City and Fort Worth Housing Solutions.

Conclusion

Of the above initiatives, the most complex and challenging from a financial perspective are those associated with housing. The HUD grant requires one-for-one replacement of the 300 public housing units at Cavile Place through mixed-income redevelopment by 2026. This intensive undertaking will only be possible with funding from TDHCA's Low-Income Housing Tax Credit (LIHTC) program and, therefore, we trust this letter has provided some insights into how the requested Qualified Allocation Plan waiver would provide a pathway to progress for this historic neighborhood.

We appreciate your cooperation and support. Please contact me at 817-392-6122 or fernando.Costa@fortworthtexas.gov if you have any questions about this request.

Sincerely,



Fernando Costa, FAICP
Assistant City Manager

cc: Mary-Margaret Lemons, Fort Worth Housing Solutions
Victor Turner, Neighborhood Services Department, City of Fort Worth
Christina Brooks, Diversity and Inclusion Department, City of Fort Worth

THE STOP SIX CHOICE NEIGHBORHOOD TRANSFORMATION PLAN



FORT WORTH HOUSING SOLUTIONS
THE CITY OF FORT WORTH
MCCORMACK BARON SALAZAR, INC.
URBAN STRATEGIES, INC.

UPDATED OCTOBER 2019



MCCORMACK
BARON
SALAZAR



WITH GRATITUDE

THIS TRANSFORMATION PLAN IS THE RESULT OF A MULTI-YEAR PLANNING AND ENGAGEMENT EFFORT UNDER THE LEADERSHIP OF FORT WORTH HOUSING SOLUTIONS AND THE CITY OF FORT WORTH.

THIS WORK WOULD NOT HAVE BEEN POSSIBLE WITHOUT THE INPUT OF CAVILE PLACE RESIDENTS, STOP SIX NEIGHBORS, KEY POLITICAL REPRESENTATIVES, AND STOP SIX BUSINESSES, INSTITUTIONS AND STAKEHOLDERS. IN ADDITION TO THE NEIGHBORHOOD, THIS PLAN HAS BEEN INFORMED BY WORK FROM THE CITY OF FORT WORTH AND ITS DEPARTMENTS, FORT WORTH HOUSING SOLUTIONS, MCCORMACK BARON SALAZAR, INC., URBAN STRATEGIES, INC. URBAN DESIGN ASSOCIATES, FORT WORTH ISD, CVR ASSOCIATES, APARTMENT MARKETDATA, LLC, KIMLEY HORN, AND BLUE LINEN CREATIVE.

THIS UPDATE OWES A DEBT OF GRATITUDE TO THE WORK OF THE ORIGINAL 2013 PLANNING TEAM OF GILMORE KEAN, DUVERNAY + BROOKS, CAMPUS + COMMUNITY STRATEGIES, EDGEMERE CONSULTING CORPORATION, FREESE & NICHOLS, INC., THE CATALYST GROUP, AND OPEN CHANNELS GROUP.

THANK YOU, ALSO, TO ALL OUR NEIGHBORHOOD PARTNERS, INSTITUTIONS AND SERVICE PROVIDERS WHO ARE A CRITICAL PART OF REALIZING THIS PLAN.



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INTRODUCTION

The Stop Six Choice Neighborhood Transformation Plan envisions the creation of a vibrant, sustainable, community through a comprehensive community-driven approach to neighborhood transformation.

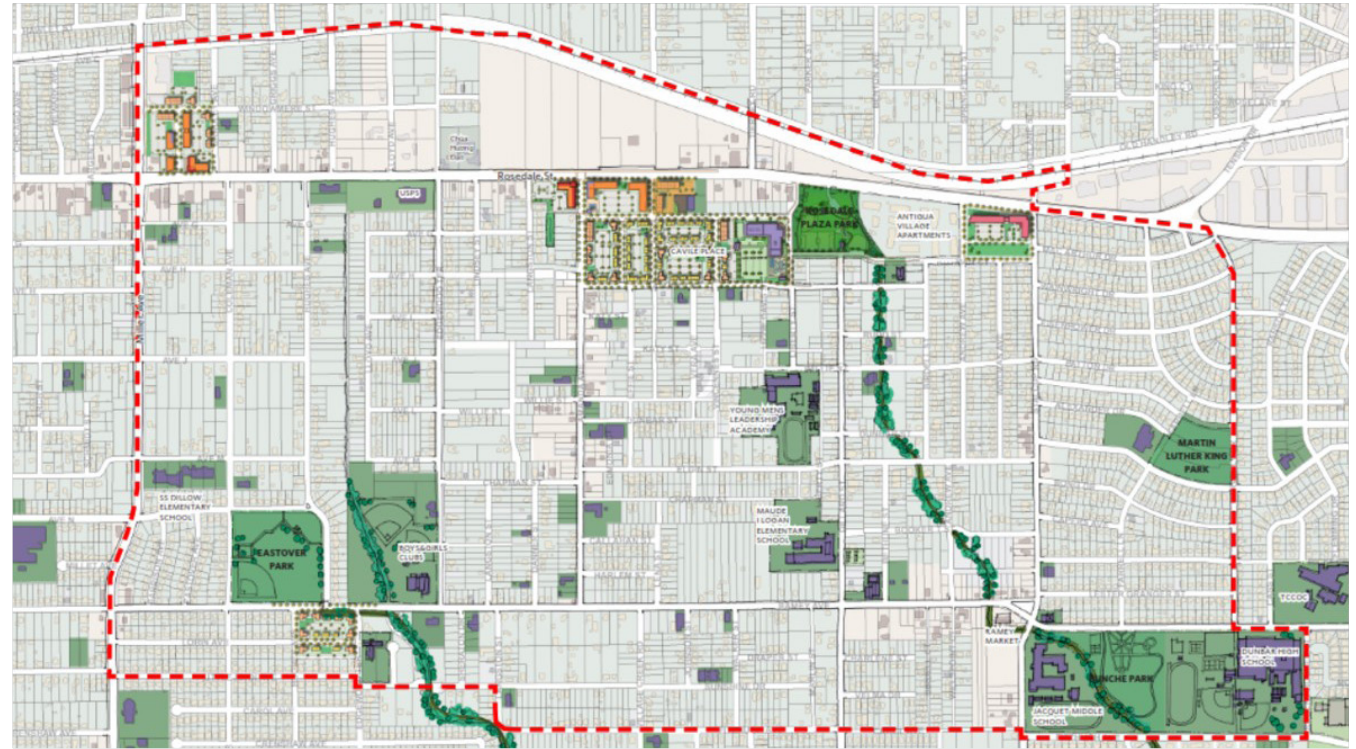
The plan is aligned with the three core goals of HUD's Choice Neighborhood Initiative (CNI):

HOUSING: Replace distressed public and assisted housing with high-quality mixed-income housing that is well-managed and responsive to the needs of the surrounding neighborhood;

PEOPLE: Improve outcomes of households living in the target housing related to employment and income, health, and education; and

NEIGHBORHOOD: Create the conditions necessary for public and private reinvestment in distressed neighborhoods to offer the amenities and assets, including safety, good schools, and commercial activity, that are important to families' choices about their community.

The boundaries of the CNI are the railroad tracks north of East Rosedale Street, Miller Avenue to the west, Carverly Drive to the east, and Fitzhugh Avenue to the south.



The historic Stop Six neighborhood was named after its location on the inter-urban railway that once linked Fort Worth and Dallas. Initially a vibrant community of prosperous, primarily African American residents, Stop Six today is an area of contrasts. The neighborhood includes many churches and several schools, which can be indicators of a strong, stable community, but also has an extensive amount of abandoned structures and vacant land (45% of all lots), a clear indicator of neighborhood stress and declining population.

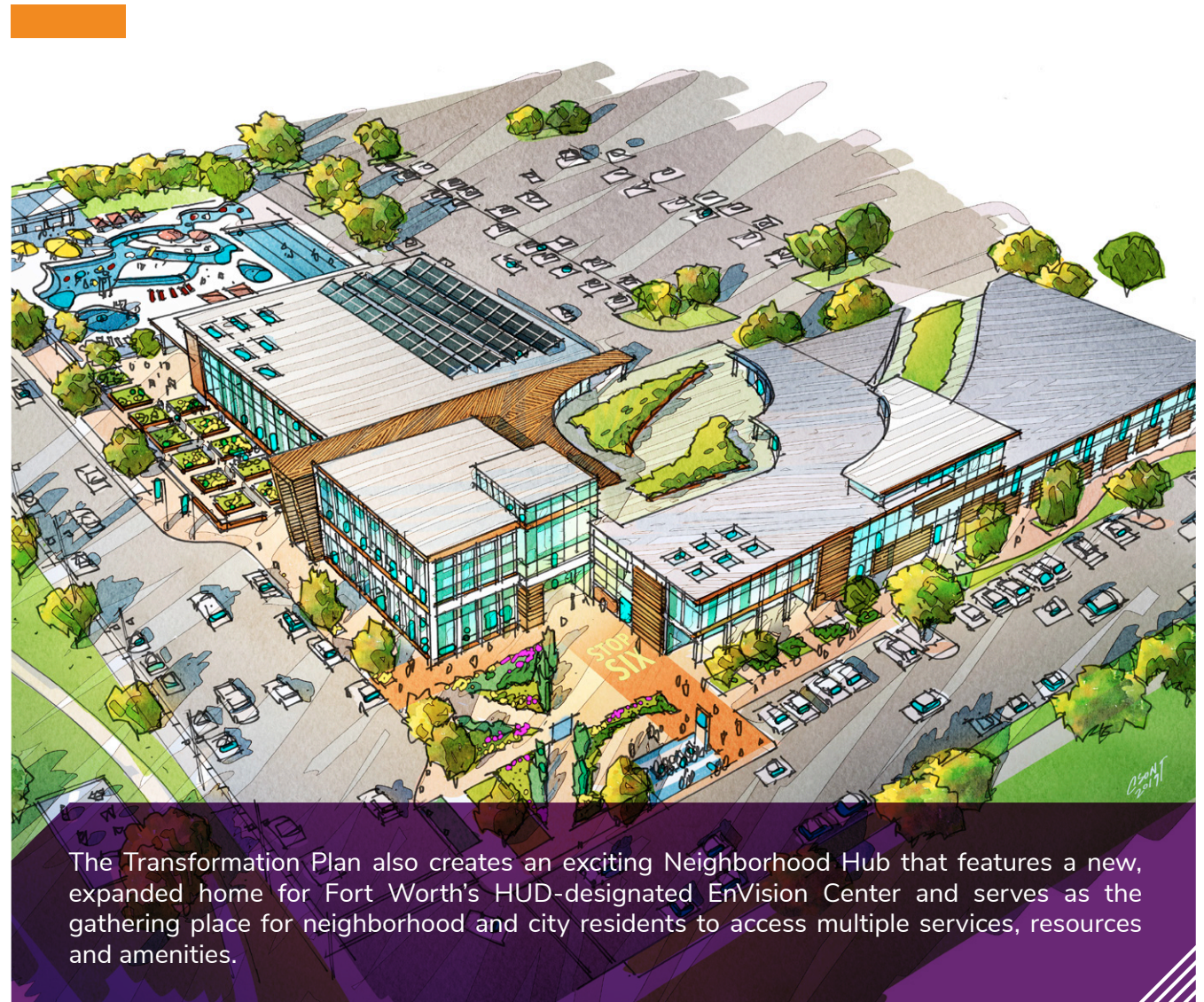
Despite its challenges, Stop Six remains the heartbeat of Fort Worth's African American community and a cultural touchstone for thousands of families who have long since moved away. Restoring this historic community into a vibrant, sustainable neighborhood, as it was decades ago, is the driving intent of today's Stop Six residents and stakeholders, and serves as the foundation of the Stop Six Choice Neighborhood Transformation Plan.

EXECUTIVE SUMMARY



EXECUTIVE SUMMARY

This 2019 update to the comprehensive, multi-dimensional Stop Six Choice Neighborhood Transformation Plan—originally completed in 2013—capitalizes upon the neighborhood’s abundant assets—multiple churches, green spaces, and strong relationships with educational institutions at the elementary, secondary and post-secondary levels—and offers fresh approaches for remedying persistent challenges, including the large numbers of vacant lots and substandard housing. Most importantly, the Plan reverses the neighborhood’s rich history, preserves its character, and seeks to restore both its vibrancy and livability.





THE NEIGHBORHOOD PLAN

The neighborhood plan builds on the pre-existing assets and relationships in the neighborhood and provides a framework for development of a neighborhood of choice—all while improving connectivity and infrastructure throughout the neighborhood.



THE HOUSING PLAN

The housing plan replaces the 300 obsolete and outdated Cavile Place public housing units one-for-one in several well-designed, high-quality, sustainable, mixed-income communities with almost 1,000 new units. The plan creates anchors at the corners of the neighborhood and connects with a large development at the heart.



THE PEOPLE PLAN

The people plan addresses the specific needs of the 252 target households from Cavile Place along with 48 households off the Cavile Place waitlist. These needs were identified through a Resident Needs Assessment and are being met with commitments from service provider partners.



THE COMMUNITY PLANNING PROCESS





THE COMMUNITY PLANNING PROCESS

In developing the Stop Six Choice Neighborhood Transformation Plan, the planning partners and participants have embraced a shared intent: to fundamentally improve Stop Six by employing proven neighborhood revitalization efforts. The work plan includes key strategies used effectively in other CNI communities, including:

- Restore neighborhood confidence—the belief on the part of neighbors and other stakeholders that conditions in Stop Six will improve, and instill confidence in their capacity to alter it.
- Reposition Stop Six in the market as a place of choice and make it competitive in attracting housing demand.
- Create new symbols and a new narrative about the Stop Six Choice Neighborhood—one that replaces a story of decline with a story of transformation.

In addition to undertaking a comprehensive physical needs assessment, market analysis, financial analysis, development feasibility study, and a resident needs assessment, the planning process relied heavily on the participation of the residents of Cavile Place, the residents of the surrounding Stop Six neighborhood, and various neighborhood and Fort Worth regional stakeholders.

The planning and development partners also sought to learn critical lessons from other Choice Neighborhood communities and avoid pitfalls that could adversely impact implementation of the Transformation Plan. As a result, the team elected to promote and expand the assets and strengths of this neighborhood and its residents, and build social connections, rather than organizing around the goal of removing something bad (dilapidated housing or crime). Similarly, the focus remains on improving and enhancing the neighborhood, not implementing a program. Success is defined solely in terms of positive neighborhood change. Finally, it is the intention of all partners to create and perpetuate a new, enhanced image of the Stop Six Choice Neighborhood. To this end, the plan balances the strategies of developing additional housing supply, expanding services and amenities, building housing demand and attracting new residents to the neighborhood.



June 17, 2019 - Community Listening Session



July 11, 2019 - Cavile Place resident providing feedback on proposed renderings.



July 11, 2019 - Final Workshop Presentation and Open Housing to listen to the community's feedback and suggestions.

OUTREACH. Restoring confidence in the Stop Six neighborhood is essential to a successful revitalization process and must begin with residents.

The effort to heighten or restore confidence and its by-product, pride began with initial outreach in 2012-13, during which the City of Fort Worth and Fort Worth Housing Solutions staff invited Cavile Place and Stop Six residents to think and talk about their aspirations for the neighborhood. Residents

were encouraged to describe what they loved about Stop Six those centerpieces of the community they wanted to preserve as well as the things that needed to be fixed or improved. Because the planning and development team has demonstrated a genuine commitment to resident engagement, the organization has earned a positive relationship with those it serves, resulting in seven years of well-attended outreach and engagement activities (hundreds of participants), and the consistent presence of resident voices in planning.

Primary resident priorities have not deviated significantly between 2012 and 2019, with most values and expectations remaining constant. For example, across five resident and community meetings and community strategy sessions (June to October 2019), attended by approximately 200 residents (not all in attendance signed in), representatives from 25 stakeholder and anchor institutions, and four elected officials (Mayor, City Councilmember, State Senator, U.S. Representative), priorities described by



July 10, 2019 - Community Open House, featuring in-progress drawings.



all sources closely mirror those originally developed in 2012.

- Parents want improved parks and recreation opportunities, better schools, and additional healthcare resources.
- Young adults want enhanced access to employment, education and training resources.
- All residents want to see neighborhood walkability upgraded as well as more neighborhood amenities, including restaurants, grocery and retail stores.
- Older and younger residents want a library and access to the internet.
- Everyone wants more gathering places where people can come together.

level, continuous outreach are visible across the Stop Six neighborhood today. Confidence in the neighborhood is building, demonstrated by increased numbers of residents who have improved their personal and rental properties. This new-found confidence is contagious, stimulating greater public and private investments in the neighborhood, seen in the multi-year street improvement program by the Texas Department of Transportation and growth in the number of new housing starts within the neighborhood. This confidence is what the community needed to envision and implement the Neighborhood, Housing and People Plans outlined in this Transformation Plan.





THE NEIGHBORHOOD PLAN





THE NEIGHBORHOOD PLAN

Summary of Existing Conditions

Stop Six was originally known as Cowanville, a community of small farms and homesteads founded by Amanda Davis, an African American pioneer of the late 1800s. By the early 20th century, Cowanville was a thriving working-class African American neighborhood, though it lacked municipal services and police protection. The area was served by the inter-urban railway and became known colloquially as Stop Six, reflecting its placement on the system's route from Fort Worth to Dallas.

Today's Stop Six Choice Neighborhood is located in the southeast quadrant of Fort Worth and enjoys close proximity (approximately 15-minute commute) to downtown and the large, nationally acclaimed biomedical center, Medical City Fort Worth. Current neighborhood boundaries—the railroad tracks above East Rosedale Street to the North, Miller to the West, Fitzhugh to the South and Carverly to the East—encompass just over 1.8 miles. Despite being engulfed by a major metropolitan area, the neighborhood retains some rural feel, thanks to abundant green spaces and Dunbar Creek, which runs through the center of the community.

COMMUNITY-IDENTIFIED GOALS AND GUIDING PRINCIPLES

The Neighborhood Plan works within the following goals and guiding principles identified through community engagement during the planning process:

- Introduce neighborhood-serving amenities, such as recreation, restaurants, and retail, to return vacant land to productive uses.
- Improve transportation and mobility through improved transit service, new and improved sidewalks and new bike lanes.
- Create open space/recreational opportunities through community gardens, multi-use trails, linear and pocket parks, and sports fields.
- Celebrate the neighborhood's history and protect and preserve neighborhood character.
- Improve neighborhood stability through increased homeownership, reuse of vacant sites and demolition of vacant houses.
- Increase public safety by incorporating safety features into new construction, improving street lighting and working with the police department to increase the visibility of police in the neighborhood.





While not technically a food desert, the Stop Six neighborhood lacks a full service grocery store. While having some strong residential areas, it is somewhat largely defined by the presence of the large Cavile Place public housing site. And while centrally located in the Fort Worth metropolitan area, it lacks a major employer or anchor gathering site.

Existing Assets

The Stop Six Choice Neighborhood has multiple existing assets that can be engaged to accelerate transformation. Among the most enduring is this community's long-standing role with Fort Worth's African American community.

The community has a smaller population than it did some years ago, but it remains a strong neighborhood, anchored by the educational institutions on its southern boundaries and by the many churches that continue to thrive, drawing congregational membership and attendance from across Fort Worth.



The substantial amount of vacant land is also an opportunity— providing significant land areas for future development. In addition, the recent improvements to East Rosedale Street have dramatically improved the appearance and impressions of the neighborhood. The Transformation Plan seeks to leverage these opportunities toward the creation of a thriving, sustainable community.



Recent Investments

In addition to the designation of the Stop Six Choice Neighborhood as a Neighborhood Empowerment Zone and the investments by the City of Fort Worth attendant to that designation, neighborhood property owners and residents are also the beneficiaries of other revitalization activities, including:

- The City of Fort Worth recently (June 2019) completed major capital improvements to Ralph J. Bunche Park, including trails, a group shelter, benches and picnic tables.
- The City of Fort Worth dedicated additional CDBG and HOME funds, leveraged with local tax dollars, toward upgrading the water and sewer infrastructure to service new housing starts.
- The City's Neighborhood Improvement Program funded over \$2.5 million in public safety improvements including sidewalks, street lighting, security cameras, demolition of abandoned structures, and clearance of trees and brush from vacant lots across the neighborhood.
- The City's Homebuyer Assistance Program provides up to \$20,000 in mortgage assistance for income-eligible first-time homebuyers in the Stop Six Choice Neighborhood.
- The City's Economic Development Strategy is encouraging private sector entities to create job opportunities within and around Stop Six as part of its commitment to deconcentrate poverty.
- The Texas Department of Public Safety completed a \$21 million streetscape improvement of East Rosedale Street, the Stop Six Neighborhood's major east-west artery.

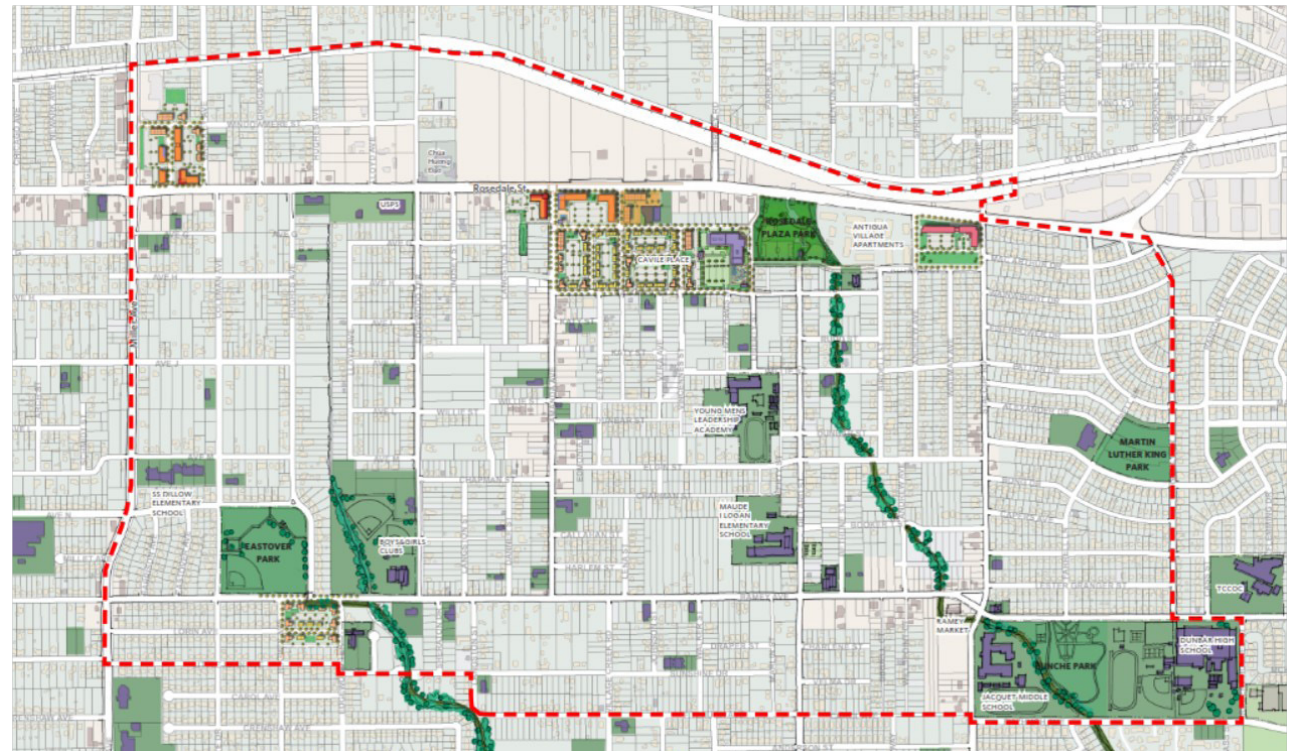


THE NEIGHBORHOOD PLAN

Proposed Neighborhood Investments

The Transformation Plan has been developed to capitalize upon the neighborhood's abundant assets and offer some fresh approaches for remedying persistent challenges. Most importantly, the Plan reverses the neighborhood's rich history, preserves its character, and seeks to restore both its vibrancy and livability.

With the overarching goal to acknowledge and preserve the unique historical heritage of the community, the Transformation Plan provides a comprehensive framework for short and long-range actions to stabilize and rebuild the historic Stop Six community.



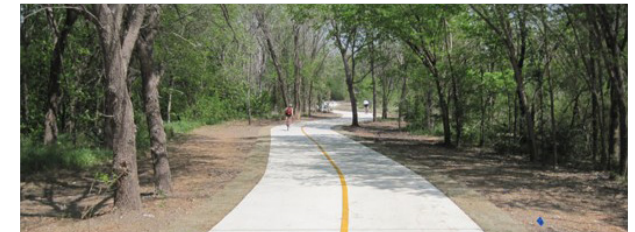


Key Neighborhood Opportunities

The Neighborhood Plan directly responds to four key opportunities that now exist in Stop Six:

- **The opportunity to establish a major anchor in the community that will serve as a gateway and focal point of new investment.** The Transformation Plan includes a large, new Neighborhood Hub, that will offer a single, easily accessed, highly visible site from which all neighborhood residents can obtain critical services and access neighborhood amenities.
- **The redevelopment the Cavile Place public housing site.** Fort Worth Housing Solutions is committed to redeveloping the Cavile site into a mixed-use, mixed-income community that will blend with and enhance the neighborhood. The re-use of the property will remove what has become an impediment to neighborhood transformation and creates the opportunity for new residential development throughout the neighborhood.

- **The enhancement of the appearance of East Rosedale Street.** The Plan leverages the major streetscape improvements that the Texas Department of Transportation has made to East Rosedale Street. The improvements have dramatically enhanced the character of this important arterial street and set the stage for introducing much needed retail and commercial activity.
- **The presence of other vacant land in the neighborhood that can be transformed and tied into infrastructure improvements to create a sustainable community.** The Transformation Plan builds additional housing on other vacant sites in the neighborhood and connects these together with planned parks, infrastructure, and open space that re-knit the community and will increase the population of the community without increasing density.



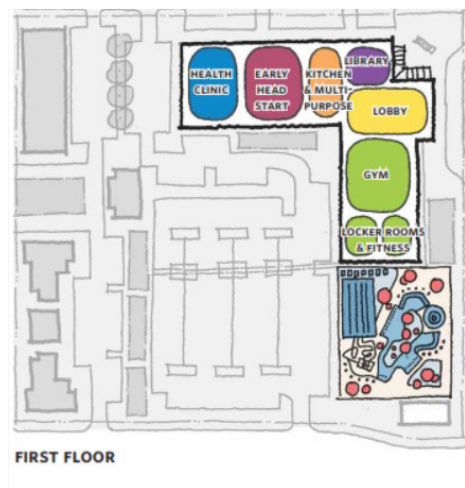


THE NEIGHBORHOOD PLAN

The Neighborhood Hub

Among the most frequently cited needs by Stop Six Choice Neighborhood residents were job training, employment assistance, education for all ages, financial literacy training, and primary healthcare. Each is methodically addressed in the People Plan; however, to further enhance service access and utilization, the Transformation Plan proposes to build a new Neighborhood Hub at the heart of the neighborhood.

The Hub will offer a single, easily accessed, highly visible site from which residents can obtain critical services. Programs will include an expanded EnVision Center, a YMCA, a Head Start Center, a city library, family case management services provided by Urban Strategies, and a host of other programs aligned to resident needs, including: 1) a job training and business incubator center; 2) afterschool programs for students from kindergarten through 8th grade, with instruction aligned with school curricula; 3) financial literacy classes and credit repair services; and 4) connections to primary care providers and medical homes. The co-location of job training and Head Start at the Hub will eliminate a primary barrier to self-sufficiency and will enable young parents to take full advantage of these resources.





Other Major Revitalization Concepts

EAST ROSEDALE STREET NEIGHBORHOOD GATEWAY. The improvements to East Rosedale Street have facilitated the opportunity to create a new “front door” to the Stop Six neighborhood. There will be four key neighborhood gateways along East Rosedale.

The first will be located at Rosedale’s intersection with Amanda Street, the traditional “main street” of the neighborhood that, in the past, supported both residential and local-serving retail. This important street will include a mixed-use building at its intersection with East Rosedale, along with retail-serving street parking, to re-establish it as a desirable address for neighborhood retail and services.

The second neighborhood gateway will be created at the intersection of East Rosedale and Liberty Street, where a vista will showcase the Neighborhood Hub and the improvements to Rosedale Plaza Park, highlighting the services and amenities now available to the community via the Hub.

The third neighborhood gateway will be at Stalcup and East Rosedale, where the prominent new senior building will mark the transition from neighborhoods to the east to the new Stop Six.

The fourth gateway will be created by the development at East Rosedale and Miller, which will be highly visible from that heavily trafficked

intersection, and will help to establish the connections between higher-income communities to the west and the new transformed Stop Six neighborhood.

NEIGHBORHOOD OPEN SPACES. The existing Rosedale Park will be improved and enhanced, with programmatic and design connections to the Neighborhood Hub, making it a more integral part of the community and solidifying the new gateway experience. In addition to Rosedale Plaza Park, the Transformation Plan incorporates recommendations for development of several other small-scale neighborhood open spaces and strengthens connections to existing parks from new housing.

MIXED-USE CENTER. Starting at the corner of Amanda Street and East Rosedale are a series of mixed-use buildings with groundfloor space for neighborhood retail, service providers, entrepreneurs and other commercial tenants. Also included in this space is the management office and community amenity space for the new housing at on the central housing site.

Parking for the mixed-use space will be provided on-street while parking for the development and employees will be located on the interior of the blocks where it will not detract from the streetscape.

The design of the frontage of the buildings will create a walkable, pedestrian-friendly district.

TRANSPORTATION, STORMWATER AND UTILITY IMPROVEMENTS. The Transformation Plan includes several “levels” of street improvements, including new streets, improved street connectivity and rebuilt streets.

The plan calls for rebuilding key streets, including resurfacing, rebuilding curbs and gutters, and providing sidewalks, streetlights and landscaping.

The Stop Six neighborhood is served by a number of bus routes that run along East Rosedale Street, Stalcup Road and Ramey Street. The Transformation Plan recommends enhancing the existing bus stops in the neighborhood and, post-residential development, re-evaluating bus service lines to ensure coverage.

The plan also includes updates of existing utility infrastructure and improvements to stormwater management to mitigate the impact of new and future investments in the community.



THE HOUSING PLAN



THE HOUSING PLAN



Summary of Existing Conditions

One factor that illustrates both the problems and opportunities embodied in the Stop Six neighborhood is the wide variety of housing character and quality. While there are some homes that are historic, dating to the earliest days of settlement in the neighborhood, there are also other older homes that have been neglected and are now in very poor condition. On the same blocks, there are newly constructed homes in excellent condition. This variation in circumstances, coupled with the substantial amount of vacant land located throughout the neighborhood, creates a general sense of uncertainty about the area's future.

There are 2,208 housing units in the Stop Six Choice Neighborhood and the vacancy rate is 6.38, three times higher than the Tarrant County rate (2.07). Three-quarters (79%) of all neighborhood housing was developed for single families. Most homes were built between 1940 and 1970; only 21 homes (1%) have been built since 2010. Homes tend to be of good size, with 58% having at least three bedrooms. About half of all homes are owner occupied. The neighborhood is highly stable, with 91% of residents living in their homes for more than five years.

The median value of housing varies across the neighborhood, ranging from \$48,200 to \$65,800, while the median in Fort Worth is \$198,800. The average gross monthly housing cost (with utilities) for owners is \$976 per month; the rate for renters is \$881. These monthly amounts cause about half of neighborhood households to be cost burdened with more than 30% of their income going to housing costs.

Cavile Place is the only public housing complex in Stop Six and is demonstrably distressed and obsolete. It was approved by HUD for demolition in April 2019.

The Housing Strategy is based on an understanding of these demographics and it looks beyond them, to describe a program for housing that will result in a sustainable, desirable, mixed-income community.





COMMUNITY-IDENTIFIED GOALS AND GUIDING PRINCIPLES

The Housing Strategy provides a comprehensive approach, plan and phasing sequence to revitalize the housing in the neighborhood, and addresses the following goals and guiding principles identified during community engagement throughout the planning process:

- Create a neighborhood comprised of high-quality, well-maintained, mixed-income housing that accommodates families and is compact and pedestrian-friendly with an interconnected network of streets and defensible public open spaces.
- Develop housing of the same design and construction quality, making assisted units indistinguishable from market-rate, affordable and workforce housing, and ensure adequate off-street parking.
- Follow a design approach that respects the historic “feel” of the neighborhood, and incorporates traditional elements like porches, masonry, and design details.
- Eliminate the stigma of Cavile Place by demolishing the site and dispersing HUD-assisted replacement units on a number of different sites, and developing new mixed-income housing that blends with the density and character of the surrounding neighborhood.
- Allow all existing Cavile Place residents the right to return to the site.
- Build at densities that blend into the existing neighborhood character, scale and building groupings.
- Incorporate sustainable building elements such as energy efficient lighting, appliances and building envelopes, low VOC (Volatile Organic Compounds) paint, sustainable materials, and green site design elements

OVERVIEW OF THE HOUSING PLAN

The Housing plan is bold ,yet feasible, and goes beyond the requirements of the CNI NOFA to address the true spirit and goals of the program. Most importantly, it addresses the specific needs expressed by the community and residents and the goals of Fort Worth Housing Solutions and the City of Fort Worth to deconcentrate poverty and create strong, equitable, inclusive communities.

The Housing Strategy was developed through a robust, six-year planning and community engagement process, which followed the CNI model, and builds off existing investments in the community, including recent single-family residential development, transportation investments on East Rosedale Street, the establishment of a Neighborhood Empowerment Zone (NEZ), the creation of the EnVision Center, and investments in neighborhood schools and parks. The Housing Strategy reconnects the neighborhood through a cohesive and holistic vision, and provides for existing residents through one-for-one replacement of subsidized housing in a truly deconcentrated, mixed-income, marketable neighborhood with access to services and opportunities.



THE HOUSING PLAN

The community-driven plan works to reverse the patterns of disinvestment in the community by physically replacing all 300 distressed public housing units across the neighborhood with project-based voucher units, along with an additional 642 market-rate, LIHTC and workforce (80%-120% AMI) units and 48 permanent supportive units. In total, 990 new units will be developed in the neighborhood, with multiple additional sites and acreage allowing for high-quality, mixed-income housing at the same density levels currently seen in the community.

The Housing Plan consists of five phases of mixed-income, family housing and one phase of mixed-income senior housing. Each phase includes units for a range of incomes (replacement, permanent supportive housing, tax credit, and market-rate), with this mix present in each building (to the extent possible given the number of units in each building). Each phase also combines a blend of resources (including Choice Neighborhood funds, private debt, private Low-Income Housing Tax Credit equity, other public dollars, and philanthropic resources) to create a strong financial underpinning and support the development throughout its lifecycle. Critically important, no family phase has more than 30% replacement units.

Stop Six is a low-rise, low-density neighborhood with strong historical roots. While the Housing Plan will bring more housing into the neighborhood, strategic acquisitions will result in the new housing being designed at neighborhood-appropriate density levels, in two- and three-story walk-up/garden apartments, two-story townhouses and two-, three-, and four-story mixed-use buildings, weaving seamlessly into the existing community.

The high-quality design of the community, the buildings and the units will result in a safer, more accessible, more amenity-rich neighborhood that meets the needs and aspirations of current residents who wish to remain in the community. At the same time, it will attract market-rate residents from other areas who are already showing an interest in the greater Stop Six neighborhood, which has had a 7.7% increase in population since 2010.



DECONCENTRATING POVERTY

Deconcentrating poverty has been a major goal of the City of Fort Worth and Fort Worth Housing Solution's public housing repositioning efforts across the City. The Housing Plan reflects this intent, with 300 replacement units representing 30% of the 990 total planned new units. The new housing is not limited to the original Cavile Place site, but includes multiple strategic sites acquired throughout the community to create a cross-neighborhood market transformation, anchor key entry points into the community, and bring visibility to the transformed central site on the highly trafficked Rosedale Avenue.



ONE-FOR-ONE REPLACEMENT

The Housing Strategy replaces all 300 Cavile units one-for-one within the neighborhood on four major development sites: Stalcup (the senior site which establishes the northeast corner of the neighborhood), the Cavile Place site plus additional surrounding lots (which establishes the “heart” of the community), Ramey (establishing the southwestern corner of the neighborhood) and Rosedale/ Miller (establishing the northwest corner). The southeast corner of the neighborhood is anchored by the educational campus of Dunbar High School, Jacquet Middle School and the Tarrant County College Opportunity Center. The proposed bedroom sizes of the replacement units reflect the current needs of the existing families in Cavile Place (and also additional families on the Fort Worth Housing Solutions waiting list). Because it is more difficult to find larger apartments with housing vouchers, the plan builds back more of the larger two- and three-bedroom units to meet the needs of harder-to-house wait list families. As the Transformation Plan is implemented, bedroom sizes will continue to be adjusted to meet the needs of families.

ONE FOR ONE REPLACEMENT UNIT MIX					
	1 BR	2 BR	3 BR	4 BR	TOTAL
Cavile Place (Original)	60	144	70	26	300
Cavile Place (Current Need)	96	119	31	6	252
Replacement: Stalcup Senior (Phase 1)	37	11	-	-	48
Replacement: Cavile (Phase 2)	18	31	8	3	60
Replacement: Cavile (Phase 3)	15	29	10	-	54
Replacement: Cavile (Phase 4)	10	11	25	3	49
Replacement: Ramey (Phase 5)	8	5	10	-	23
Replacement: Miller/Rosedale (Phase 6)	33	33	-	-	66
Total Replacement	121	120	53	6	300



THE HOUSING PLAN

HOUSING DESIGN

From the planning process, a shared vision of the neighborhood emerged: a vibrant, sustainable community with the attributes—education, healthcare, safety, services, and amenities—of a neighborhood of choice. During the planning process, design, density, and amenity preferences were surveyed from Cavile Place residents, neighborhood residents, and other community stakeholders. Those preferences were reviewed and are reflected in the resulting Housing Plan. This plan integrates the mixed-income, mixed-use redevelopment of neighborhood housing with a host of complementary investments in the neighborhood, connected by improved infrastructure, services and streetscapes. The plan works to restore and reinforce the qualities of adjacent streets and blocks, knitting the neighborhood together with surrounding blocks by eliminating inward-facing super blocks, reconnecting the street grid and creating a new pedestrian-friendly scale.

DESIGN ELEMENTS. The design replaces distressed and obsolete units with a selection of new mixed-income walkup/garden, townhouse and elevator-served apartments. The buildings, some of which are also mixed-use, are designed to contemporary architectural standards and reflect market tastes, the historic context of the Stop Six



neighborhood, and feedback gathered from residents and stakeholders. Rather than front doors facing parking lots or interior courtyards, all residential front doors and front porches will face public streets. The design is updated, yet well-integrated with the architectural character of Stop Six—with gabled roofs, front porches, materials, style and colors—appealing to families and individuals who have the means to move anywhere, but choose to

live in the Stop Six neighborhood and an urban environment.

UNIT AND ROOM SIZES. All new units will be designed to the same market-rate standard and will be indistinguishable from each other. Rooms are large enough to accommodate modern furniture and room sizes, and bedroom configurations have been designed to accommodate the needs of contemporary



families, including ground-floor powder rooms in townhouses, in-unit washers/dryers, and large closets to provide sufficient storage. Units have high-quality, market-rate finishes and appliances, as expected in the Fort Worth market.

COMPACT, PEDESTRIAN-FRIENDLY, MIXED-USE NEIGHBORHOOD. The plan reconnects to the traditional block pattern to create a framework that supports compact yet comfortable development, connections for

pedestrians, and an integrated plan that supports a core of diverse land uses. The housing is well-integrated into the planned neighborhood investments, including connections to the Neighborhood Hub and EnVision Center from all sites, connections from each site to parks and greenspace, and walkable connections to transit. It has a diversified architectural density of two- and three-story garden, townhome and mixed-use elevator buildings with higher densities on the major thoroughfare, Rosedale. Different

building types create variety and diversity from the street that is attractive to pedestrians, and both contextual and contemporary, elevating traditional designs to tangibly demonstrate new investment in Stop Six. The plan features new, continuous, and accessible sidewalks and crosswalks; improved street lighting, street trees/landscaping and drainage; buildings that face the public realm; and improved local streets that provide better connection to Rosedale, the new Hub, parks, and schools. The improvements promote walking, biking, and accessibility to the Hub to aid in a healthy lifestyle.

RESIDENT COMMUNITY SPACE AND RECREATION. The design centers around the new Neighborhood Hub at the heart (literally and figuratively) of the community. In addition, each of the four housing sites will have resident-only amenities—an expectation for all market-rate housing in Fort Worth. These amenities include clubhouses/community spaces, fitness centers, outdoor spaces (including pools and water features), and management offices in all four sites. Each new multi-family block incorporates an interior playground and green space.





DEFENSIBLE SPACE. The plan is designed to create defensible space by incorporating Crime Prevention Through Environmental Design (CPTED) principles to deter criminal activity through natural surveillance, natural access control, and clearly defining public versus private spaces. On-site elements include: buildings that front the street; no blank elevations; security lighting; security cameras; windows overlooking sidewalks, parking lots, and parks; limited entrances to buildings and parking spaces; and see-through fences between buildings. Off-site elements include recent investments by the City of Fort Worth in street lights and cameras.

MICRO-CLIMATE APPROPRIATE LANDSCAPING. The plan follows Enterprise Green Communities (EGC) criteria, which include native species and xeriscaping to reduce the need for irrigation and provide for landscaping that is resilient to dramatic weather events. Native shade trees will help restore the native microclimate and reduce the heat island effect, conserving energy and promoting livability by creating more comfortably enjoyable outdoor spaces.

STORMWATER MANAGEMENT PRACTICES. Drainage is a known challenge in Fort Worth. In addition to investments by the city to reduce runoff from upstream sources, aggressive strategies will be employed to address stormwater runoff management on-site and reduce our impacts downstream. The design incorporates native



raingardens, retention ponds and underground storage piping to detain and filter precipitation, decrease pooling, decrease the impact to the combined stormwater system, and increase resilience to extreme weather events.

ENERGY EFFICIENT, SUSTAINABLE, AND RESILIENT. All new housing will be built and certified to Enterprise Green Communities Criteria (EGC) 2020 Standards (or a newer version as applicable) and ENERGY STAR for Homes (ES). EGC

and ES increase the efficiency of the buildings and systems, and require energy efficient appliances, lighting, and roofing products. EGC prevents waste of natural resources by using environmentally preferable materials, minimizes construction waste, and promotes healthy living environments through the use of healthy interior materials (low- and no-VOC paints and adhesives, Green Label carpeting and other environmentally preferable flooring, formaldehyde-free wood products, and asthmagen-free materials), integrated pest control,



adequate ventilation planning, and mold prevention. EGC 2020 also includes planning for mitigating the impact of natural disasters.

ACCESSIBLE AND FREE FROM DISCRIMINATION.

In the Stop Six neighborhood census tracts, 37.2% of residents are identified as disabled. For this reason, it was critical to ensure there are ample accessible housing opportunities in the new housing. Five percent of the units across unit sizes will be accessible to persons with physical

disabilities, 100% of ground floor garden and elevator-accessible apartments—including 100% of the senior building—will be adaptable and visitable (i.e. able to be visited by a person who uses a wheelchair). All townhomes will be visitable on the first floor (zero-step entrance, 32 inches of door passage space, and a wheelchair-accessible ground floor bathroom). At least 2% of units will be wired to accommodate persons with visual and/or hearing impairments. All sidewalks and paths of travel will be designed to ADA and UFAS

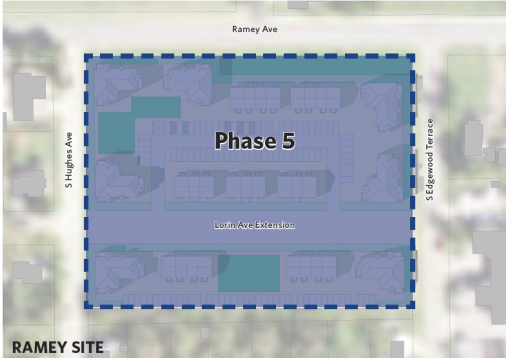
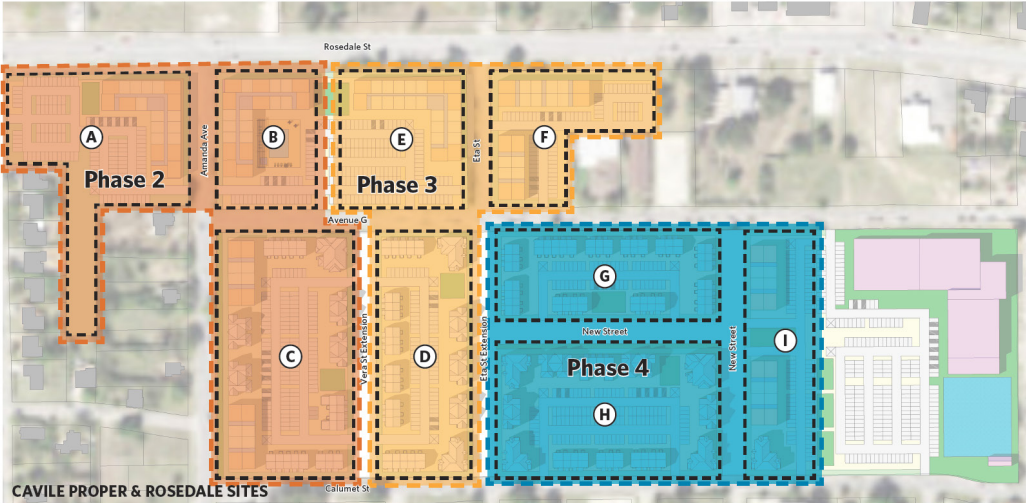
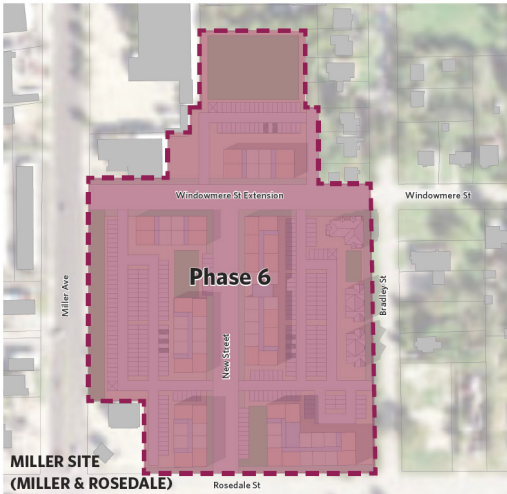
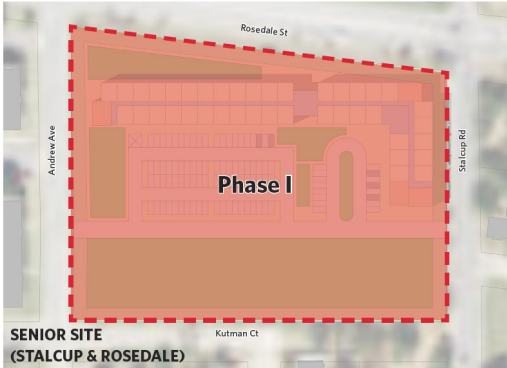
standards, and playgrounds and fitness equipment will include accessible options. Fort Worth's CNI team is also committed to affirmatively furthering Fair Housing and increasing racial, ethnic, and economic diversity to create a community free from discrimination.



THE HOUSING PLAN

IMPLEMENTATION AND PHASING PLAN

The phasing plan anticipates six total phases of multi-family, mixed-income residential housing across the Stop Six neighborhood. The phasing plan responds to the specific realities of the sites, the market and the requirements of funding sources.



PHASING PLAN

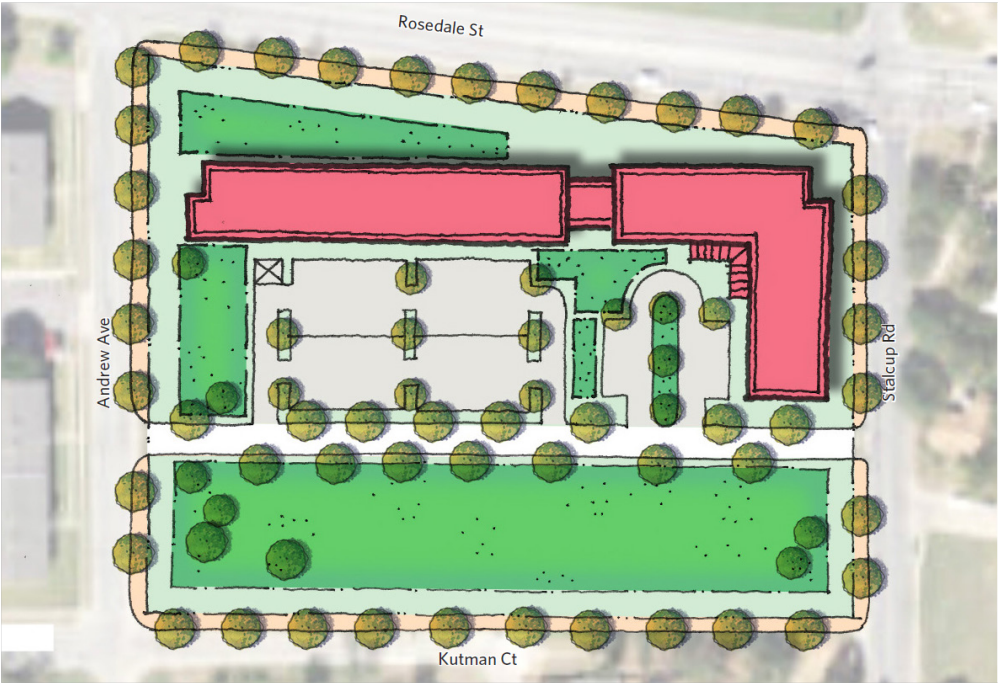
CAVILE PLACE CNI / FORT WORTH, TEXAS / SEPTEMBER 27, 2019





PHASE 1.

Phase 1 is mixed-income senior building to be built on currently vacant land at East Rosedale Street and Stalcup. It includes 111 1-bedroom and 11 2-bedroom apartments and directly fronts Rosedale, boldly announcing the change and opportunity coming to Stop Six. A 9% Low-Income Housing Tax Credit-equity funded development, Phase 1 can begin development before any shift in market dynamics on a site that needs little site preparation and no relocation. The demographics of current residents at Cavile justify the 56 subsidized units and, with 533 seniors in the neighborhood, the broader market area will quickly absorb the low-income and market-rate senior units. The building will include universal design features with 100% of the units visitable and adaptable. In addition to housing, the senior building will include ample community and activity space for residents (including a movie room and billiard table), outdoor passive and active space, a community garden for residents, a health suite, a beauty salon and a fitness center.



PHASE 1: SENIOR UNIT MIX					
BR	Market	LIHTC	Permanent Supportive	PBV / Replacement	Total
1	13	53	8	37	111
2	-	-	-	11	11
Total	13	53	8	48	122

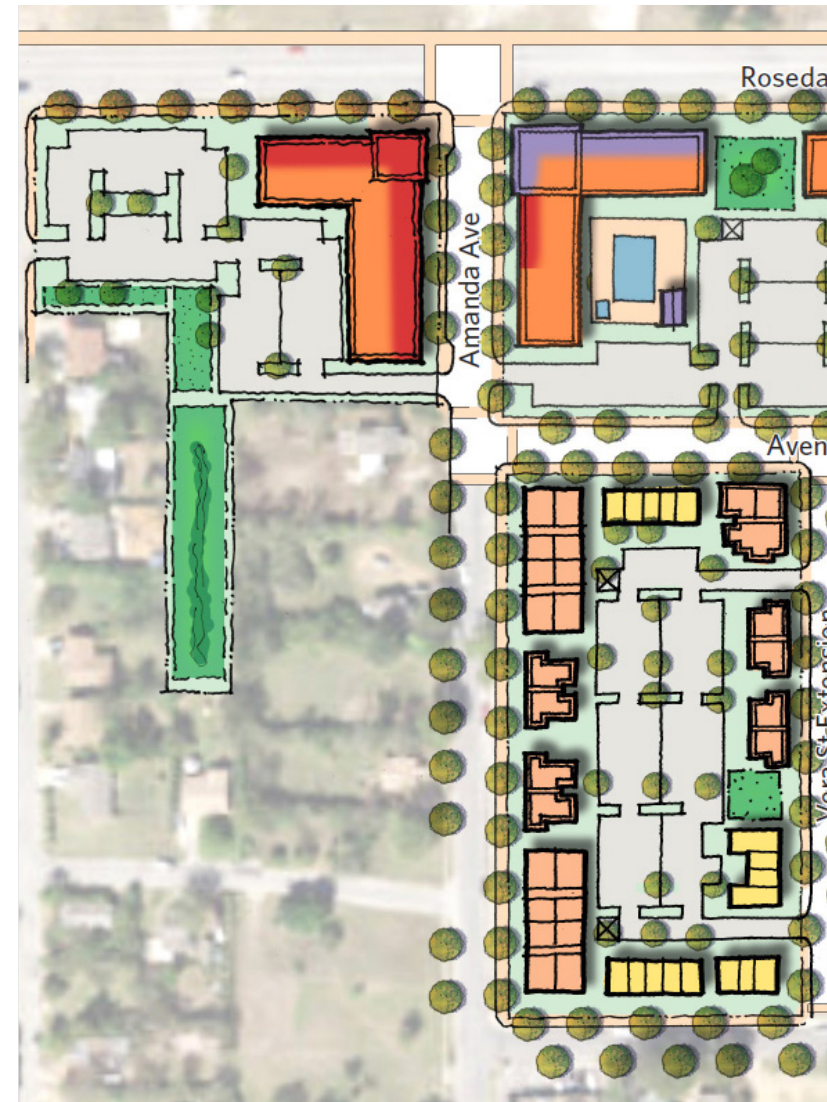


THE HOUSING PLAN

PHASE 2.

Phase 2 is a large 4% LIHTC development meant to bring attention to the heart of the transformation with a large, visible investment along Rosedale Street, the major artery in the community. Because 4% LIHTC are non-competitive, the 210-unit Phase 2 can move forward quickly upon award of CNI funding and will signal the turning point in the Stop Six neighborhood. Phase 2 consists of two elevator-accessed buildings with 12,000 square feet of ground floor retail/commercial space along Rosedale and the historic commercial corridor, Amanda Avenue. The commercial space will be split between community space, space for partners and social service providers, and retail space. In addition, Phase 2 has garden apartments and townhouses further down Amanda, making the transition to lower-density parts of the neighborhood with more residential character. Phase 2 will include market-rate amenities to serve all residents of the new site, including the management office, fitness space, a clubhouse, a kids' activity room and a swimming pool.

PHASE 2					
BR	Market	LIHTC	Permanent Supportive	PBV / Replacement	Total
1	10	46	8	18	82
2	34	45	5	31	115
3	-	2	-	8	10
4	-	-	-	3	3
Total	44	93	13	60	210





PHASE 3.

Phase 3 is another 4% low-income housing tax-credit-financed phase developed on the central site. With 187 units in elevator buildings, walkup/gardens and townhouses, Phase 3 lengthens development along Rosedale Street and brings additional diversity of housing types into the new community. Phase 3 has 1-3 bedroom units and continues in uniting the “new” frontage on Rosedale with the historic Cavile site. The new development will be 25% market-rate, reflecting the desirability in the community of market-rate garden and townhouse apartment options as well as the anticipated shift in market perceptions.

PHASE 3					
BR	Market	LIHTC	Permanent Supportive	PBV / Replacement	Total
1	11	53	11	15	90
2	27	27	2	29	85
3	-	2	-	10	12
4	-	-	-	-	-
Total	38	82	13	54	187



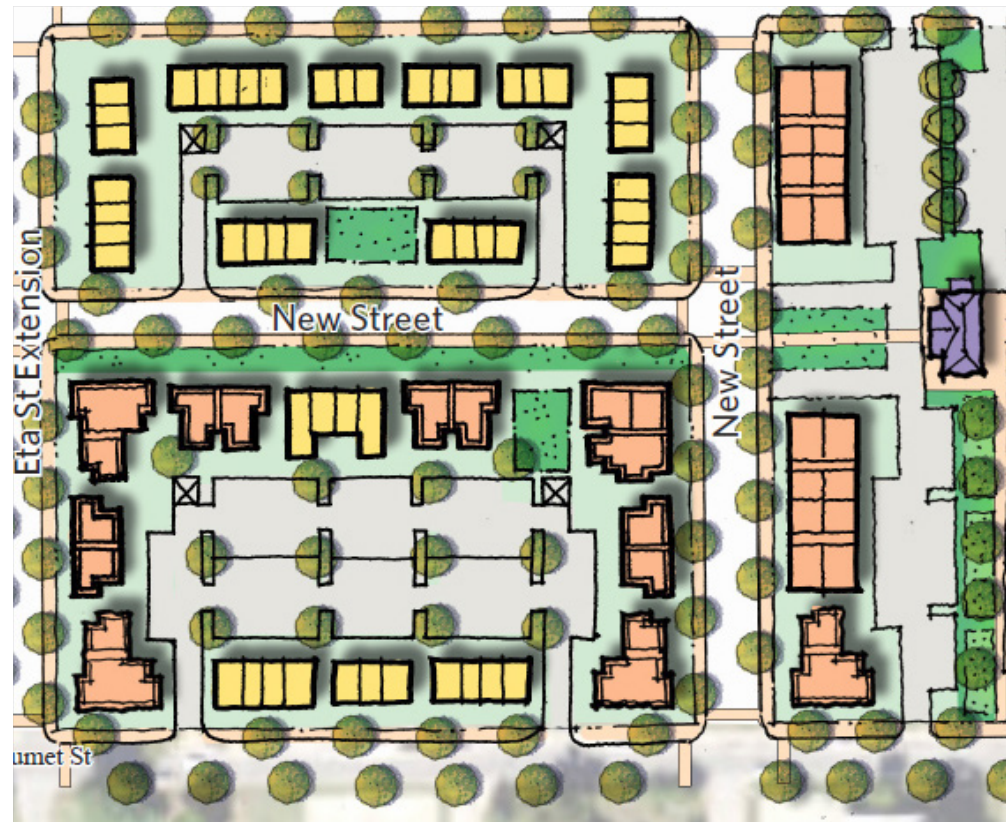


THE HOUSING PLAN

PHASE 4.

Phase 4 is the final phase on the central site and is a 168-unit 4% LIHTC phase. Phase 4 makes the connection between the new housing and the Neighborhood Hub, building out the bulk of the original Cavile site with townhouse and walkup/garden apartments. Phase 4 has 1-4 bedroom unit options and 29% of the units will be replacement, 30% LIHTC-only, 7% permanent supportive housing, and 35% market-rate.

PHASE 4					
BR	Market	LIHTC	Permanent Supportive	PBV / Replacement	Total
1	17	2	7	10	36
2	41	43	4	11	99
3	-	5	-	25	30
4	-	-	-	3	3
Total	58	50	11	49	168

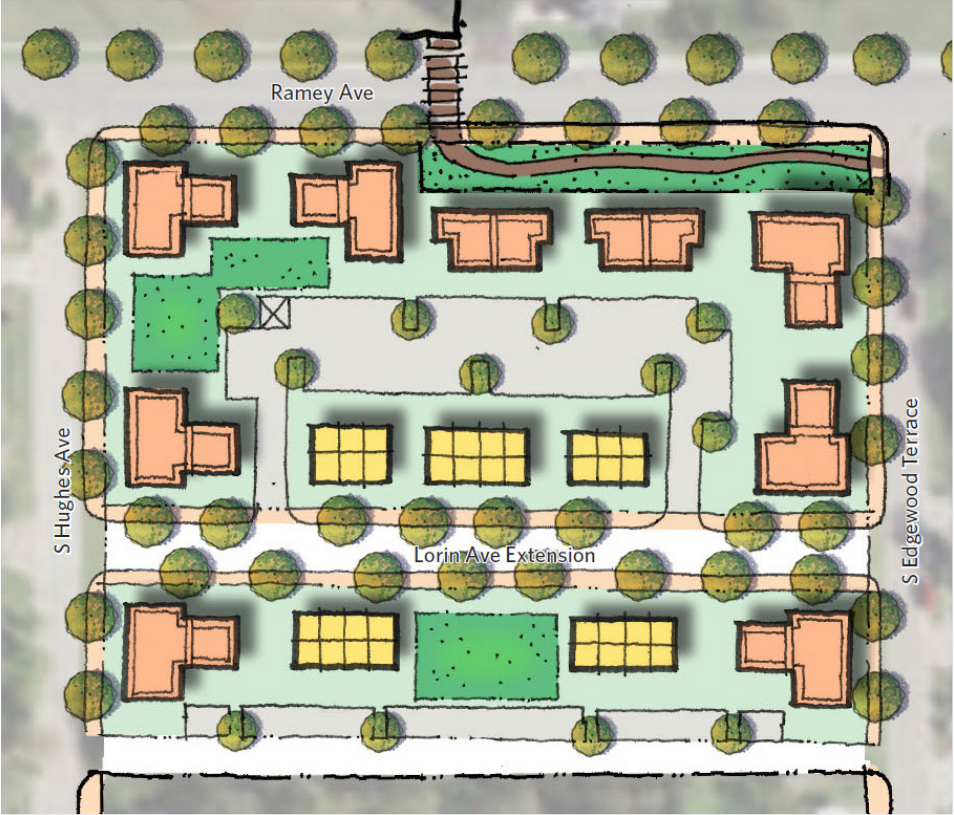




PHASE 5.

Phase 5 is a 9% LIHTC phase of walkup/garden and townhouse apartments in the southwestern corner of the neighborhood. On the Ramey site, and across from Eastover Park, Phase 5 will anchor this corner of the neighborhood, connecting the improvements in Eastover Park with the established residential communities on the southwestern border of Stop Six. With 79 units, and a full amenity package including a fitness center, clubhouse and pool, Phase 5 makes the connection between the new investments and the well-trafficked Ramey Avenue, creating a new gateway to welcome people into the Stop Six neighborhood.

PHASE 5					
BR	Market	LIHTC	Permanent Supportive	PBV / Replacement	Total
1	5	2	3	8	18
2	18	22	2	5	47
3	-	4	-	10	14
4	-	-	-	-	-
Total	23	28	5	23	79





THE HOUSING PLAN

PHASE 6.

Phase 6 is the final phase of the Housing Plan and is representative of the sea-change that the plan anticipates happening in the neighborhood. With 224 units at the intersection of two major corridors (Miller Avenue and Rosedale Street), Phase 6 has replacement units, market units and workforce units and is financed without LIHTC. With a full amenity package of clubhouse, fitness center and pool, Phase 6 will attract an entirely new market to the transformed Stop Six neighborhood—specifically marketing to Texas Wesleyan University students and employees. Phase 6 will serve as a gateway to the community from the west.

PHASE 6					
BR	Market	LIHTC	Workforce	PBV / Replacement	Total
1	54	-	19	33	106
2	59	-	26	33	118
3	-	-	-	-	-
4	-	-	-	-	-
Total	113	-	45	66	224





THE FINANCIAL PLAN



PRELIMINARY FINANCIAL PLAN

OVERALL USES BY SOURCE									
	CNI	First Mortgage	Tax Credit Equity	City of Fort Worth Programs and Waivers	Foundations / Philanthropic	Fort Worth Housing Solutions	City of Fort Worth Improvements	Subordinate Debt/Grants/ FWHS	TOTAL
TOTAL PLAN	35,000,000	98,408,800	70,180,077	20,465,000	28,175,000	11,556,873	29,595,000	51,025,731	344,406,481
Neighborhood	3,150,000	-	-	9,405,000	12,175,000	-	4,595,000	-	29,325,000
Housing	24,500,000	98,408,800	70,180,077	11,060,000	1,250,000	6,594,993	25,000,000	51,025,731	288,019,601
People	5,250,000	-	-	-	14,750,000	-	-	-	20,000,000
Relocation & Demolition	-	-	-	-	-	4,961,880	-	-	4,961,880
Grant Administration and Evaluation	2,100,000	-	-	-	-	-	-	-	2,100,000



HOUSING TOTAL USES	
	TOTAL
PART A COSTS	
Construction Hard Costs	174,272,750
Architecture, Engineering, Environmental	10,777,000
Finance Fees and Interest	6,907,000
Insurance, Prof. Fees, Legal, Taxes, Misc	40,556,000
Contingency	1,991,000
Reserves	5,098,000
TOTAL PART A	239,601,750
PART B COSTS	
Site Preparation & Remediation	8,278,188
Fees	4,568,558
Offsite Public Improvements	28,886,112
Master Planning, Acquisition, Legal	6,594,993
TOTAL PART B	48,327,851
TOTAL PART A AND PART B	287,929,601



HOUSING TOTAL SOURCES	
	TOTAL
PART A SOURCES	
First Mortgage	98,408,800
CNI Funds	24,500,000
Tax Credit Equity	70,180,077
City of Fort Worth (Sub. Debt, Fee Waiver)	11,060,000
PSH Foundation Match	1,250,000
Subordinate Debt/Grants/FWHS	34,202,873
TOTAL PART A SOURCES	239,601,750
PART B SOURCES	
Fort Worth Housing Solutions	6,594,993
City of Fort Worth (Public Improvements)	25,000,000
Subordinate Debt/Grants/FWHS	16,732,858
TOTAL PART B SOURCES	48,327,851
TOTAL PART A AND PART B	287,929,601



HOUSING PHASE 1 USES	
	TOTAL
PART A COSTS	
Construction Hard Costs	19,340,000
Architecture, Engineering, Environmental	1,257,000
Finance Fees and Interest	560,000
Insurance, Prof. Fees, Legal, Taxes, Misc	4,792,000
Contingency	224,000
Reserves	565,000
TOTAL PART A	26,738,000
PART B COSTS	
Site Preparation & Remediation	1,003,958
Fees	594,184
Offsite Public Improvements	4,003,922
Master Planning, Acquisition, Legal	417,208
TOTAL PART B	6,019,272
TOTAL PART A AND PART B	32,757,272

HOUSING PHASE 2 USES	
	TOTAL
PART A COSTS	
Construction Hard Costs	42,508,700
Architecture, Engineering, Environmental	2,213,000
Finance Fees and Interest	2,166,000
Insurance, Prof. Fees, Legal, Taxes, Misc	9,122,000
Contingency	474,000
Reserves	1,099,000
TOTAL PART A	57,582,700
PART B COSTS	
Site Preparation & Remediation	1,475,760
Fees	910,695
Offsite Public Improvements	6,982,345
Master Planning, Acquisition, Legal	2,668,875
TOTAL PART B	12,037,674
TOTAL PART A AND PART B	69,620,374

HOUSING PHASE 3 USES	
	TOTAL
PART A COSTS	
Construction Hard Costs	32,826,000
Architecture, Engineering, Environmental	2,133,000
Finance Fees and Interest	811,000
Insurance, Prof. Fees, Legal, Taxes, Misc	7,724,000
Contingency	371,000
Reserves	942,000
TOTAL PART A	44,807,000
PART B COSTS	
Site Preparation & Remediation	1,284,056
Fees	769,787
Offsite Public Improvements	3,727,705
Master Planning, Acquisition, Legal	164,000
TOTAL PART B	5,945,548
TOTAL PART A AND PART B	50,752,548

HOUSING PHASE 1 SOURCES	
	TOTAL
PART A SOURCES	
First Mortgage	9,040,000
CNI Funds	3,185,000
Tax Credit Equity	13,799,000
City of Fort Worth (Sub. Debt, Fee Waiver)	514,000
PSH Foundation Match	200,000
Subordinate Debt/Grants/FWHS	-
TOTAL PART A SOURCES	26,738,000
PART B SOURCES	
Fort Worth Housing Solutions	417,208
City of Fort Worth (Public Improvements)	3,501,485
Subordinate Debt/Grants/FWHS	2,100,579
TOTAL PART B SOURCES	6,019,272
TOTAL PART A AND PART B	32,757,272

HOUSING PHASE 2 SOURCES	
	TOTAL
PART A SOURCES	
First Mortgage	21,253,000
CNI Funds	5,145,000
Tax Credit Equity	13,798,620
City of Fort Worth (Sub. Debt, Fee Waiver)	3,669,000
PSH Foundation Match	325,000
Subordinate Debt/Grants/FWHS	13,392,080
TOTAL PART A SOURCES	57,582,700
PART B SOURCES	
Fort Worth Housing Solutions	2,668,875
City of Fort Worth (Public Improvements)	5,885,293
Subordinate Debt/Grants/FWHS	3,483,507
TOTAL PART B SOURCES	12,037,674
TOTAL PART A AND PART B	69,620,374

HOUSING PHASE 3 SOURCES	
	TOTAL
PART A SOURCES	
First Mortgage	17,473,000
CNI Funds	4,573,000
Tax Credit Equity	17,478,000
City of Fort Worth (Sub. Debt, Fee Waiver)	2,284,000
PSH Foundation Match	300,000
Subordinate Debt/Grants/FWHS	2,699,000
TOTAL PART A SOURCES	44,807,000
PART B SOURCES	
Fort Worth Housing Solutions	164,000
City of Fort Worth (Public Improvements)	3,305,335
Subordinate Debt/Grants/FWHS	2,476,213
TOTAL PART B SOURCES	5,945,548
TOTAL PART A AND PART B	50,752,548



HOUSING PHASE 4 USES	
	TOTAL
PART A COSTS	
Construction Hard Costs	31,379,000
Architecture, Engineering, Environmental	2,040,000
Finance Fees and Interest	1,672,000
Insurance, Prof. Fees, Legal, Taxes, Misc	7,363,000
Contingency	364,000
Reserves	877,000
TOTAL PART A	43,695,000
PART B COSTS	
Site Preparation & Remediation	2,167,759
Fees	897,241
Offsite Public Improvements	5,002,623
Master Planning, Acquisition, Legal	741,911
TOTAL PART B	8,809,533
TOTAL PART A AND PART B	52,504,533

HOUSING PHASE 5 USES	
	TOTAL
PART A COSTS	
Construction Hard Costs	14,499,800
Architecture, Engineering, Environmental	942,000
Finance Fees and Interest	430,000
Insurance, Prof. Fees, Legal, Taxes, Misc	3,714,000
Contingency	168,000
Reserves	363,000
TOTAL PART A	20,116,800
PART B COSTS	
Site Preparation & Remediation	928,111
Fees	573,277
Offsite Public Improvements	4,415,361
Master Planning, Acquisition, Legal	1,104,000
TOTAL PART B	7,020,749
TOTAL PART A AND PART B	27,137,549

HOUSING PHASE 6 USES	
	TOTAL
PART A COSTS	
Construction Hard Costs	33,719,250
Architecture, Engineering, Environmental	2,192,000
Finance Fees and Interest	1,268,000
Insurance, Prof. Fees, Legal, Taxes, Misc	7,841,000
Contingency	390,000
Reserves	1,252,000
TOTAL PART A	46,662,250
PART B COSTS	
Site Preparation & Remediation	1,418,544
Fees	823,374
Offsite Public Improvements	4,754,156
Master Planning, Acquisition, Legal	1,499,000
TOTAL PART B	8,495,074
TOTAL PART A AND PART B	55,157,324

HOUSING PHASE 4 SOURCES	
	TOTAL
PART A SOURCES	
First Mortgage	16,827,000
CNI Funds	4,165,000
Tax Credit Equity	11,305,457
City of Fort Worth (Sub. Debt, Fee Waiver)	2,259,000
PSH Foundation Match	275,000
Subordinate Debt/Grants/FWHS	8,863,543
TOTAL PART A SOURCES	43,695,000
PART B SOURCES	
Fort Worth Housing Solutions	741,911
City of Fort Worth (Public Improvements)	4,400,337
Subordinate Debt/Grants/FWHS	3,667,286
TOTAL PART B SOURCES	8,809,533
TOTAL PART A AND PART B	52,504,533

HOUSING PHASE 5 SOURCES	
	TOTAL
PART A SOURCES	
First Mortgage	5,820,800
CNI Funds	-
Tax Credit Equity	13,799,000
City of Fort Worth (Sub. Debt, Fee Waiver)	350,000
PSH Foundation Match	150,000
Subordinate Debt/Grants/FWHS	-
TOTAL PART A SOURCES	20,116,800
PART B SOURCES	
Fort Worth Housing Solutions	1,104,000
City of Fort Worth (Public Improvements)	3,835,270
Subordinate Debt/Grants/FWHS	2,081,479
TOTAL PART B SOURCES	7,020,749
TOTAL PART A AND PART B	27,137,549

HOUSING PHASE 6 SOURCES	
	TOTAL
PART A SOURCES	
First Mortgage	27,995,000
CNI Funds	7,432,000
Tax Credit Equity	-
City of Fort Worth (Sub. Debt, Fee Waiver)	1,984,000
PSH Foundation Match	-
Subordinate Debt/Grants/FWHS	9,251,250
TOTAL PART A SOURCES	46,662,250
PART B SOURCES	
Fort Worth Housing Solutions	1,499,000
City of Fort Worth (Public Improvements)	4,072,280
Subordinate Debt/Grants/FWHS	2,923,794
TOTAL PART B SOURCES	8,495,074
TOTAL PART A AND PART B	55,157,324



NEIGHBORHOOD USES	
	TOTAL
PART A COSTS	
Construction Hard Costs	17,604,000
Architecture, Engineering, Environmental	1,144,000
Finance Fees and Interest	1,325,039
Insurance, Prof. Fees, Legal, Taxes, Misc	4,443,961
Contingency	213,000
TOTAL PART A	24,730,000
PART B COSTS	
Offsite Public Improvements	4,595,000
TOTAL PART B	4,595,000
TOTAL PART A AND PART B	29,325,000

PEOPLE USES	
	TOTAL
Workforce	4,200,000
Education	3,200,000
Healthcare	2,200,000
Case Management	10,400,000
TOTAL	20,000,000

PEOPLE SOURCES	
	TOTAL
CNI Funds	5,250,000
Grants/Philanthropic Contributions	14,750,000
TOTAL	20,000,000

OTHER USES	
	TOTAL
Relocation and Demolition	4,961,880
Administration and Evaluation	2,100,000
TOTAL	7,061,880

OTHER SOURCES	
	TOTAL
Fort Worth Housing Solutions	4,961,880
CNI Funds	2,100,000
TOTAL	7,061,880

NEIGHBORHOOD SOURCES	
	TOTAL
PART A SOURCES	
CNI Funds	3,150,000
City of Fort Worth	9,405,000
Philanthropic Contributions	12,175,000
TOTAL PART A SOURCES	24,730,000
PART B SOURCES	
City of Fort Worth (Public Improvements)	4,595,000
TOTAL PART B SOURCES	4,595,000
TOTAL PART A AND PART B	29,325,000





THE PEOPLE PLAN





THE PEOPLE PLAN

Resident Needs Assessment and Results

A needs assessment, completed in 2012 as part of the original Transformation Plan, identified multiple resource gaps that were adversely impacting residents' health, quality of life and ability to support their families. Since that time, Fort Worth Housing Solutions has methodically built relationships with existing providers, and recruited new partners in an effort to expand the base of available supportive services.

In 2019, to ensure current needs were captured and addressed in the updated Transformation Plan, this comprehensive household needs assessment was repeated as a part of the planning process. The needs assessment was completed by Fort Worth Housing Solutions staff who have worked with Cavile Place residents for years. The existing, trusting relationships between staff and Cavile Place residents played a critical role in ensuring resident participation. The needs assessment surveys were also completed in conjunction with the beginning of relocation for Cavile Place residents. Incorporating the survey into the relocation paperwork process also elevated the interest level of residents to participate, resulting in a response rate of 100% (259 surveys completed, which included seven households who were from the Cavile Place Waiting List).

The Needs Assessment survey addressed all members of the household and captured current circumstances, needs, and preferences in eight focal areas: Housing, Neighborhood Development, Economic Well-being, Education, Safety, Health, Transportation, and Improving Quality of Life. The survey was also available in Spanish and Vietnamese to capture every resident's needs and input. In addition to the survey data, Urban Strategies, Inc. analyzed property management data to understand the demographic profile of target households and obtained secondary data from US Census, Fort Worth Independent School District (FWISD), and Fort Worth Police Department to further understand crime, public health, education and labor force characteristics for target residents.

KEY DEMOGRAPHICS

There are a total of 252 target households with 692 target residents residing at Cavile Place. The next few pages explain key demographic information about these target residents.

COMMUNITY-IDENTIFIED GOALS AND GUIDING PRINCIPLES

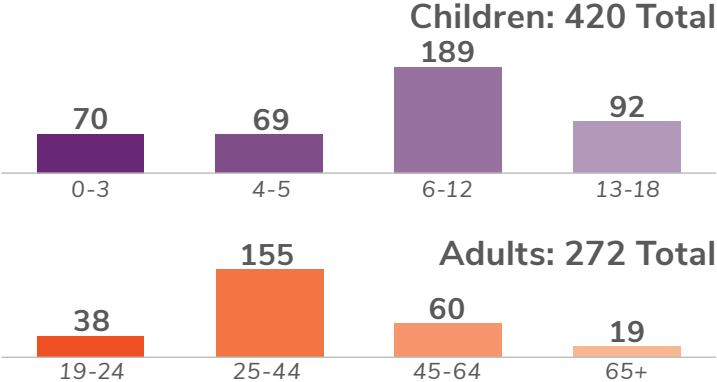
The needs assessment activities informed the overall People Vision, which serves as the guide for strategies designed to achieve the People Goals:

- Increase income and financial stability of target households.
- Improve the health of target residents by delivering comprehensive family-centered support, and high quality and accessible health services to youth and their families.
- Improve educational outcomes of target youth by delivering comprehensive family-centered support, and educational and career services.

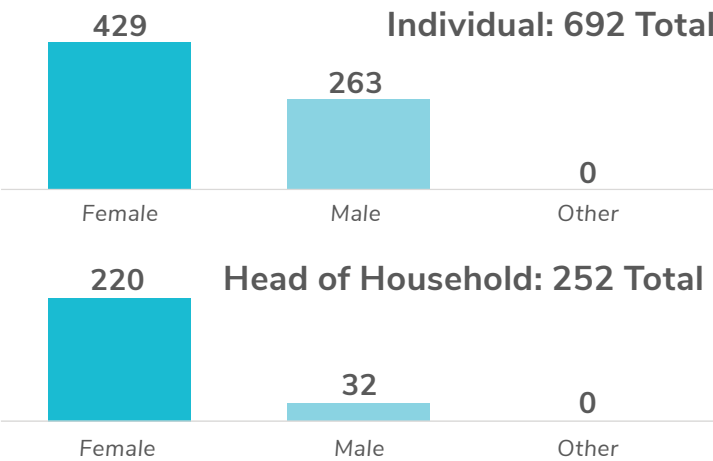


DEMOGRAPHICS: KEY DEMOGRAPHICS

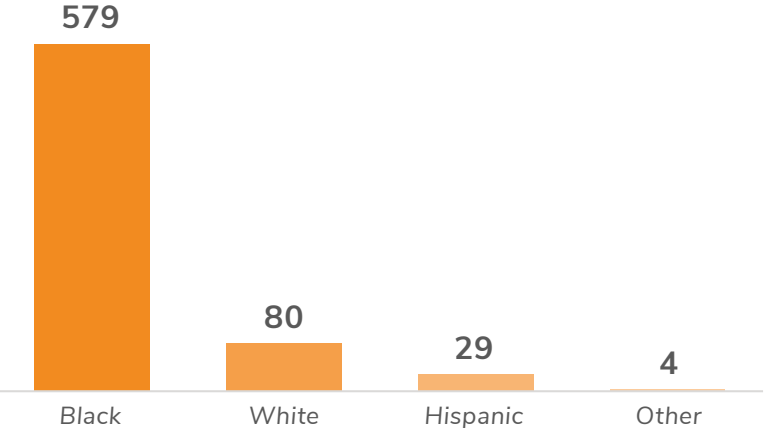
AGE:



GENDER:



RACE:





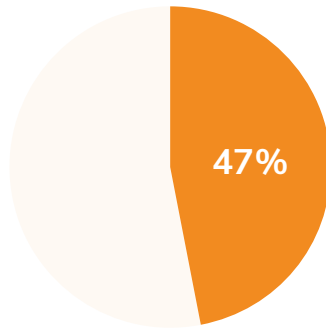
THE PEOPLE PLAN

DEMOGRAPHICS: INCOME AND EMPLOYMENT

AVERAGE TOTAL HOUSEHOLD INCOME:

\$8,984/year

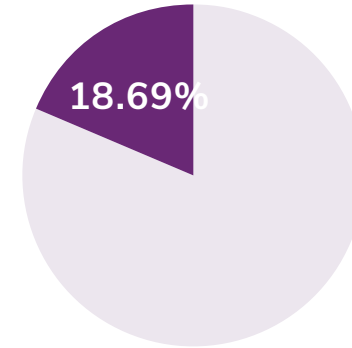
EARNED INCOME:



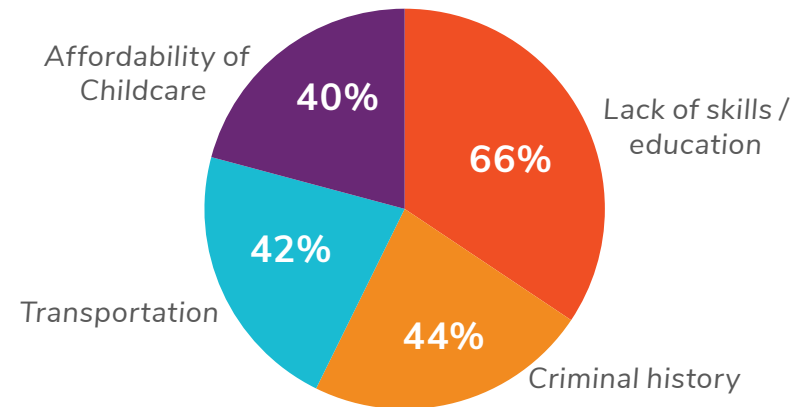
NUMBER OF HOUSEHOLDS EARNING
LESS THAN \$5,000
(WITHOUT DISABILITY OR RETIREMENT):

95

HOUSEHOLDS RECEIVING
FOOD STAMPS:



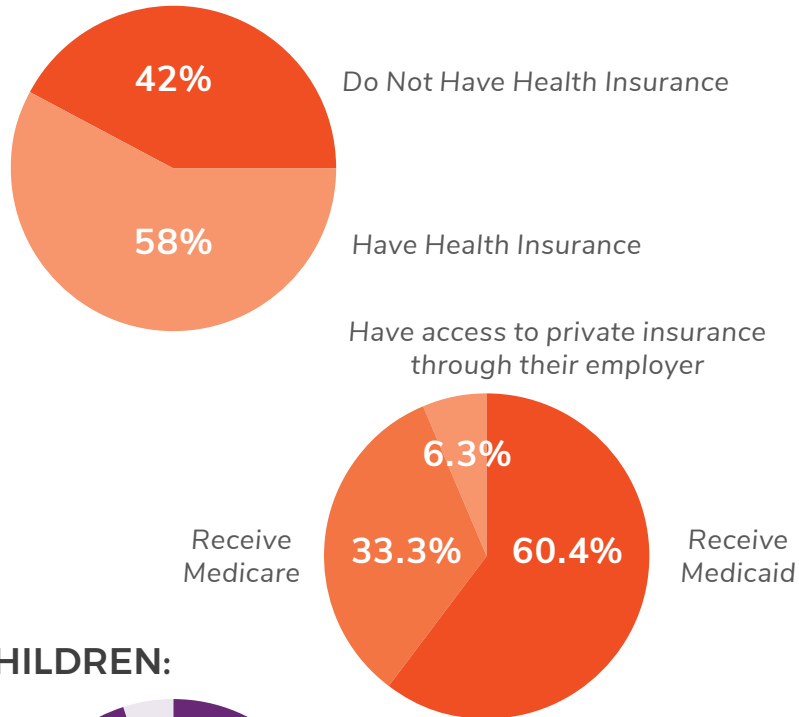
EMPLOYMENT BARRIERS:



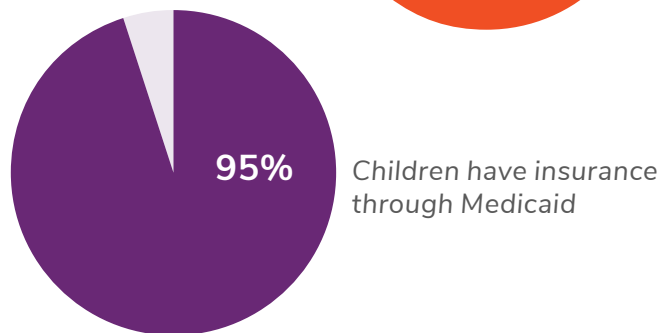


DEMOGRAPHICS: HEALTH DATA

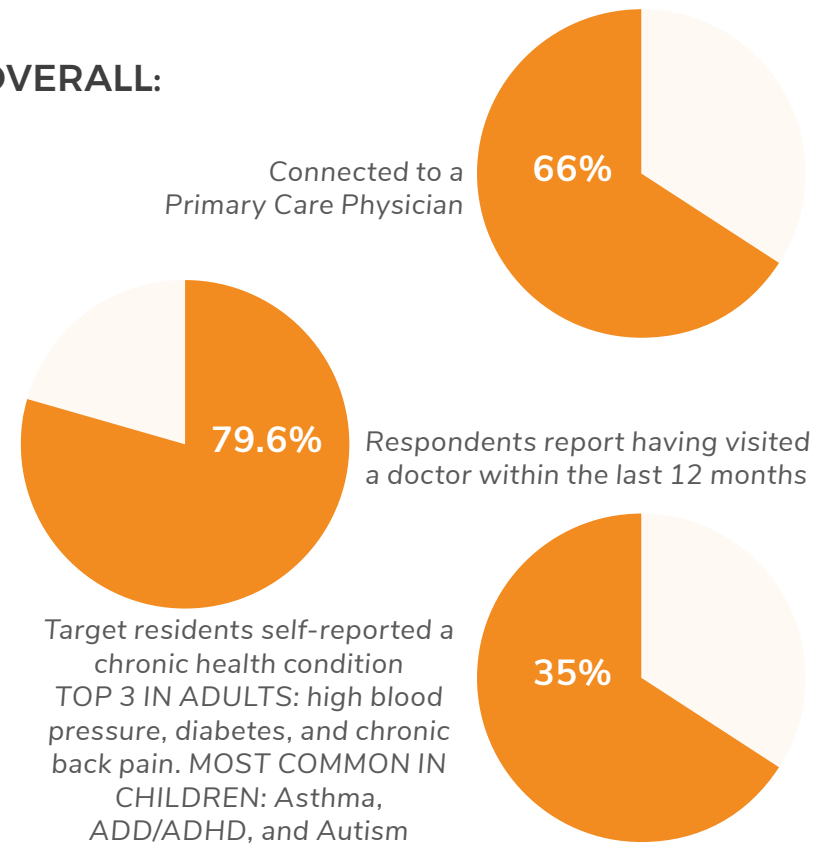
HEALTH INSURANCE (ADULTS):



CHILDREN:



OVERALL:





THE PEOPLE PLAN

HEALTH

GOAL: Children, Youth, and Adults are Physically & Mentally Healthy

BASELINE: 84% (534) of target residents currently have a place where they regularly go, other than the Emergency Department, when they are sick or in need of advice about their health. This breaks down to 68% (162) of target adults, and 93% (282) of target dependents.

84% or (407) of all target residents currently have health insurance. This breaks down to 67% (114) of target adults, and 94% (372) of target dependents.

STRATEGY:	Increase the number of residents accessing quality physical and mental healthcare	Improve health outcomes through prevention and wellness programming supporting the holistic health of the individual
KEY PARTNERS:	Cook Children's John Peter Smith Health Network	Cook Children's John Peter Smith Health Network Lena Pope Counseling YMCA of Metropolitan Fort Worth Fort Worth Bike Sharing Catholic Charities Healthy Tarrant County Collaborative Meals on Wheels of Tarrant County

OUTCOMES: 95% of all target residents will have a place where they regularly go, other than the ER, when they are sick or in need of advice about their health. 88% of all target residents will have health insurance (70% of adults and 100% of dependents).





ECONOMIC MOBILITY

GOAL: Households are Economically Stable and Self-Sufficient

BASELINE: 118 residents between the ages of 18 and 64 have wage income (61 employed FT and PT; 57 self-employed). \$8,984 is the current average annual household income for target residents.

STRATEGY:	Increase adult educational attainment	Increase opportunities for job training in growth sectors	Increase opportunities for wealth generation through entrepreneurship	Increase adult financial empowerment and wealth-building skills
KEY PARTNERS:	Goodwill Industries of Fort Worth Tarrant County College Texas Wesleyan University	Workforce Solutions of Tarrant County Goodwill Industries of Fort Worth Fort Worth Housing Solutions	Center for Transforming Lives City of Fort Worth Business Assistance Center	Pathfinders Center for Transforming Lives Catholic Charities United Way of Tarrant County City of Fort Worth Department of Neighborhood Services



OUTCOMES: 70% of all target residents between the ages of 18 and 64 will have wage income. \$24,706 average annual income of target households (excluding those who cannot work due to being elderly or disabled)—a 275% increase from baseline.



EDUCATION

GOAL: Children Enter Kindergarten Ready to Learn

BASELINE: Among the 259 respondents to the survey, 50% said they had a child in some type of pre-school childcare, including Head Start and pre-kindergarten program. These parents reported a total of 36 children in some type of early education program.

36 (50%) of 72 target children, from birth to kindergarten entry, are participating in center-based or formal home-based early learning settings or programs.

At Maude Logan Elementary School, 55 (83.3%) kindergarteners who were assessed upon entrance to kindergarten were "ready" according to the TX-KEA during the 2018-2019 school year.



STRATEGY:	Increase enrollment in high quality early learning programs	Increase family-based literacy	Increase participation in screening for health development for all children 0-5
KEY PARTNERS:	Childcare Associates FWISD Early Learning Alliance	City of Fort Worth Library United Way of Tarrant County Childcare Associates	FWISD Childcare Associates Cook Children's My Health My Resources of Tarrant County

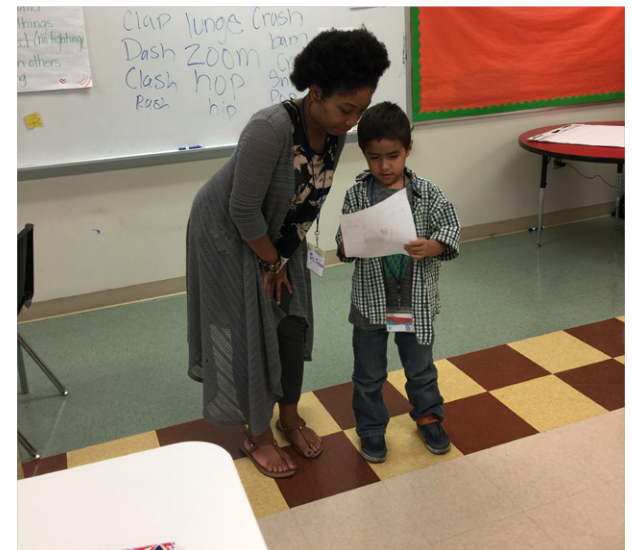
OUTCOMES: By the end of the grant period 65% of 139 target children, from birth to kindergarten entry, will be participating in center-based or formal home-based early learning settings or programs. 85% of kindergarten students will demonstrate age-appropriate functioning across multiple domains of early learning.



GOAL: Children are proficient in core academic subjects (reading and math)

BASELINE: 17% target 3rd graders, 34% target 4th graders, 70% target 5th graders, 42% target 6th graders, 25% target 7th graders, and 44% target 8th graders were proficient in math.

35% target 3rd graders, 48% target 4th graders, 75% target 5th graders, 25% target 6th graders, 44% target 7th graders, and 44% target 8th graders were proficient in reading.



STRATEGY:	Increase participation in high quality extended learning opportunities	Enhance innovative school-based learning opportunities to improve academic performance	Decrease chronic absenteeism
KEY PARTNERS:	FWISD AB Christian Center YMCA of Metropolitan Fort Worth Boys and Girls Club of Greater Tarrant County City of Fort Worth Library Texas Wesleyan University	FWISD Texas Wesleyan University Reading Partners Idea Public Schools	FWISD

OUTCOMES: By the end of the grant period, 132 (70%) of 189 target children, are proficient in Reading/ Language Arts as compared to the state average of 74%. 132 (70%) of 189 target children are proficient in Math as compared to the state average of 77%.



GOAL: Youth graduate from high school college/career-ready

BASELINE: Dunbar High School has a 72% graduation rate as of the 2016-2017 school year.

STRATEGY:	Increase participation in STEM-based certification and training programs	Increase participation in AP and dual-enrollment courses	Increase exposure to post-secondary education and career pathways
KEY PARTNERS:	FWISD Texas Wesleyan University Tarrant County College	FWISD Texas Wesleyan University Tarrant County College Paul Quinn College	Texas Wesleyan University Paul Quinn College Goodwill Industries of Fort Worth Idea Public Schools

OUTCOMES: By the end of the grant period, 90% of target youth, including youth with disabilities, will graduate from high school college and career ready.





THE PEOPLE PLAN

Case Management

Critical to success of the People Strategy is a well-managed, integrated case management program. Urban Strategies, Inc. will implement case management, coordinate partnerships with supportive service partners, and develop a resourcing strategy for long-term sustainability of the People Strategy. All supportive service activities will be coordinated with the Housing and Neighborhood Implementation Entities to support the revitalization schedule and to achieve Section 3 goals. This is especially important given stringent timelines, relocation, and re-occupancy associated with a Choice Neighborhood grant.


Case management will initially be available for all 252 original Cavile Place households as well as the 48 households receiving a voucher as part of Cavile Place relocation. Upon completion of new replacement housing, case management will be available for those who occupy the CNI replacement units in the new development. The purpose of case management is to establish positive rapport with residents in order to offer personalized and culturally sensitive assistance with assessing complex problems, selecting effective problem-

solving interventions, and accessing the services they desire or need to pursue their goals.

A comprehensive outreach and engagement campaign to offer case management services to all target households will be launched within 60 days of a Choice Neighborhood grant award. This outreach and engagement campaign will utilize a multifaceted approach including door-to-door outreach, phone calls and text messages, mailing information, target resident group events, coordination with annual re-certifications, social media, and target programming to generate interest and engagement in case management services.

Urban Strategies' case management protocol includes, as a first step, a comprehensive assessment of each participant to identify their assets, needs and goals related to employment, education, health, economic mobility, and housing stability. Based on this in-depth assessment, all target adults and out-of-school youth will have the opportunity to work closely with a culturally responsive, trained and skilled USI social work professional (i.e., case manager) to develop a flexible but time-sensitive roadmap





towards their personal aspirations, in what are called Individual Development Plans (IDP). The IDP will identify specific employment, education and health goals, and related supportive service needs. Risk factors that are assessed and addressed by the IDP include, but are not limited to: risk of unemployment; risk of incarceration; physical and behavioral health risks; and risk of being disconnected from school, job, or caring adult (for children and youth).

In addition to an IDP, parents and heads of household will have the opportunity to work with the case manager to develop a family-centered roadmap (a Family Development Plan or FDP) with goals that address housing stability, housing choice, and the educational, health, and social needs of each dependent or in-school youth.

SERVICE COORDINATION

Built around the core of on-site case management services, and leveraging the data collected via case management as described above, the ultimate purpose of service coordination is to increase the collective impact of supportive service providers by braiding programs and services together, and increasing collaboration. Capitalizing on existing relationships with residents, private/public sector stakeholders, and supportive service partners, Urban Strategies, Inc. will assemble a Service Provider Network (SPN) composed of high capacity partners and enlist their support for the People Strategy. The network will function as a professional learning community that meets regularly and uses iterative Result-Based methodologies to continually review outcomes, identify and address gaps in needed services, share lessons learned, and coordinate strategies.

MOBILITY SUPPORT

With relocation of the current Cavile Place residents underway in the fall of 2019, Urban Strategies will work closely with Fort Worth Housing Solutions to track all target households and engage residents in mobility counseling. Recognizing the tremendous impact of moving from one household to another, case managers will be trained to engage proactively with residents around the housing options available when a resident's lease is coming up for renewal.

Urban Strategies' case management protocol includes, as a first step, a comprehensive assessment of each participant to identify their needs, developmental assets and goals related to employment, education, health, economic mobility, and housing stability.



PARTNERS



PARTNERS

AB Christian Learning Center
Boys and Girls Club of Greater Tarrant County
Brighter Outlook
Camp Fire First Texas
Catholic Charities Fort Worth
Center for Transforming Lives
Childcare Associates
Chùa Hương Đạo
City of Fort Worth (Library)
City of Fort Worth Business Assistance Center
Cook Children's
Early Learning Alliance
Envision Center/City of Fort Worth Neighborhood Services
Fort Worth Bike Sharing
FWISD
Goodwill Industries of Fort Worth
Healthy Tarrant County Collaborative
IDEA Public Schools
John Peter Smith Clinic (JPS)
Lena Pope Counseling Services
MBS Urban Initiatives CDE
Meals on Wheels of Tarrant County
My Health My Resources of Tarrant County
Pathfinders
Paul Quinn College
Read Fort Worth
Reading Partners
Tarrant County College
Texas Wesleyan University
U.S. Bancorp Community Development Corporation
United Way of Tarrant County
Workforce Solutions of Tarrant County
YMCA of Metropolitan Fort Worth

PROJECT SPONSOR:



CO SPONSOR:



IMPLEMENTATION ENTITIES:



(Neighborhood)

MCCORMACK
BARON
SALAZAR

(Housing)



USI | URBAN STRATEGIES, INC.

(People)





4

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
NOVEMBER 5, 2020

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*.

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the Department) is authorized by Tex. Gov't Code Ch. 2306, Subchapter DD, to make Housing Tax Credit allocations for the State of Texas;

WHEREAS, pursuant to Tex. Gov't Code §§2306.67022 and .6724 and Internal Revenue Code §42(m)(1), the Department is required to adopt a qualified allocation plan (QAP); to establish the procedures and requirements relating to an allocation of Housing Tax Credits;

WHEREAS, the proposed qualified allocation plan, set forth in 10 TAC Chapter 11, was published in the September 18, 2020, issue of the *Texas Register* for public comment;

WHEREAS, public comment was received and is summarized in the preambles attached;

WHEREAS, a technical correction is needed to 10 TAC §11.4(c), as a result of 85 Federal Register 60255 (September 24, 2020);

WHEREAS, pursuant to Tex. Gov't Code §2306.6724(b) the Board shall adopt the QAP and on or before November 15, submit it to the Governor, to approve, reject, or modify and approve not later than December 1;

NOW, therefore, it is hereby

RESOLVED, that the repeal of 10 TAC Chapter 11, and a new 10 TAC Chapter 11 concerning the Housing Tax Credit Qualified Allocation Plan together with the preambles presented to this meeting, are hereby approved and recommended to the Governor; and

FURTHER RESOLVED, that the Executive Director and his designees be and

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

BACKGROUND

The Board approved the proposed 10 TAC Chapter 11 regarding the Housing Tax Credit Program Qualified Allocation Plan (QAP) at the Board meeting of September 3, 2020, to be published in the *Texas Register* for public comment. Staff has reviewed all comments received and provided a reasoned response to these comments in the following preamble. Staff has listed the areas below that received the most comment.

§11.1(d)(108)	Rehabilitation
§11.1(d)(122)	Supportive Housing
§11.202(7)	Deficiency Process
§11.203(1)	Public Notifications
§11.204(6)	Experience Requirement
§11.204(15)	Feasibility Report
§11.3(b)	Two Mile Sam Year Rules
§11.304(a)(2)	Appraisal Review
§11.306	Scope and Cost Review
§11.5(3)	Competitive HTC Set-Asides
§11.7	Tie Breaker Factors
§11.9(b)(2)	Sponsor Characteristics
§11.9(c)(3)	Resident Services
§11.9(c)(4)	Opportunity Index
§11.9(c)(7)	Proximity to Job Areas
§11.9(c)(8)	Readiness to Proceed
§11.9(d)(1)	Local Government Support
§11.9(d)(2)	Commitment of Development Funding by Local Political Subdivision
§11.9(d)(7)	Concerted Revitalization Plan
§11.9(e)(2)	Cost of Development per Square Foot
§11.101(a)(2)	Undesirable Site Features
§11.101(a)(3)	Neighborhood Risk Factors
§11.101(a)(7)(E)	Community Supportive Services

Additionally, staff has made a technical correction in 10 TAC §11.4(c) – Increase in Eligible Basis. The 2021 Draft QAP published for public comment included changes to this section that clarified the circumstances in which a complete application could be submitted in order for the Department to underwrite the application with a 30% boost in eligible basis. While the language

added to the rule reflected the Department's practice in prior years, staff has received clarification from HUD that necessitates a change to the draft language provided, and consequently to staff's position in prior years. Staff recommends the language be modified accordingly in order to conform to the Federal Register Notice on the subject:

"(4) For Tax-Exempt Bond Developments, as a general rule, a QCT or SADDA designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30% boost in its underwriting evaluation. The Department acknowledges guidance contained in the Federal Register regarding effective dates of QCT and SADDA designations. Pursuant to 85 Federal Register 60255, unless future federal guidance states otherwise, complete HTC Applications (including all Third Party Reports) with a corresponding Certificate of Reservation that are submitted to the Department in the year the QCT or SADDA designation is effective may be underwritten to include the 30% boost, provided there are no changes that would affect the materiality of the submission. Pursuant to the Federal Register Notice, a complete application (as defined in the Notice) may also be submitted to the bond issuer, in lieu of the Department, in the year the QCT or SADDA designation is effective. Where this is the case, the HTC Application submitted to the Department must contain a certification from the issuer that speaks to the date on which such complete application (as defined in the Notice) was submitted in order for the Department to consider a 30% boost in its underwriting. If the issuer is a member of the organizational structure, then such certification must come from the bond counsel to the issuer."

Attachment 1: Preamble, including required analysis, for repeal of 10 TAC Chapter 11, Qualified Allocation Plan

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 11, Qualified Allocation Plan (QAP). The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, concerning the allocation of Low Income Housing Tax Credits (LIHTC).

2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department or in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, concerning the allocation of LIHTC.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043.

The repeal does not contemplate nor authorize a takings by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5).

Mr. Wilkinson has also determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule for administering the allocation of LIHTC. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held September 18, 2020, to October 9, 2020, to receive stakeholder comment on the repealed section. No public comment was received on the repeal of 10 TAC Chapter 11.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed sections affect no other code, article, or statute.

10 TAC Chapter 11, Qualified Allocation Plan

SUBCHAPTER A

§11.1 General

§11.2 Program Calendar for Housing Tax Credits

§11.3 Housing De-Concentration Factors

§11.4 Tax Credit Request and Award Limits

§11.5 Competitive HTC Set-Asides. (§2306.111(d))

§11.6 Competitive HTC Allocation Process

§11.7 Tie Breaker Factors

§11.8 Pre-Application Requirements (Competitive HTC Only)

§11.9 Competitive HTC Selection Criteria

§11.10 Third Party Request for Administrative Deficiency for Competitive HTC Applications

SUBCHAPTER B

§11.101 Site and Development Requirements and Restrictions

SUBCHAPTER C

§11.201 Procedural Requirements for Application Submission

§11.202 Ineligible Applicants and Applications

§11.203 Public Notifications (§2306.6705(9))

§11.204 Required Documentation for Application Submission

§11.205 Required Third Party Reports

§11.206 Board Decisions (§§2306.6725(c); 2306.6731; and 42(m)(1)(A)(iv))

§11.207 Waiver of Rules

SUBCHAPTER D

- §11.301 General Provisions
- §11.302 Underwriting Rules and Guidelines
- §11.303 Market Analysis Rules and Guidelines
- §11.304 Appraisal Rules and Guidelines
- §11.305 Environmental Site Assessment Rules and Guidelines
- §11.306 Property Condition Assessment Guidelines

SUBCHAPTER E

- §11.901 Fee Schedule
- §11.902 Appeals Process
- §11.903 Adherence to Obligations
- §11.904 Alternative Dispute Resolution (ADR) Policy

Attachment 2 Preamble, including required analysis, for new 10 TAC Chapter 11, Qualified Allocation Plan

The Texas Department of Housing and Community Affairs (the “Department”) adopts new 10 TAC Chapter 11, Qualified Allocation Plan (QAP). The purpose of the new section is to provide compliance with Tex. Gov’t Code §2306.67022 and to update the rule to: clarify how Applications will be treated in the Deficiency Process and Appeals Process; clarify and amend the definition of Supportive Housing; update the Program Calendar; amend the readiness to proceed in disaster impacted counties scoring item to look back four years so that Applications in Hurricane Harvey counties are still eligible for these points and add a provision that a FEMA declaration of statewide disaster does not apply; update provisions to Neighborhood Risk Factors and mitigation allowed for those factors; revise timelines associated with Tax-Exempt Bond Developments; and, specify provisions for termination for Applications seeking Tax-Exempt Bond or Direct Loan funds.

Tex. Gov’t Code §2001.0045(b) does not apply to the action on this rule for two reasons: 1) the state’s adoption of the QAP is necessary to comply with IRC §42; and 2) the state’s adoption of the QAP is necessary to comply with Tex. Gov’t Code §2306.67022. The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV’T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, concerning the allocation of Low Income Housing Tax Credits (LIHTC).
2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The rule changes do not require additional future legislative appropriations.
4. The rule changes will result in an increase in fees paid to the Department in some cases. A new Determination Notice Reinstatement Fee has been added in the amount of \$1,000; only rarely will applicants be in a situation that may prompt them to want to pursue a reinstatement. A new Appraisal Review Fee has been added only for those applicants required to submit an appraisal. The fee amount is not fixed; however the rule provides that it will not exceed \$6,000. The rule removes a one-time adjustment to the Commitment and Determination Fee amounts from 4% to 2%.
5. The rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The rule will not limit or repeal an existing regulation, but can be considered to “expand” the existing regulations on this activity because the rule has sought to clarify Application requirements.

Some “expansions” are offset by corresponding “contractions” in the rules, compared to the 2020 QAP. Notably, the Department has sought to remove superfluous language wherever

possible and to consolidate rules into just one section.

These additions, removals, and revisions to the QAP are necessary to ensure compliance with IRC §42 and Tex. Gov't Code §2306.67022.

7. The rule will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The rule will not negatively affect the state's economy, and may be considered to have a positive effect on the state's economy because changes at 10 TAC §11.9(c)(7), Proximity to Job Areas, may help to encourage the Development of affordable multifamily housing in robust markets with strong and growing economies.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.67022. Some stakeholders have reported that their average cost of filing an Application is between \$50,000 and \$60,000, which may vary depending on the specific type of Application, location of the Development Site, and other non-state of Texas funding sources utilized. The rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules. Two new fees were added to this rule, however the instances in which these fees would be required to be paid are limited to the rare instance of an applicant wanting to request that a determination notice be reinstated and for those applicants required to submit an appraisal. Additionally, because of revisions to how Applicants may mitigate neighborhood risk factors, recipients of HTC awards may be able to decrease the cost of having to comply with this rule.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 100 to 150 small or micro-businesses subject to the rule for which the economic impact of the rule may range from \$480 to many thousands of dollars, just to submit an Application for Competitive or non-Competitive HTCs. The Department bases this estimate on the potential number of Applicants and their related parties who may submit applications to TDHCA for LIHTC. The fee for submitting an Application for LIHTC is \$30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units. While, in theory, there is no limit to the number of Units that could be proposed in a single Application, practically speaking, the Department sees few proposed Developments larger than 350 Units, which, by way of example, would carry a fee schedule of \$10,500. These Application Fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing. Nor does this estimate include fees from the Department for Applications that successfully attain an award.

There are 1,285 rural communities potentially subject to the rule for which the economic impact of the rule is projected to be \$0. The rule places no financial burdens on rural communities, as

the costs associated with submitting an Application are born entirely by private parties. If anything, a rural community securing a LIHTC Development will experience an economic benefit, not least among which is the potential increased property tax revenue from a large multifamily Development.

3. The Department has determined that because there are rural tax credit awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive LIHTC awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The rule does not contemplate or authorize a takings by the Department. Therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX GOV'T CODE §2001.024(a)(6). The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the rule may provide a possible positive economic effect on local employment in association with this rule since LIHTC Developments often involve a total input of, typically at a minimum, \$5 million in capital, but often an input of \$10 million - \$30 million. Such a capital investment has concrete direct, indirect, and induced effects on the local and regional economies. However, because the exact location of where program funds and development are directed is not determined in rule, there is no way to determine during rulemaking where the positive effects may occur. Furthermore, while the Department knows that any and all impacts are positive, that impact is not able to be quantified for any given community until a proposed Development is actually awarded LIHTC, given the unique characteristics of each proposed multifamily Development and region in which it is being developed.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that significant construction activity is associated with any LIHTC Development and that each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the new rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive LIHTC awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule for administering the allocation of LIHTC with considerations made for applicants as it relates to the impact of the COVID-19 pandemic on the application process. Other than the fees mentioned in section (a)(4) above, there is no change to the economic cost to any individuals required to comply with the new section because the same processes described by the rule have already been in place through the rule found at this section being repealed. The average cost of filing an application remains between \$50,000 and \$60,000, which may vary depending on the specific

type of application, location of the development site, and other non-state of Texas funding sources utilized. The rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the same processes described by the rule have already been in place through the rule found at this section being repealed. If anything, Departmental revenues may increase due to a comparatively higher volume of Applications, which slightly increases the amount of fees TDHCA receives.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

Public comments were accepted between September 18, 2020 and October 9, 2020, with comments received from: (1) Southwest Sendero, (2) Brinshore Development, (3) Ryan Hettig, (4) Caritas of Austin, (5) Kyle Shelton, (6) Wilson Calvert, (7) National Church Residences, (8) Helen Eisert, (9) Volunteers of America, (10) Orlean Pierce, (11) Maureen O'Connell, (12) Orlean Pierce, (13) Marilyn Hartman, (14) CitySquare, (15) Michelle Helmke, (16) Bill Howard, (17) Eulain Hall, (19) Lydia Reynolds, (20) Ashley Owen Brundage, (21) Edd Eason, (22) DCT LiveWell, (23) Sunny Bundy, (24) Davidyne Dove, (25) Lee R. Stark, (26) Madeline Reedy, (27) Houston Volunteer Lawyers, (28) Linda Siemers, (29) Houston Volunteer Lawyers, (30) Kevin Trahan, (31) Daniel & Beshara, representing ICP, (32) Lisa Stone, (33) Carreen Carson, (34) Santiago Torres, (35) Sharon Karam, (36) Colbey Walker, (37) Kris Donaldson, (38) John Basel, (39) Eli Mensing, (40) duplicate, (41) Teri Peterson, (42) McDowell Housing Partners, (43) McDowell Housing Partners, (44) McDowell Housing Partners, (45) Brad Fahnert, (46) SEARCH Homeless Services, (47) Jen Beardsley, (48) McDowell Housing Partners, (49) McDowell Housing Partners, (50) Flora Alexandra Baker, (51) McDowell Housing Partners, (52) McDowell Housing Partners, (53) Stephanie Truong, (54) Marcie Henry, (56) Susan King, (57) Texas Housers, (58) Metro Dallas Homeless Alliance, (59) Disability Rights Texas, (60) Lauren Butler, (61) Dalton Marcum, (62) Alyssa Carpenter, (63) Five Woods, (64) Ingrid Norbergs, (65) Mercy Street, (66) TAAHP, (67) Scott Marks, (68) Texas Council on Family Violence, (69) Resource and Crisis Center of Galveston, (70) Michelle Helmke, (71) Beth Spencer, (72) Kate Grabyan, (73) Martha Chang, (74) Just Liberty, (75) Steve Jensen, (76) Carol Baker, (77) Texas Senators and Representative, Houston area, (78) Linda White, (79) Cameron County Housing Finance Corp, (80) Ryan Grainger, (81) Roberta Burroughs, (82) Texas Homeless Network, (83) Carol Laufer, (84) Stefanie Collins, (85) Carter Mize, (86) Sallie Burchett, (87) Sara Calderon, (88) CSH, (89) Preston Petty, (90) New Hope Housing, (91) Rodney Ellis Harris County Commissioner, (92) Joshua Cook, (93) San Antonio NHCD, (94) Perry Covington, (95) Foundation Communities, (96) Doni Green (97) Dylan Lowery, (98) Sue Kellogg, (99) Marsha Edwards, (100) Philip Guffy, (101) Lindsay Bing, (102) DMA, (103) Dallas County District Attorney, (104) Jamie O'Quinn, (105) Michelle Eilers, (106) Phylis Wakefield, (107) Maria Garcia, (108) Morgan Dickson, (109) Aging Programs of North Central Texas, (110) Maggie Luna, (111) Veronica Morales, (112) Alicia Duncombe, (113) Texas Harm Reduction Alliance, (114) Phase Engineering, (115) Miranda Nadeau, (116) The Humane Society Texas, (117) Cleoney Lawrence, (118) Integral Care, (119) True Casa Consulting, (120) Christopher White, (121) Magnificat Houses, (122) Mary Rose, (123) Ashley Lucas, (124) Austin Housing Coalition, (125) Austin Justice Coalition, (126) Houston Austin and Fort Worth PHAs, (127) City of Austin Housing and Planning Dept, (128) NAMI, (129) Daniel Mee, (130) Recovery Coalition of Texas, (131) The American Conservative Union Foundation, (132) Travis County District Attorney, (133) Unlocking Doors, (134) Western Regional Advocacy Project, (135) Texas Tenants' Union, (136) National Homelessness Law Center, (137) Katie Donovan, (138) Austin Travis County Reentry Roundtable, (139) City of Austin Mayor Steve Adler, (140) Purple Martin Real Estate, (141) Harris County Community Services Department, (142) ECHO, (143) Bradford White Corporation(144) Lone Star Legal Aid, representing a client, (145) Rachel McCallister, (146) Central Houston Inc, (147) Harris County Public Defender's Office, (148) BETCO Housing Lab, (149) Latino Justice, (150) State Rep Armando Walle, (151) Greg Buffone, (152) Texas Smart on Crime Coalition, (153) Brook Holland, (154) Hogg Foundation for Mental Health, (155) Teresa Bowyer, (156) City of San Antonio Mayor Ron Nirenberg, (157) City of Houston Housing and Community Development, (158) Fair and Just

Prosecution, (159) Houston Health Department, (160) Coastal Bend Center for Independent Living, (161) Texas Inmate Families Association, (162) Coalition for the Homeless, (163) Harris County Public Defender's Office, (164) Texas Senators and House Members, (165) Texas RioGrande Legal Aid (TRLA), (166) Tim Smith, (167) Texas Appleseed, (168) College & Community Fellowship, (169) Texas Network of Youth Services, (170) Starting Over Inc, (171) Prosecutor Impact LATE, (172) Mike Holloway LATE, (173) For Restorative Justice LATE, (174) Housing First Community Coalition LATE, (175) Susan Holloway LATE, (176) Pedcor, and (177) Katherine Randolph.

General Comments

§11.1(d)(5) – Applicable Percentage (176)

COMMENT SUMMARY: Commenter (176) points to the potential for the applicable credit percentage to be fixed through federal legislative action, and requests flexibility to respond to such possible changes, rather than setting the Applicable Percentage at Application.

STAFF RESPONSE: Staff understands that fixing the 4% Applicable Percentage has been included in several draft bills in Congress. The current definition accounts for the possibility of the percentage being fixed. Staff also understands that a 4% application can be under review for several months before finalizing the underwriting analysis and a factor in that analysis is the applicable percentage that is used. To provide flexibility in the percentage used at underwriting, which occurs several months after application submission, and recognizing that ultimately the percentage will be whatever is locked at closing or at cost certification, staff recommends the following modification to the definition:

(5) Applicable Percentage--The percentage used to determine the amount of the Housing Tax Credit for any Development, as defined more fully in Code, §42(b).

(A) For purposes of the Application, the Applicable Percentage will be projected at:

- (i) nine percent for 70% present value credits, pursuant to Code, §42(b); or
- (ii) fifteen basis points over the current Applicable Percentage for 30% present value credits, unless fixed by Congress, pursuant to Code, §42(b) for the month in which the ~~Application is submitted to the Department~~ Department's Credit Underwriting Analysis Report is finalized.

(B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based on:

- (i) the percentage indicated in the Agreement and Election Statement, if executed; or
- (ii) the percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

§11.1(d)(108) – Rehabilitation (148)

COMMENT SUMMARY: Commenter (148) suggests moving “*Reconstructed Units will be considered New Construction for purposes of calculating the Replacement Reserves under 10 TAC 11.302(d)(2)(I).*” to the Reconstruction definition at §11.1(d)(107).

STAFF RESPONSE: While staff appreciates the logic of this comment, the addition is made here specifically to differentiate Reconstruction for State purposes, from Reconstruction for federal purposes, where it is generally considered to be rehabilitation. *Staff recommends no changes based on this comment.*

§11.1(d)(122) – Supportive Housing (4), (5), (6), (8), (10), (11), (12), (13), (14), (15), (16), (17), (19), (20), (21), (22), (23), (24), (25), (26), (27), (28), (29), (30), (31), (32), (33), (34), (35), (36), (37), (38), (39), (41), (45), (46), (47), (50), (53), (54), (56), (57), (58), (59), (60), (61), (64), (65), (67), (68), (69), (70), (71), (72), (73), (74), (75), (76), (77), (78), (80), (81), (82), (83), (84), (85), (87), (88), (89), (90),

(91), (92), (93), (94), (95), (97), (98), (99), (100), (101), (103), (104), (105), (106), (107), (108), (110), (111), (112), (113), (115), (116), (117), (118), (119), (120), (121), (122), (123), (124), (125), (126), (127), (128), (129), (130), (131), (132), (133), (134), (135), (136), (137), (138), (139), (141), (142), (144), (145), (146), (147), (148), (149), (150), (151), (152), (153), (154), (156), (157), (158), (159), (160), (161), (162), (163), (164), (165), (167), (168), (169), (170), (171), (172), (173), (174), (175), (177)

COMMENT SUMMARY (due to the large amount of comments received on Supportive Housing, Comment Summary on this issue is divided into groups based upon the responses received):

Commenters (4), (5), (8), (11), (14), (15), (16), (19), (20), (22), (26), (27), (30), (32), (34), (35), (36), (39), (46), (47), (53), (57), (58), (59), (60), (61), (64), (68), (69), (70), (72), (73), (74), (77), (80), (81), (82), (83), (84), (85), (87), (88), (89), (91), (92), (93), (94), (97), (98), (99), (100), (101), (103), (105), (107), (108), (110), (111), (112), (113), (116), (117), (118), (119), (120), (121), (123), (125), (126), (127), (128), (129), (130), (132), (133), (134), (135), (136), (138), (139), (141), (145), (146), (147), (149), (150), (151), (152), (154), (156), (158), (159), (160), (161), (162), (163), (164), (165), (167), (168), (169), (170), (171), (172), (173), (174), (175), and (177) expressed concern that implementation of the revised criminal background screening criteria would increase homelessness. All but four of the commenters described the criteria as excluding the homeless from the Supportive Housing definition that is designed to assist them. Commenters (25), (103), (118), (123), (134), (136), (147), (158), (161), (163), (165), (167), (168), (170), (171), (174) expressed concern for the children and families of offenders, who may also experience housing instability or homelessness if they aren't able to access Supportive Housing. Commenter (169) states that the stability and services available to families living in Supportive Housing may prevent children entering the foster care system and (160) described the potential impact to companion animals.

Commenters (6), (11), (20), (32), (57), (58), (68), (75), (82), (88), (91), (93), (103), (104), (105), (107), (108), (116), (125), (126), (134), (136), (139), (145), (147), (149), (150), (156), (158), (161), (162), (163), (167), (168), (169), (170), and (171) are concerned that the criteria may have a disparate racial impact, and commenters (59), (82), (93), (99), (116), (127), (128), (141), (150), (160), and (167) are concerned with potential disparate impact on persons with disabilities. Commenter (169) is concerned that the criteria could have an impact on youth aging out of foster care & LGBTQ+ youth, as they have a higher rate of conviction than their peers.

Commenters (4), (32), (37), (68), (93), (94), (99), (101), (103), (105), (116), (118), (121), (123), (127), (133), (134), (136), (139), (147), (150), (158), (161), (163), (164), (167), (168), (170), and (171) describe criminalization and increased encounters with police that lead to the homeless being more likely to have a criminal record. Commenters (8), (11), (13), (34), and (169) point out that some offenders may have taken a plea agreement in order to expedite the legal process or due to lack of knowledge. Commenters (10), (13), (14), (31), and (34) describe increased convictions among victims of human trafficking and domestic violence,

Commenters (15), (20), (25), (27), (33), (39), (47), (54), (57), (64), (65), (68), (70), (74), (81), (84), (88), (91), (92), (97), (99), (101), (106), (110), (111), (112), (113), (115), (118), (122), (125), (129), (130), (131), (132), (133), (134), (136), (137), (141), (145), (147), (150), (151), (152), (158), (159), (161), (163), (165), (168), (170), (171), (172), (173), (174), and (175) believe that the criteria will

lead to increased recidivism, and commenters (14), (15), (100), (129), (131), (137) (150), (158), and (171) believe the screening criteria will not improve safety or provide other public benefits.

Commenters (15), (29), (34), (47), (50), (54), (56), (74), (75), (76), (78), (92), (99), (103), (105), (107), (108), (123), (127), (129), (131), (132), (133), (134), (136), (149), (158), (161), (165), (168), (170), (171), (172), (174), and (175) describe the criteria as an additional sentence on the offender.

Regarding proposed changes to the screening criteria:

Commenters (13), (68), (110), (111), (113), and (120) believe that the look back periods should be shorter.

Commenters (13), (72), (82), and (126) say that more mitigation options should be available. Commenter (126) also says that self-certification as in 24 CFR 982.553(a)(2)(ii)(4)(C)(1), which allows the applicant to submit a certification that she or he is not currently engaged in and has not engaged in such criminal activity during the specified period, should be allowed.

Commenter (25) states that people with violent convictions that are in compliance with their parole requirements should be allowed residency, and that individuals with violent convictions who have completed all parole requirements should be allowed residency without look back.

Commenters (11) and (68) believe there should be a separate category for sex offenders.

Commenter (74) points out that the criteria does not distinguish between people who are convicted and serve time and those who are on parole, nor does it distinguish between first time and repeat offenders.

Commenter (31) stated that that they believe the revised tenant selection criteria for supportive housing violates both the Fair Housing Act and HUD's disparate impact standard and 2016 guidance (as well as the Equal Protection clause of the 14th Amendment), and also believes it to violate the Public Use provision in 26 CFR §1.42-9(a). The commenter states their belief that the additional criteria will result in a disparate racial impact, and contends that the new criteria fails to adequately consider the type and severity of past offenses and the amount of time that has passed since the criminal conduct. No specific substitute language is proposed by the comment.

Commenter (144) stated that they believe the revised tenant selection criteria for supportive housing, specifically the criteria regarding the temporary bar of individuals with non-violent felonies and Class A misdemeanors, violates both the Fair Housing Act and HUD's disparate impact standard and 2016 guidance. The commenter states their belief that the additional criteria regarding non-violent felonies and Class A misdemeanors will result in a disparate racial impact without a substantial, legitimate governmental interest, and contends that the new criteria fails to adequately consider the type and severity of past offenses (or whether they are related to a threat to the health, safety, or peaceable enjoyment of the premises by other residents), and the amount of time that has passed since the criminal conduct. Commenter proposes TDHCA substitute a criteria that requires housing providers consider mitigating circumstances of past [violent] criminal conduct, and require consideration of the context, age of

the individual at the time of the offense, and a more reasonable look-back period, instead of the temporary denial period for non-violent felonies and Class A misdemeanors. Commenter also proposes that applicants be informed in writing of their ability to present evidence of mitigating circumstances.

Several commenters suggested changes to the potential mitigation described in the screening criteria:

Commenter (65) requested that the mitigation part of the screening criteria include a description of how letters will impact mitigation decisions.

Commenter (68) requested that a family violence advocate or an advocate who assisted a domestic violence survivor be added to those eligible to write a letter.

Commenters (120) and (144) requested more detail in the mitigation policy.

1. COMMENT SUMMARY: Commenters (57), (95), (118), (119), (124), (125), (138), (141), (148), (157) and (162) request that the proposed 10 TAC §11.1(d)(122)(B)(v) be removed in its entirety, but also provided alternative language if the criminal background requirements cannot be removed.

As an alternative, Commenter (57) proposes staff:

“Replace the proposed addition at §11.1(d)(122)(B)(v) with either:

a. The language that is marked out of the Staff Draft at §11.1(E)(ii)(VI): ‘The Development’s Tenant Selection Criteria will include a clear description of any credit, criminal conviction, or prior eviction history that may disqualify a potential resident. The disqualification cannot be a total prohibition.’

b. Or with: “Have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of criminal history screening criteria.”

Commenters (90), (95), and (148) alternatively suggest:

The second preference would be to replace the current section with a simpler rule:

11.1 (d)122(B)(v): have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of criminal history screening criteria.

The third preference for commenters (90), (95) and (148) is the same language proposed by commenter (157), as follows:

11.1 (d)122(B)(v): have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of criminal history screening criteria ~~credit, criminal conviction, and prior eviction history that may disqualify a potential resident.~~

(I) The criminal screening criteria must, at minimum, include: ~~not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and~~

~~(-a-) Permanent denial based on criminal history at application or recertification for lifetime registered sex offenders, or any conviction for murder related offense, sexual assault, kidnapping, or felony manufacture of methamphetamines; and~~

~~(-b-) Temporary denial for a minimum of three years two years from date of arrest~~

~~based on criminal history at application or recertification of any for a violent or armed felony conviction. for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;~~

~~(-c-) Temporary denial for a minimum of two years for non-violent felonies;~~

~~and (-d-) Temporary denial for a minimum of one year for Class A misdemeanors~~

(II) The criminal screening criteria may include provisions for mitigation ~~of that waive temporary or permanent denials, such as including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others. with personal knowledge of the tenant. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years.~~

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect."

To better clarify, Commenter (95) further states:

“Without redlines, the proposed 11.1(d)122(B)(v) would read as follows:

11.1(d)122(B)(v): have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of criminal history screening criteria.

(I) The criminal screening criteria must, at minimum, include:

(-a-) Permanent denial based on criminal history at application for lifetime registered sex offenders, or any conviction for felony manufacture of methamphetamines; and

(-b-) Temporary denial for a minimum of two years from date of arrest based on criminal history for a violent or armed felony conviction.

(II) The criminal screening criteria may include provisions for mitigation of that waive temporary or permanent denials, such as letters of recommendation from mental health professionals, employers, case managers, or others.

(III) Disqualifications in a property’s Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.”

Commenter (162) proposes alternative language:

(v) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of ~~credit~~, criminal conviction, and ~~prior eviction~~ history that may disqualify a potential resident.

(I) The criminal screening criteria must not allow residents to reside in the Development that are ~~on the National or Texas Sex Offender website~~ lifetime registered sex offenders or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(-a-) Permanent denial based on criminal history at application or recertification ~~of any conviction for murder related offense, sexual assault, kidnapping, or arson~~ lifetime registered sex offenders;

(-b-) Temporary denial for a ~~minimum~~ maximum of three years based on criminal history at application or recertification of any felony conviction for discharge/display or firearm or illegal/deadly weapon, armed offense, ~~stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others~~;

(-c-) Temporary denial for a minimum of two years for non-violent felonies; and

~~(d) Temporary denial for a minimum of one year for Class A misdemeanors~~

(II) The criminal screening criteria may include provisions for mitigation of temporary denials including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant or when tenants are participating in a housing program providing supportive services and case management services. ~~The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years~~

(IV) When property units are assisted through the Housing Choice Voucher Program, the Public Housing Authority's Criminal Background Criteria may apply, including mitigation of temporary denials

~~(III)~~ Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

Other comments received:

It appears that commenters (10), (12), and (67) are providing information to the Department, without a clear position or request.

Commenters (15), (20), (27), (32), (35), (36), (39), (46), (54), (70), (82), (87), (88), (93), (117), (118), (126), (136), (138), (141), (145), (146), (147), (49), (156), (158), (162), (163), and (167) cite the COVID-19 pandemic as reason to not implement the proposed change for the 2021 QAP.

Commenter (162) requests a one-year delay and fiscal impact statement.

Commenters (93), (110), (111), (113), (119), (127), (128), (130), (138), (152), (164), (167), and (169) believe the proposed language conflicts with 10 TAC 11.9(c)(6)(B), and commenter (154) believes it conflicts with the 2020 State Low-Income Housing Plan (SLIHP). Commenter (126) believes it conflicts with HUD guidance at 24 CFR 982.553 and therefore Section 42 requirements that LIHTC properties accept vouchers.

Commenter (57), (141), and (150) cite an additional administrative burden on providers and TDHCA. Commenter (167) believes the screening criteria could be incompatible with other fund sources and thereby limit Developer's financing options.

Commenters (5), (11), (37), (54), (57), (69), (83), (93), (118), (119), (124), (126), (127), (131), (137), (138), (150), (152), (156), (165), and (167) believe housing providers and local communities should be able to set their own screening criteria.

Commenters (139) and (164) incorrectly state that the lookback period is added to the Resident Application date, effectively creating a waiting period after an Application is submitted to the provider.

Commenter (57) supports the clarification that the entire Development must meet the definition of Supportive Housing.

STAFF RESPONSE:

The changes to this rule were proposed to bring clarity and consistency to tenant criminal history screening criteria imposed by Supportive Housing developments. By providing for minimum time periods to restrict tenancy for individuals following particular felony criminal convictions, developments would be given a rule-based tool for developing their screening criteria and process to assess the suitability for tenancy of individuals who had been convicted of these crimes, and whether their tenancy would pose an undue risk to the health, safety, and peaceable enjoyment of the property of other tenants (e.g. Commenter 10), as well as those residing in the immediate vicinity of the development. TDHCA proposed a set of criminal background screening criteria in the supportive housing rule based on criminal background screening criteria examples actually being used by current supportive housing providers. The considerable public comment that resulted only reinforces the fact that TDHCA needed to provide guidance in its rule as to what criteria and process, including the ability to mitigate all denials, should be followed when Developments create their tenant selection criteria in accordance with 10 TAC §10.802. Following the suggested changes, below, the resulting proposed rule seeks to balance the ability of the development to set a tenant criminal background screening criteria that is particular to its development, while reinforcing the requirement that the criteria developed and used by the development, including mitigation, must conform to applicable federal regulation, and particularly the official federal guidance regarding the application of Fair Housing standards to the use of criminal background screening criteria.

Staff is recommending a number of changes to the proposed tenant criminal screening criteria as a result of, and in response to, public comment:

- 1) Temporary denial for a minimum of seven years from a felony conviction for a short list of Part I crimes replaces permanent denial.
- 2) Temporary denial for a minimum of three years from a felony conviction for aggravated assault, robbery, drug possession, and drug distribution, replaces a list of less violent felonies;
- 3) Denials for other non-violent felonies and Class A misdemeanors were removed;
- 4) Mitigation is required to be available for all denials, and written notice must be provided to a prospective tenant of his/her ability to provide mitigation evidence;
- 5) The screening criteria must include provisions for individual review of a denial if a conviction is more than 7 years old, or if the applicant/resident is over 50 years old, and the prospective resident has no additional felony convictions in the last 7 years.
- 6) A requirement was inserted that a Development's criminal screening criteria and mitigation must conform to federal regulations and official guidance, including HUD's 2016 Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records.
- 7) A reminder was inserted that the process of evaluation of prospective residents must also follow 10 TAC §1.204 (regarding Reasonable Accommodations).

(122) Supportive Housing--A residential rental Development and Target Population meeting the requirements of subparagraphs (A) - (E) of this paragraph.

(A) Be intended for and targeting occupancy for households in need of specialized and specific non- medical services in order to maintain housing or transition into independent living;

(B) Be owned and operated by an Applicant or General Partner that must:

(i) have supportive services provided by the Applicant, an Affiliate of the Applicant, or a Third Party provider if the service provider is able to demonstrate a record of providing substantive services similar to those proposed in the Application in residential settings for at least three years prior to the beginning of the Application Acceptance Period, or Application Submission Date for Multifamily Direct Loan Applications;

(ii) secure sufficient funds necessary to maintain the Supportive Housing Development's operations throughout the entire Affordability Period;

(iii) provide evidence of a history of fundraising activities reasonably deemed to be sufficient to address any unanticipated operating losses;

(iv) provide a fully executed guaranty agreement whereby the Applicant or its Affiliate assume financial responsibility of any outstanding operating deficits, as they arise, and throughout the entire Affordability Period; and

(v) have minimum Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident. This process must follow 10 TAC §1.204 of this title (regarding Reasonable Accommodations).

(I) ~~The criminal screening criteria must not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), who are subject to a lifetime sex offender registration requirement; and provide, at least, for:~~

~~(-a-) Permanent Temporary denial for a minimum of seven years based on criminal history at application or recertification of any felony conviction for murder related offense, sexual assault, kidnapping, ~~or~~ arson, or manufacture of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and~~

~~(-b-) Temporary denial for a minimum of three years based on criminal history at application or recertification of any felony conviction for aggravated assault, robbery, drug possession, or drug distribution ~~a discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;~~~~

~~(-c-) Temporary denial for a minimum of two years from conviction for Part I non-violent felonies; and~~

~~(-d-) Temporary denial for a minimum of one year from conviction for any violent Class A misdemeanors~~

(II) The criminal screening criteria ~~may~~ must include provisions for approving applications despite the tenant's criminal history on the basis of mitigation evidence. ~~mitigation of temporary~~

~~denials. Applicants/tenants must be provided written notice of their ability to provide materials that support mitigation. Mitigation may be provided during the initial tenant application or upon appeal after denial. Mitigation may include personal statements/certifications,~~ documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. The criteria ~~must may~~ include provision for individual review of permanent or temporary denials if the conviction is more than ~~20-7~~ years old or if the applicant/resident is over 50 years of age, and the prospective resident has no additional felony convictions in the last ~~20~~ 7 years. Criminal screening criteria and mitigation must conform to federal regulations and official guidance, including HUD's 2016 Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records.

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, ~~or this subparagraph~~ (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

§11(d)(122)(E)(i) – Supportive Housing (127)

COMMENT SUMMARY: Commenter (127) requests that funds from a local government or instrumentality of a local government be allowed as exceptions to the “no hard debt” portion of the definition.

STAFF RESPONSE: Staff appreciates commenter (127) pointing out the similarities between Direct Loan and funds from local government.

Regarding the request that “local or” be added preceding “federal funds” to the sentence, “For tax credit applications only, permanent foreclosable debt that contains scheduled or periodic repayment provisions (including payments subject to available cash-flow) is permissible if sourced by federal funds and otherwise structured to meet valid debt requirements for tax credit eligible basis considerations,” this part of the definition applies to federal funds from all sources, and is necessary to preserve eligible basis if there is a question of valid debt.

Regarding the other request from commenter (127), staff is recommending the following change:

“E) Supportive Housing Developments must meet the criteria of either clause (i) or (ii) of this subparagraph:

(i) not financed, except for construction financing, or a deferred-forgivable or deferred-payable construction-to-permanent Direct Loan from the Department, with any debt containing foreclosure provisions or debt that contains scheduled or periodic repayment provisions. A loan from a local government or instrumentality of local government is permissible if it is a deferred-forgivable or deferred-payable construction-to-permanent loan, with no foreclosure provisions or scheduled or periodic repayment provisions, and a maturity date after the end of the Affordability Period. For tax credit applications only, permanent foreclosable debt that contains scheduled or periodic repayment provisions (including payments subject to available cash-flow) is permissible if sourced by federal funds and otherwise structured to meet

valid debt requirements for tax credit eligible basis considerations. In addition, permanent foreclosable, cash-flow debt provided by an Affiliate is permissible if originally sourced from charitable contributions or pass-through local government funds and the foreclosure provisions are triggered only by default on non-monetary default provisions. Developments meeting these requirements are not subject to §11.302(i)(4) & (5) of Subchapter D of this chapter (relating to Underwriting and Loan Policy). Any amendment to an Application or Underwriting Report resulting in the addition of debt prohibited under this definition will result in the revocation of IRS Form(s) 8609, and may not be made for Developments that have Direct Loans after a LURA is executed, except as a part of an approved Asset Management Division work out arrangement; or

§11.3(b) – Two Mile Same Year Rule (93) (127)

COMMENT SUMMARY: Commenters (93) and (127) express concern that the Two Mile Same Year Rule impedes the process of building an adequate supply of affordable units. Commenters suggest that any political subdivision subject to the Two Mile Same Year Rule should have the ability to waive the requirement if approved by local officials.

STAFF RESPONSE: Staff acknowledges receipt of the concerns expressed by Commenter (93). However, the requirements under 10 TAC §11.3(b) are implemented as required by Tex. Gov't Code §2306.6711(f). *Staff recommends no changes based on this comment.*

§11.5 – Competitive HTC Set-Asides (93).

COMMENT SUMMARY: Commenter (93) requests removing language restricting access to set-asides for public housing authorities and public finance corporation projects. Commenter (93) claims the restrictions may limit who can apply for funds under the Housing Tax Credit Program. STAFF RESPONSE: Staff appreciate the concerns expressed by Commenters (93) and (148) regarding the Competitive HTC Set-Asides under 10 TAC §11.5. Applicants eligible to participate in the at-risk set-aside are defined in Tex. Govt. Code §2306.6702. *Staff recommends no changes based on these comments.*

§11.7 – Tie Breaker Factors (66), (86), and (102).

COMMENT SUMMARY: Commenters (66) and (102) suggests that tie breaker factors should not be based on census tract data due to developers building within the same census tracts. The same Commenters also suggest using only distance tie breakers as opposed to a multi-step system. Commenter (86) suggests that the current tie-breaker should not be changed.

STAFF RESPONSE: Staff appreciate the concerns expressed by Commenters (66), (86), and (102) regarding the Tie Breaker Factors under 10 TAC §11.7. 10 TAC §11.3(h) limits Competitive Housing Tax awards to one per census tract, and Applicants are able to evaluate competing Applications through the Pre-Application to determine if they will move forward. *Staff recommends no changes based on these comments.*

§11.8(b)(1)(I)(ii) – Pre-Application Disclosure of Neighborhood Risk Factors (57)

COMMENT SUMMARY: Commenter (57) supports the change to most recent school ratings rather than describing specific years, as the change will allow the rule to mold to extant circumstances for the coronavirus pandemic.

STAFF RESPONSE: *Staff thanks the commenter, and recommends no changes.*

§11.8(b)(2) – Pre-Application Threshold Criteria (62)

COMMENT SUMMARY: Commenter (62) points out an inconsistency across the QAP regarding dates that Neighborhood Organizations must be on record.

STAFF RESPONSE: Staff appreciates the commenters pointing out this inconsistency, and recommends the following change:

“(2) Evidence in the form of a certification provided in the pre-application, that all of the notifications required under this paragraph have been made and that a reasonable search for applicable entities has been conducted. (§2306.6704).

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state 30 days prior to the beginning of the Application Acceptance Period whose boundaries include the entire proposed Development Site ~~as of the beginning of the Application Acceptance Period.~~

(B) Notification Recipients

(i) Neighborhood Organizations on record with the state or county 30 days prior to the beginning of the Application Acceptance Period ~~as of the beginning of the Application Acceptance Period~~ whose boundaries include the entire proposed Development Site;”

§11.8(b)(2)(B)(i) Notification Recipients (95)

COMMENT SUMMARY: Commenter (95) describes difficulty in determining the accurate address for Neighborhood Organizations, and requests that language regarding a reasonable search be added.

STAFF RESPONSE: Staff believes that the term “reasonable search” is difficult to define, and could lead to confusion among Applicants regarding the requirement. *Staff recommends no changes.*

§11.8(c) – Pre-Application Results (148)

COMMENT SUMMARY: Commenter (148) points out that Applicants may not know if they have a need for Multifamily Direct Loan funds at Pre-Application, and requests that the deadline for submission of a Request for Preliminary Determination be moved to the Application Delivery Date.

STAFF RESPONSE: Staff appreciates that Applicants may not know the full financing structure for an Application at the Pre-Application deadline, and that a great deal of work is completed between Pre-Application and Application. The Preliminary Determination is intended to serve a

similar purpose as a Lender letter for Applicants seeking only Multifamily Direct Loan as permanent financing, and are seeking points under 10 TAC §11.9(e)(1)(E). *Staff recommends the following change:*

(d) Applicants that may be requesting a Multifamily Direct Loan from the Department may submit a Request for Preliminary Determination ~~with the Pre-Application~~ on or before February 12. The results of evaluation of the Request may be used as evidence of review of the Development and the Principals for purposes of scoring under 10 TAC §11.9(e)(1)(E). Submission of a Request for Preliminary Determination does not obligate the Applicant to request Multifamily Direct Loan funds with their full Application.

§11.9(b)(2) – Sponsor Characteristics (7) and (9).

COMMENT SUMMARY: Commenters (7) and (9) both note that the proposed additions discourage non-local, nonprofits from competing in the Competitive (9%) Housing Tax Credit Program and prevent local nonprofits from having the ability to expand outside their footprint. Both Commenters recommend striking the language related to nonprofit organizations in regards to not being a Related Party to or Affiliate of the Applicant, Developer, or Guarantor.

STAFF RESPONSE: Staff understands and appreciates the concerns of Commenters (7) and (9). Staff intends to address these suggestions more thoroughly during the 2022 QAP planning process. Commenters with similar concerns are recommended to submit their suggestions at that time. *No additional changes are recommended at this time.*

§11.9(c)(3) – Resident Services (96) and (109).

COMMENT SUMMARY: Commenters (96) and (109) both have concerns regarding the Owner's flexibility to change services at any time, which reduces their accountability with TDHCA. Commenter (96) proposes owners should be required to undergo a review and approval process before changing resident services.

STAFF RESPONSE: Staff appreciates Commenters (96) and (109) for providing recommendations and explaining their concerns. Changes to Supportive Services are also governed by the Asset Management rules related to Land Use Restriction Agreement (LURA) amendments under 10 TAC §10.405. Because that section is not currently out for public comment. *Staff recommends no changes based on these comments.*

§11.9(c)(4) – Opportunity Index (57), (62), (116), (167)

COMMENT SUMMARY: Commenters (57), (116), and (167) oppose the increase of mile distances for amenities in urban and rural opportunity index scoring items. Commenter (57) raises a concern that the increased thresholds would create more difficulty for residents with transportation or mobility concerns.

Commenter (57) supports the change to using the most recent school ratings for Opportunity Index points.

Commenter (62) suggests additional language within §11.9(c)(4)(A)(ii) is missing regarding poverty rates less than the greater of 20% or the median poverty rate for a region.

STAFF RESPONSE: Staff appreciates the recommendations and concerns provided by Commenters (57), (116), and (167). These changes have been made in order to expand the number of potential sites for affordable housing development. *Staff recommends no changes based on these comments.*

The change suggested by commenter (62) is consistent with staff understanding and application of the rule. *Staff recommends the following change:*

“(ii) The Development Site is located entirely within a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with a median household income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile for median household income that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, without physical barriers such as (but not limited to) highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. For purposes of this scoring item, a highway is a limited-access road with a speed limit of 50 miles per hour or more; and, (1 point)”

§11.9(c)(5)(F) – Underserved Area (18)

COMMENT SUMMARY: Commenter (18) requests that the minimum population be reduced from 100,000 to 50,000.

STAFF RESPONSE: Staff believes these suggestions would represent sufficiently substantive changes from what was proposed such that it could not be accomplished without republishing the QAP for public comment. *Staff recommends no changes based on this comment.*

§11.9(c)(7) – Proximity to Job Areas (1), (2), (18), (42), (43), (44), (48), (49), (51), (52), (62), (66), (79), (86), (102), and (127)

COMMENT SUMMARY: Commenters (2), (42), (43), (44), (48), (49), (51), (52), (62), (86), and (127) all request that the Department not make any modifications for the mile radius or job thresholds in regards to the Proximity to Jobs scoring item.

Commenters (1), (18), (66), (79), and (102) all propose changes in regards to the job thresholds or mile radius for the Proximity to Jobs scoring items. Commenter (1) requests a mechanism or option to tweak the job thresholds in order to help smaller urban cities. Commenter (18) suggests lowering the urban core threshold from 190,000 to 90,000 (as low as 50,000) in order to help smaller metro cities compete with larger cities, similarly commenter (79) requests a reduction of the threshold to 180,000. Commenters (66) and (102) propose decreases for the job count thresholds by 3,000 jobs for §11.9(c)(7)(i)-(iv), by 2,500 jobs for §11.9(c)(7)(v), and by 1,000 jobs for §11.9(c)(7)(vi).

STAFF RESPONSE: Staff appreciates Commenters for providing recommendations and explaining their concerns. However, Staff believes these divergent suggestions would require sufficiently substantive changes from what was proposed such that it could not be accomplished without

republishing the QAP for public comment. Commenters that support this idea should raise it during the 2022 QAP planning process. *Staff recommends no changes based on these comments.*

§11.9(c)(8) – Readiness to Proceed (RTP) in Disaster Impacted Counties (7), (57), (62), (66), (102), (140), (157), and (167)

COMMENT SUMMARY: Commenters (7) and (62) propose that Readiness to Proceed should not apply for applications under At-Risk or USDA Set-Aside. Commenter (62) points out that At-Risk and USDA developments already have “on the ground” units with tenants, and other scoring categories such as Proximity to Jobs do not apply. Commenters (66), (102), and (140) suggest the RTP point category be entirely removed from the 2021 QAP. Commenter (157) suggest that the deadline should be six months after award.

By contrast, Commenters (57) and (167) support the proposed change regarding points for RTP up to four years from December 1, 2020. In addition, Commenter (57) explains the change will continue to support the reconstruction of areas affected by Hurricane Harvey.

STAFF RESPONSE: Staff understands the complexity of the concerns surrounding the Readiness to Proceed in Disaster Impacted Counties requirements of 10 TAC §11.9(c)(8).

In response to all commenters on this proposed rule, and in particular the timing issues related to the COVID-19 pandemic, staff recommends that the points for this scoring item be suspended for the 2021 LIHTC round, and proposes the following change:

(8) Readiness to proceed in disaster impacted counties. Due to uncertainty linked to the COVID-19 pandemic, scoring for all Applicants under this item is suspended (no points may be requested, nor will they be awarded) for 2021 HTC Applications. An Application for a proposed Development that is located in a county declared by the Federal Emergency Management Agency to be eligible for individual assistance, within four years preceding December 1, 2020. Federal Emergency Management Agency declarations that apply to the entire state at any point in time prior to Application do not apply. The Applicant must provide a certification that they will close all financing and fully execute the construction contract on or before the last business day of November or as otherwise permitted under subparagraph (C) of this paragraph. For the purposes of this paragraph only, an Application may be designated as "priority." Applications in the At-Risk or USDA Set-asides are not eligible for these points. (5 points)

Staff recommends no further changes based on these comments.

§11.9(d)(1) – Local Government Support (62).

COMMENT SUMMARY: Commenter (62) requests clarification regarding development sites that are partially within both a municipality and an Extraterritorial Jurisdiction (ETJ) or county.

STAFF RESPONSE: Staff appreciates the request and agrees to provide clarification as requested in writing on a case-by-case basis. Additionally, Staff acknowledges that 10 TAC §11.9(d)(1) is predominantly implemented in accordance with Tex. Gov't Code §2306.6710(b)(1)(B). *Staff recommends no changes based on these comments.*

§11.9(d)(2) – Commitment of Development Funding by Local Political Subdivision (127) and (157).

COMMENT SUMMARY: Commenters (127) and (157) request that commitments from HOME, CDBG, or local funding to developments should be weighted more heavily. Commenters (127) and (157) request this scoring item reflect an amount that is material to the overall financing of a transaction.

STAFF RESPONSE: Staff appreciates Commenters (127) and (157) for providing recommendations and explaining their concerns. This scoring item implements Tex. Gov't Code §2306.6725(e), which describes a de minimis amount. Further, the requested change would significantly disadvantage applications in communities that do not have the described fund sources available. *Staff recommends no changes based on these comments.*

§11.9(d)(4) – Quantifiable Community Participation (62)

COMMENT SUMMARY: Commenter (62) points out an inconsistency regarding the date that a Neighborhood Organization must be on record.

STAFF RESPONSE: Staff appreciates the commenter pointing out this inconsistency, and recommend the following change:

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(I); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in current, valid existence with boundaries that contain the entire Development Site ~~30 days prior to the beginning of the Application Acceptance Period~~. In addition, the Neighborhood Organization must be on record 30 days prior to the beginning of the Application Acceptance Period with the Secretary of State or county in which the Development Site is located as of the beginning of the Application Acceptance Period. Once a letter is submitted to the Department it may not be changed or withdrawn. The written statement must meet all of the requirements in subparagraph (A) of this paragraph. Letters received by the Department setting forth that the eligible Neighborhood Organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website. Written statements from the Neighborhood Organizations included in an Application and not received by the Department from the Neighborhood Organization will not be scored but will be counted as publiccomment.

§11.9(d)(7) – Concerted Revitalization Plan (62), (93), (127), (157), and (166).

COMMENT SUMMARY: Commenter (62) notes that developments in certain communities that could qualify for seven points under the Opportunity Index may apply under 10 TAC §11.9(d)(7) in order to take advantage of statutory requirements Tex. Gov't Code §2306.6711(g). Commenter (62) proposes that if an Application is eligible for Opportunity Index points, then the application should not be eligible for CRP points.

Alternatively, Commenters (93), (127) and (157) have concerns that the proposed rules regarding CRPs in the QAP Draft prevent municipalities from determining what development plans are eligible, which compromises local control.

Commenter (166) states that the “additional efforts” required by the QAP are subjective.

STAFF RESPONSE: Staff appreciates the Commenter (62) concerns, but believes that the statute is sufficiently concise to not allow the requested change. Regarding comments by (93), (127), (157), and (166), staff believes these suggestions would represent sufficiently substantive changes from what was proposed such that it could not be accomplished without republishing the QAP for public comment. *Staff recommends no changes based on these comments.*

§11.9(e)(2) – Cost of Development per Square Foot (127) and (148).

COMMENT SUMMARY: Commenter (127) opposes the increase for the cost per square foot scoring thresholds as City of Austin believes there isn’t enough evidence for the increase. Commenter (148) supports the increase for the cost per square foot scoring thresholds.

STAFF RESPONSE: Staff appreciates the support and recommended revisions regarding the increases to the Cost of Development per Square Foot requirements under 10 TAC §11.9(e)(2). Staff encourages commenters with similar suggestions to share their analysis with Staff during the 2022 QAP planning process. *No additional changes are recommended by Staff at this time.*

§11.101(a)(2) – Undesirable Site Features (57), (62), and (148).

COMMENT SUMMARY: Commenter (62) proposed that if the QAP allows a local ordinance to supersede the distances within §11.101(a)(2), then local resolutions should also be accepted. Commenter (62) notes that it would allow local government to approve developments in their community and avoid unnecessary Requests for Administrative Deficiencies.

Commenter (57) instead opposes the added exception to exempt parking areas from the allowed distance to high voltage power lines. The commenter expresses concern that parking areas are not always used just to park vehicles, and describes studies regarding the potential health impacts of exposure due to proximity to high voltage lines.

Lastly, Commenter (148) asks for clarification during the pre-application process regarding requests for pre-determinations of site eligibility, such as whether the pre-determination holds under peer review.

STAFF RESPONSE: Staff appreciates the recommendations and concerns of Commenters (57) and (62), but believes that these suggestions would represent sufficiently substantive changes from what was proposed and longstanding and accepted practices such that it could not be accomplished without republishing the QAP for public comment. Commenters that support this idea should raise it during the 2022 QAP planning process.

In response to Commenter (148), staff directs their attention to the language of the paragraph that describes instances in which a pre-determination could re-evaluated. *Staff recommends no changes based on these comments.*

§11.101(a)(3) – Neighborhood Risk Factors (3), (57), (66), (86), (93), (116), (140), (148), (155) (157), and (167).

COMMENT SUMMARY: Commenters (3), (66), (86), (93), and (140) suggest the removal of the Texas Education Agency (TEA)'s School Ratings Requirement from the application threshold. Given the current environment of education, Commenter (66) notes that using a school rating from the 2018-2019 academic year for a development that may not be completed until 2024 seems counterproductive. Commenter (93) further suggests that school ratings should not be considered for the 2021 QAP due to COVID-related school closures.

In contrast, Commenters (57) and (167) support the proposed language regarding maintaining the most recent TEA School ratings.

Commenter (155) supports the change to 10 TAC §11.101(a)(3)(C) and (D), which suspends the requirement for mitigation for 2021 Applications.

Commenter (57) opposes the changes in 10 TAC §11.101(a)(3)(C) and (D), which allow Applicants to not include mitigation for certain schools in 2021, due to school closures as a result of the COVID-19 pandemic. They state that Applications in the impacted attendance zones should be determined ineligible, and describe the importance of locating Developments near high-performing schools.

Commenter (148) requests that Supportive Housing Developments where all units are one bedroom be added to Developments that are exempt under 10 TAC §11.101(a)(3)(iv).

Commenter (157) instead proposes alternative mitigation for school districts that have wide enrollment or school choice. Commenter (157) suggests this change would allow an Applicant to pick a school that is not the closest to the proposed development, and if the applicant provides adequate transportation for potential students, the application can use that school's rating.

STAFF RESPONSE: Staff appreciates the Commenters' recommendations and concerns but believes that these divergent suggestions would require sufficiently substantive changes from what was proposed such that it could not be accomplished without republishing the QAP for public comment. *Staff recommends no changes based on these comments.*

§11.101(a)(3)(D)(i) – Neighborhood Risk Factors (57)

COMMENT SUMMARY: Commenter (57) continues to oppose a change to the 2020 QAP, which allowed a poverty rate over 40% to be mitigated with a resolution from the Governing Body of the community, acknowledging the high poverty and allowing the Development to move forward.

STAFF RESPONSE: Staff appreciates the Commenters' recommendations and concerns but believes that these suggestions would represent sufficiently substantive changes from what was proposed such that it could not be accomplished without republishing the QAP for public comment. *Staff recommends no changes based on these comments.*

§11.101(a)(7)(E) – Community Supportive Services (96) and (109).

COMMENT SUMMARY: Commenter (96) suggests increasing the total number of points awarded for “specific service coordination” and “part-time resident services coordinator” to incentivize the services.

STAFF RESPONSE: Staff appreciates the Commenters’ recommendations and concerns, but disagrees with the premise that these services should be awarded more points when considered in context with all other point items. Commenters that support this idea should raise it during the 2022 QAP planning process. *Staff recommends no changes based on these comments.*

§11.101(b)(1)(C) – Ineligible Developments (57).

COMMENT SUMMARY: Commenter (57) supports the change to using the most recently available TEA ratings. They also propose making all schools with the most recent TEA rating of “F” ineligible.

STAFF RESPONSE: Staff appreciates the Commenters’ recommendations and concerns but believes that these suggestions would represent sufficiently substantive changes from what was proposed such that it could not be accomplished without republishing the QAP for public comment. *Staff recommends no changes based on these comments.*

§11.101(b)(6)(B)(VI)(-d-) – Development Requirements and Restrictions (143).

COMMENT SUMMARY: Commenter (143) describes an update to the 2018 International Green Construction Code.

STAFF COMMENT: Because only the title of the Code is listed in the rule, any updates will be automatically incorporated without a change to the draft language. *Staff recommends no change based on this comments.*

§11.202(7) – Deficiency Process (62).

COMMENT SUMMARY: Commenter (62) notes that several 2020 Applications were allowed to provide missing or additional documentation for scoring items during the deficiency review process. The items mentioned are Proximity to Jobs, Concerted Revitalization Plan, and Sponsor Characteristics. Commenter (62) suggests that if this continues to be allowed, then TDHCA should revise or remove various sections of the QAP in regards to deficiency submissions.

STAFF RESPONSE: Staff appreciates Commenter (62) for providing recommendations regarding the Deficiency Process. Staff believes the suggested revisions would represent sufficiently substantive changes from what was proposed, such that it could not be accomplished without republishing the QAP for public comment. Commenters that support this idea should raise it during the 2022 QAP planning process. *Staff recommends no changes based on this comment.*

§11.203(1) – Public Notifications (62) and (95).

COMMENT SUMMARY: Commenters (62) and (95) note the potential confusion regarding the date a neighborhood organization must be on record and when the boundaries must be

established through the three mentioned sections above within the QAP. Commenters (62) and (95) suggest clarification and consistency within these areas of the QAP to avoid potential deficiencies.

STAFF RESPONSE: Staff appreciates the commenters pointing out this inconsistency, and recommends the following change:

(1) Neighborhood Organization Notifications.

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the beginning of the Application Acceptance Period and whose boundaries include the entire proposed Development Site. As used in this section, "on record with the state" means on record with the Secretary of State.

(B) The Applicant must list, in the certification form provided in the pre-application and Application, all Neighborhood Organizations on record with the county or state as of 30 days prior to the beginning of the Application Acceptance Period and whose boundaries include the proposed Development Site ~~as of the submission of the Application~~, and the Applicant must certify that a reasonable search for applicable entities has been conducted.

§11.204(6) – Experience Requirement (55), (62), (63), (66), (86), (140), (155).

COMMENT SUMMARY: Commenters (62), (63), (66), (86), (140), and (155) recommend removing the newly added language “Serving only as the HUB for a Development does not meet the requirement.” Commenters (62), (66), (155) believe the HUB is already participating in the process of development, construction, and operating of the proposed Development, thereby already having met the Experience Requirement. Commenter (55) proposes that multiple parties be able to aggregate their experience as a team in order to qualify for an Experience Certificate.

STAFF RESPONSE: Staff understand and appreciate the Commenters’ concerns regarding the complexity of the Experience Requirements under 10 TAC §11.204(6). Staff intend to address the suggestions regarding HUBs in conjunction with the Sponsorship Characteristics of 10 TAC §11.9(b)(2) during the 2022 QAP planning process. The suggestion regarding a group of individuals using aggregate experience in order to earn an Experience Certificate would represent sufficiently substantive changes from what was proposed, such that it could not be accomplished without republishing the QAP for public comment. *Staff recommends no changes based on these comments.*

In addition, staff is recommending the following clarification be added to 10 TAC §11.204(6) – Experience Requirement

(A) A natural Person, with control of the Development who intends and has the ability to remain in control through placement in service, who is also a Principal of the Developer, Development Owner, or General Partner must establish that they have experience that has included the development and placement in service of 150 units or more. Applicants requesting Multifamily Direct Loan funds only may meet the alternative requirement at §13. 5(h)(1) of this title (relating to Experience). An agreement between a HUB listed as a participant on a previous Application and the person in control of that same Application

does not meet this requirement. Acceptable documentation to meet this requirement shall include any of the items in clauses (i) - (ix) of this subparagraph:

§11.204(8)(E)(ii) – Development Costs (148).

COMMENT SUMMARY: Commenter (148) request that the proposed “and the source of their cost estimate” be further described.

STAFF RESPONSE: In order to better understand and evaluate an Application, staff must have access to accurate information. The source of a particular cost is not a matter of evaluation, but rather a point of information. *Staff recommends no changes based on this comment.*

§11.204(8)(F) – Rental Assistance/Subsidy (148).

COMMENT SUMMARY: Commenter (148) requests that the phrase “must be provided” be removed from the stricken language.

STAFF RESPONSE: The proposed language is in accordance with the requirement described in Tex. Gov’t Code §2306.6705(4). *Staff recommends no changes based on this comment.*

§11.204(15) - Feasibility Report (7), (66), (140).

COMMENT SUMMARY: Commenters (7), (66), (140), and (166) suggest removing the requirement that Acquisition and Rehabilitation only Applications provide a Feasibility Report. The argument both commenters share is that new construction developments should be the only application requiring a Feasibility Report since the reports are concentrated on site design, zoning, ordinances, ingress/egress, off-site costs, and site work cost. Due to Acquisition and Rehabilitation only developments already being in existence, Commenter (7) and Commenter (66) suggest the Feasibility Report is unnecessary and burdensome.

STAFF RESPONSE: Staff agrees with the concerns of Commenters (7) and (66) regarding Feasibility Reports for Acquisition and Rehabilitation only developments, as the same Developments are required to submit an extensive Scope and Cost Review Report under 10 TAC §11.205 (relating to Required Third Party Reports). *Staff recommends amending the rule as follows:*

“(15) Feasibility Report. This report, compiled by the Applicant or Third Party Consultant, and prepared in accordance with this paragraph, which reviews site conditions and development requirements of the Development and Development Site, is required and must meet all of the criteria provided in subparagraphs (A) to (F) of this paragraph. Acquisition and Rehabilitation Applications are exempted from this requirement. If an Application involves Acquisition and Rehabilitation along with other activities, the Feasibility Report is required for the entire Development.

§11.304(a)(2) - Appraisal Review (7), (9), (57), (66), (140), and (166).

COMMENT SUMMARY: Commenters (7), (9), (66), and (166) suggest the Appraisal Review Fee of \$6,000 be removed entirely. Commenters suggest the proposed fee is burdensome and egregious as it adds to the total cost of an application. Regardless, Comments do support and recommend that TDHCA publish a list of approved appraisers. Comments suggest it would eliminate any potential providers that have a history of concerns. Accordingly, Commenter (57) supports the TDHCA approved list of appraisers by the Texas Appraisal Licensing and Certification Board, along with supporting the additional reviewing appraiser.

STAFF RESPONSE: Staff appreciate the concerns expressed by Commenters (7), (9), and (66) regarding the Appraisal Review Fee. Staff recommends commenters with similar concerns participate in the 2022 QAP Planning Process so as to better inform staff of their concerns. *Staff recommends no changes based on these comments.*

§11.302(g)(4) Direct Loan (95).

COMMENT SUMMARY: Commenter (95) is concerned that the described calculation could have a negative impact on the feasibility conclusion for a Direct Loan application, particularly given the structures and requirements typical of Supportive Housing.

STAFF RESPONSE: While staff is aware of the commenter's concerns, the Department is required by federal fund sources to show that the Development is not over-subsidized. In order to meet the federal requirement this is the methodology the Department has adopted for 2021 Applications, in order to amend its 2020 Action Plan to incorporate this requirement. Commenters that support other methodologies to meet this federal requirement should identify these methodologies during the 2022 QAP planning process. As part of a waiver request, 2021 Direct-Loan only Applicants or 4% layered Applicants may request the Department further amend its 2020 or 2021 Action Plan (as applicable) as allowed by 10 TAC §13.1(c)(2).

§11.306 – Scope and Cost Review (114) and (119).

COMMENT SUMMARY: Commenters (114) and (119) ask for additional clarification within §11.306 as the current language and changes made within the QAP need more direction.

STAFF RESPONSE: Staff appreciates the request and agrees to provide clarification as needed in writing on a case-by-case basis. *Staff recommends no changes based on these comments.*

STATUTORY AUTHORITY. The adoption is made pursuant to TEX. GOV'T CODE §2306.053, which authorizes the Department to adopt rules. Except as described herein the new sections affect no other code, article, or statute.

Chapter 11, Housing Tax Credit Program Qualified Allocation Plan

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2021 CHAPTER 11, QUALIFIED ALLOCATION PLAN (QAP)

SUBCHAPTER A PRE-APPLICATION, DEFINITIONS, THRESHOLD REQUIREMENTS AND COMPETITIVE SCORING

§11.1 General

(a) Authority. This chapter applies to the awarding and allocation by the Texas Department of Housing and Community Affairs (the Department) of Competitive and non-Competitive Housing Tax Credits. The federal laws providing for the awarding and allocation of Housing Tax Credits require states to adopt a qualified allocation plan. Pursuant to Tex. Gov't Code, Chapter 2306, Subchapter DD, the Department is assigned responsibility for this activity. As required by Internal Revenue Code (the Code), §42(m)(1), the Department has developed this Qualified Allocation Plan (QAP) and it has been duly approved to establish the procedures and requirements relating to an award and allocation of Housing Tax Credits. All requirements herein and all those applicable to a Housing Tax Credit Development or an Application under Chapter 10 of this title (relating to Post Award and Asset Management Requirements, Compliance Monitoring, and Incomes and Rents rules) collectively constitute the QAP required by Tex. Gov't Code §2306.67022 and §42(m)(1)(B) of the Code. Unless otherwise specified, certain provisions in sections §11.1 - §11.4 also apply to non-Competitive Housing Tax Credits. Subchapters B - E of this chapter also apply to non-Competitive Housing Tax Credits and Multifamily Direct Loans. Applicants are required to certify, among other things, that they have familiarized themselves with the rules that govern that specific program including, but not limited to, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 10 of this title (relating to Uniform Multifamily Rules), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 of this title (relating to Multifamily Direct Loan Rule), and other Department rules. This subchapter does not apply to operating assistance programs or funds unless incorporated by reference in whole or in part in a Notice of Funding Availability (NOFA) or rules for such a program except to the extent that Developments receiving such assistance and otherwise subject to this chapter remain subject to this chapter.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP, or may be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature, and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. The Multifamily Programs Procedures Manual is not a rule and is provided as good faith guidance and assistance, but in all respects the statutes and rules governing the Low Income Housing Tax Credit program supersede these guidelines and are controlling. Moreover, after the time that an issue is initially presented and guidance is provided,

additional information may be identified and the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application.

(c) Competitive Nature of Program. Applying for Competitive Housing Tax Credits is a technical process that must be followed completely and correctly. Any person who desires to request any reasonable accommodation for any aspect of this process is directed to §1.1 of this Title (relating to Reasonable Accommodation Requests to the Department). As a result of the highly competitive nature of applying for Housing Tax Credits, an Applicant should proceed on the assumption that deadlines are fixed and firm as further provided for in subsection (f) of this section.

(d) Definitions. The capitalized terms or phrases used herein are defined below. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning as defined in Tex. Gov't Code Chapter 2306, Internal Revenue Code (the Code) §42, the HOME Final Rule, and other federal or Department rules, as applicable. Defined terms, when not capitalized, are to be read in context and construed according to common usage.

(1) Adaptive Reuse--The change-in-use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes (e.g., school, warehouse, office, hospital, hotel, etc.), into a building which will be used, in whole or in part, for residential purposes. Adaptive Reuse requires that at least 75% of the original building remains at completion of the proposed Development. Ancillary non-residential buildings, such as a clubhouse, leasing office or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site. Adaptive Reuse Developments will be considered as NewConstruction.

(2) Administrative Deficiency--Information requested by Department staff that staff requires to clarify or explain one or more inconsistencies; to provide non-material missing information in the original Application or pre-application; or to assist staff in evaluating the Application or pre-application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application or pre-application. Administrative Deficiencies may be issued at any time while the Application or pre-application or Contract is under consideration by the Department, including at any time while reviewing performance under a Contract, processing documentation for a Commitment of Funds, closing of a loan, processing of a disbursement request, closing out of a Contract, or resolving of any issues related to compliance. A matter may begin as an Administrative Deficiency but later be

determined to have constituted a Material Deficiency. If an Applicant claims points for a scoring item, but provides supporting documentation that would support fewer points for that item, staff would treat this as an inconsistency and issue an Administrative Deficiency which will result in a correction of the claimed points to align with the provided supporting documentation. If the supporting documentation is not provided for claimed points, the item would be assigned no points.

(3) Affiliate--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, has Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.

(4) Affordability Period--The Affordability Period commences as specified in the Land Use Restriction Agreement (LURA) or federal regulation, or commences on the first day of the Compliance Period as defined by the Code §42(i)(1), and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period shall be imposed by the LURA or other deed restriction, and in some circumstances may be terminated upon foreclosure or deed in lieu of foreclosure. The Department reserves the right to extend the Affordability Period for Developments that fail to meet program requirements. During the Affordability Period, the Department shall monitor to ensure compliance with programmatic rules as applicable, regulations, and Application representations.

(5) Applicable Percentage--The percentage used to determine the amount of the Housing Tax Credit for any Development, as defined more fully in Code, §42(b).

(A) For purposes of the Application, the Applicable Percentage will be projected at:

(i) nine percent for 70% present value credits, pursuant to Code, §42(b); or

(ii) fifteen basis points over the current Applicable Percentage for 30% present value credits, unless fixed by Congress, pursuant to Code, §42(b) for the month in ~~which the Application is submitted to the Department~~Department's Credit Underwriting Analysis Report is finalized.

(B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based on:

(i) the percentage indicated in the Agreement and Election Statement, if executed; or

(ii) the percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

(6) Applicant--Means any Person or a group of Persons and any Affiliates of those Persons who file an Application with the Department requesting funding or a tax credit allocation subject to the requirements of this chapter or 10 TAC Chapters 12 or 13 and who have undertaken or may contemplate the later formation of one or more business entities, such

as a limited partnership, that is to be engaged in the ownership of a Development.

(7) Application Acceptance Period--That period of time during which Applications may be submitted to the Department. For Tax-Exempt Bond Developments it is the date the Application is submitted to the Department.

(8) Award Letter --A document that may be issued to an awardee of a Direct Loan before the issuance of a Commitment or Contract which preliminarily sets forth the terms and conditions under which the Direct Loan will be made available. An Award Letter will typically be contingent on the awardee satisfying certain requirements prior to executing a Commitment or Contract.

(9) Bank Trustee--A federally insured bank with the ability to exercise trust powers in the State of Texas.

(10) Bedroom--A portion of a Unit which is no less than 100 square feet; has no width or length less than eight feet; is self contained with a door (or the Unit contains a second level sleeping area of 100 square feet or more); has at least one window that provides exterior access; and has at least one closet that is not less than two feet deep and three feet wide and high enough to accommodate five feet of hanging space. A den, study or other similar space that could reasonably function as a Bedroom and meets this definition is considered a Bedroom.

(11) Breakeven Occupancy--The occupancy level at which rental income plus secondary income is equal to all operating expenses, including replacement reserves and taxes, and mandatory debt service requirements for a Development.

(12) Building Costs--Cost of the materials and labor for the vertical construction or rehabilitation of buildings and amenity structures.

(13) Carryover Allocation--An allocation of current year tax credit authority by the Department pursuant to the provisions of the Code, §42(h)(1)(C) and U.S. Treasury Regulations, §1.42-6.

(14) Carryover Allocation Agreement--A document issued by the Department, and executed by the Development Owner, pursuant to §10.402(f) of this Title (relating to Carryover for Competitive Housing Tax Credits Only and Tax Exempt Bond Developments).

(15) Cash Flow--The funds available from operations after all expenses and debt service required to be paid have been considered.

(16) Certificate of Reservation or Traditional Carryforward Designation--The notice given by the Texas Bond Review Board (TBRB) to an issuer reserving a specific amount of the private activity bond state ceiling for a specific Development.

(17) Code--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the U.S. Department of the Treasury or the Internal Revenue Service (IRS).

(18) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(19) Commitment (also referred to as Contract)--A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants, or other sources of funds or financial assistance from the Department will be made available.

(20) Commitment of Funds--Occurs after the Development is approved by the Board and once a Commitment or Award Letter is executed between the Department and Development Owner. For Direct Loan Programs, this process is distinct from "Committing to a specific local project" as defined in 24 CFR Part 92 and Part 93, which may occur when the activity is set up in the disbursement and information system established by HUD, known as the Integrated Disbursement and Information System (IDIS). The Department's Commitment of Funds may not align with commitments made by other financing parties.

(21) Committee--See Executive Award and Review Advisory Committee.

(22) Common Area--Enclosed space outside of Net Rentable Area, whether conditioned or unconditioned, to include such area contained in: property management offices, resident service offices, 24-hour front desk office, clubrooms, lounges, community kitchens, community restrooms, exercise rooms, laundry rooms, mailbox areas, food pantry, meeting rooms, libraries, computer labs, classrooms, break rooms, flex space programmed for resident use, interior corridors, common porches and patios, and interior courtyards. Common Area does not include individualized garages, maintenance areas, equipment rooms, or storage.

(23) Comparable Unit--A Unit, when compared to the subject Unit, is similar in net rentable square footage, number of Bedrooms, number of bathrooms, overall condition, location (with respect to the subject Property based on proximity to employment centers, amenities, services and travel patterns), age, Unit amenities, utility structure, and common amenities.

(24) Competitive Housing Tax Credits (HTC)--Tax credits available from the State Housing Credit Ceiling.

(25) Compliance Period--With respect to a building financed, in part with proceeds of Housing Tax Credits, the period of 15 taxable years, beginning with the first taxable year of the credit period pursuant to Code, §42(i)(1).

(26) Continuously Occupied--The same household has resided in the Unit for at least 12 months.

(27) Contract--See Commitment.

(28) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.

(29) Contractor--See General Contractor.

(30) Control (including the terms "Controlling," "Controlled by," and "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. As used herein "acting in concert" involves more than merely serving as a single member of a multi-member body. A member of a multi-member body is not acting in concert and therefore does not exercise control in that role, but may have other roles, such as executive officer positions, which involve actual or apparent authority to exercise control. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Controlling individuals and entities are set forth in subparagraphs (A) - (E) of this paragraph. Multiple Persons may be deemed to have Control simultaneously.

(A) For for-profit corporations, any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 50% or more interest in the corporation, and any individual who has Control with respect to such stockholder;

(B) For nonprofit corporations or governmental instrumentalities (such as housing authorities), any officer authorized by the board, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, the Audit committee chair, the Board chair, and anyone identified as the executive director or equivalent;

(C) For trusts, all beneficiaries that have the legal ability to Control the trust who are not just financial beneficiaries;

(D) For limited liability companies, all managers, managing members, members having a 50% or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company; or

(E) For partnerships, Principals include all General Partners, and Principals with ownership interest and special limited partners with ownership interest who also possess factors or attributes that give them Control.

(31) Debt Coverage Ratio (DCR)--Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." Calculated as Net Operating Income for any period divided by scheduled debt service required to be paid during the same period, and as described in §11.302(d)(4) of

this chapter.

(32) Deferred Developer Fee--The portion of the Developer Fee used as a source of funds to finance the development and construction of the Property, and as described in §11.302(i)(2) of this chapter.

(33) Deobligated Funds--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and a Development Owner or Applicant.

(34) Determination Notice--A notice issued by the Department to the Development Owner of a Tax- Exempt Bond Development which specifies the Department's preliminary determination as to the amount of tax credits that the Development may be eligible to claim pursuant to the Code, §42(m)(1)(D).

(35) Developer--Any Person entering into a contractual relationship with the Owner to provide Developer Services with respect to the Development and receiving the right to earn a fee for such services and any other Person receiving any portion of a Developer Fee, whether by subcontract or otherwise, except if the Person is acting as a consultant with no Control. The Developer may or may not be a Related Party or Principal of the Owner.

(36) Developer Fee--Compensation in amounts defined in §11.302(e)(7) of this chapter (relating to Total Housing Development Costs, Developer Fee in the Underwriting Rules and Guidelines) paid by the Owner to the Developer for Developer Services inclusive of compensation to a Development Consultant(s), Development Team member or any subcontractor that performs Developer Services or provides guaranties on behalf of the Owner will be characterized as Developer Fee. A person who is entitled to a Developer Fee assumes the risk that it may not be paid if the anticipated sources of repayment prove insufficient.

(37) Developer Services--A scope of work relating to the duties, activities and responsibilities for pre- development, development, design coordination, and construction oversight of the Property generally including but not limited to:

- (A) Site selection and purchase or lease contract negotiation;
- (B) Identifying and negotiating sources of construction and permanent financing, including financing provided by the Department;
- (C) Coordination and administration of activities, including the filing of applications to secure such financing;
- (D) Coordination and administration of governmental permits, and approvals required for construction and operation;
- (E) Selection and coordination of development consultants including architect(s), engineer(s), third- party report providers, attorneys, and other design or feasibility consultants;
- (F) Selection and coordination of the General Contractor and construction contract(s);

- (G) Construction oversight;
- (H) Other consultative services to and for the Owner;
- (I) Guaranties, financial or credit support if a Related Party or Affiliate;and
- (J) Any other customary and similar activities determined by the Department to be Developer Services.

(38) Development--A residential rental housing project that consists of one or more buildings under common ownership and financed under a common plan which has applied for Department funds. This includes a proposed qualified low income housing project, as defined by Code, §42(g), that consists of one or more buildings containing multiple Units owned that is financed under a common plan, and that is owned by the same Person for federal tax purposes and may consist of multiple buildings that are located on scattered sites and contain only rent restricted Units. (§2306.6702(a)(6)).

(39) Development Consultant or Consultant--Any Person who provides professional or consulting services relating to the filing of an Application, or post award documents as required by the program.

(40) Development Owner (also referred to as "Owner")--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department and is responsible for performing under the allocation or Commitment with the Department. (§2306.6702(a)(7)).

(41) Development Site--The area or, if more than one tract (which may be deemed by the Internal Revenue Service or the Department to be a scattered site), areas on which the Development is proposed and to be encumbered by a LURA, including access to that area or areas through ingress and egress easements.

(42) Development Team--All Persons and Affiliates thereof that play a role in the development, construction, rehabilitation, management or continuing operation of the subject Development, including any Development Consultant and Guarantor.

(43) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program (NSP), National Housing Trust Fund (NHTF), Tax Credit Assistance Program Repayment Funds (TCAP RF) or State Housing Trust Fund or other program available through the Department for multifamily development. The terms and conditions for Direct Loans will be determined by provisions in Chapter 13 of this title (relating to Multifamily Direct Loan Rule) and the NOFA under which they are awarded, the Contract, or the loan documents. The tax-exempt bond program is specifically excluded.

(44) Economically Distressed Area--An area that is in a census tract that has a median household income that is 75% or less of the statewide median household income and in a municipality or, if not within a municipality, in a county that has been awarded funds under

the Economically Distressed Areas Program administered by the Texas Water Development Board. Notwithstanding all other requirements, for funds awarded to another type of political subdivision (e.g., a water district), the Development Site must be within the jurisdiction of the political subdivision.

(45) Effective Gross Income (EGI)--As provided for in §11.302(d)(1)(D) of this chapter. The sum total of all sources of anticipated or actual income for a rental Development, less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

(46) Efficiency Unit--A Unit without a separately enclosed Bedroom.

(47) Elderly Development--A Development that either meets the requirements of the Housing for Older Persons Act (HOPA) under the Fair Housing Act, or a Development that receives federal funding that has a requirement for a preference or limitation for elderly persons or households, but must accept qualified households with children.

(48) Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.

(49) Environmental Site Assessment (ESA)--An environmental report that conforms to the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with §11.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.

(50) Executive Award and Review Advisory Committee (EARAC also referred to as the Committee). The Department committee required by Tex. Gov't Code §2306.1112.

(51) Existing Residential Development--Any Development Site which contains existing residential Units at any time as of the beginning of the Application Acceptance Period.

(52) Extended Use Period--With respect to an HTC building, the period beginning on the first day of the Compliance Period and ending the later of:

(A) The date specified in the LURA; or

(B) The date which is 15 years after the close of the Compliance Period.

(53) First Lien Lender--A lender whose lien has first priority as a matter of law or by operation of a subordination agreement or other intercreditor agreement.

(54) General Contractor (including "Contractor")--One who contracts to perform the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors.

A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in subparagraphs (A) or (B) of this paragraph:

(A) Any subcontractor, material supplier, or equipment lessor receiving more than 50% of the contract sum in the construction contract will be deemed a prime subcontractor; or

(B) If more than 75% of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

(55) General Partner--Any person or entity identified as a general partner in a certificate of formation for the partnership or is later admitted to an existing partnership as a general partner that is the Development Owner and that Controls the partnership. Where a limited liability corporation is the legal structure employed rather than a limited partnership, the manager or managing member of that limited liability corporation is deemed, for the purposes of these rules, to be the functional equivalent of a general partner.

(56) Governing Body--The elected or appointed body of public or tribal officials, responsible for the enactment, implementation, and enforcement of local rules and the implementation and enforcement of applicable laws for its respective jurisdiction.

(57) Governmental Entity--Includes federal, state or local agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts, tribal governments and other similar entities.

(58) Gross Capture Rate--Calculated as the Relevant Supply divided by the Gross Demand, and as described in §11.302(i)(1) of this chapter.

(59) Gross Demand--The sum of Potential Demand from the Primary Market Area (PMA) and demand from other sources, as described in §11.303(d)(9)(E)(ii) of this chapter.

(60) Gross Program Rent--Maximum rent limits based upon the tables promulgated by the Department's division responsible for compliance, which are developed by program and by county or Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) or national non-metro area.

(61) Guarantor--Any Person that provides, or is anticipated to provide, a guaranty for all or a portion of the equity or debt financing for the Development.

(62) HTC Development (also referred to as "HTC Property")--A Development subject to an active LURA for Housing Tax Credits allocated by the Department.

(63) HTC Property--See HTC Development.

(64) Hard Costs--The sum total of Building Costs, Site Work costs, Off-Site Construction costs

and contingency.

(65) Historically Underutilized Businesses (HUB)--An entity that is certified as such under and in accordance with Tex. Gov't Code, Chapter 2161.

(66) Housing Contract System (HCS)--The electronic information system established by the Department for tracking, funding, and reporting Department Contracts and Developments. The HCS is primarily used for Direct Loan Programs administered by the Department.

(67) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Development Owner as provided for in Code.

(68) Housing Credit Allocation Amount--With respect to a Development or a building within a Development, the amount of Housing Tax Credits the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the Affordability Period and which the Board allocates to the Development.

(69) Initial Affordability Period--The Compliance Period or such longer period as shall have been elected by the Owner as the minimum period for which Units in the Development shall be retained for low-income tenants and rent restricted, as set forth in the LURA.

(70) Integrated Disbursement and Information System (IDIS)--The electronic grants management information system established by HUD to be used for tracking and reporting HOME and NHTF funding and progress and which may be used for other sources of funds as established by HUD.

(71) Land Use Restriction Agreement (LURA)--An agreement, regardless of its title, between the Department and the Development Owner which is a binding covenant upon the Development Owner and successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds. (§2306.6702)

(72) Low-Income Unit--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department utilizing its published income limits.

(73) Managing General Partner--A general partner of a partnership (or, as provided for in the definition of General Partner in this subsection, its functional equivalent) that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also refer to a manager or managing member of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.

(74) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the

economic conditions of supply, demand and rental rates conducted in accordance with §11.303 of this chapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(75) Market Analyst--A real estate appraiser or other professional satisfying the qualifications in §11.303(c) of this chapter, and familiar with the subject property's market area who prepares a Market Analysis.

(76) Market Rent--The achievable rent at the subject Property for a Unit without rent and income restrictions determined by the Market Analyst or Underwriter after adjustments are made to actual rents on Comparable Units to account for differences in net rentable square footage, functionality, overall condition, location (with respect to the subject Property based on proximity to primary employment centers, amenities, services and travel patterns), age, Unit amenities, utility structure, and Common Area amenities. The achievable rent conclusion must also consider the proportion of market Units to total Units proposed in the subject Property.

(77) Market Study--See Market Analysis.

(78) Material Deficiency--Any deficiency in a pre-application or an Application or other documentation that exceeds the scope of an Administrative Deficiency. Inability to provide documentation that existed prior to submission of an Application to substantiate claimed points or meet threshold requirements is material and may result in denial of the requested points or a termination in the case of threshold items. It is possible that multiple deficiencies that could individually be characterized as Administrative Deficiencies, when taken as a whole would create a need for substantial re-review of the Application and as such would be characterized as constituting a Material Deficiency.

(79) Multifamily Programs Procedures Manual--The manual produced and amended from time to time by the Department which reiterates and implements the rules and provides guidance for the filing of multifamily related documents.

(80) Net Operating Income (NOI)--The income remaining after all operating expenses, including replacement reserves and taxes have been paid, as provided for in §11.302(d)(3) of this chapter.

(81) Net Program Rent--Calculated as Gross Program Rent less Utility Allowance.

(82) Net Rentable Area (NRA)--The Unit space that is available exclusively to the tenant and is heated and cooled by a mechanical HVAC system. NRA is measured to the outside of the studs of a Unit or to the middle of walls in common with other Units. If the construction does not use studs, NRA is measured to the outside of the material to which the drywall is affixed. Remote Storage of no more than 25 square feet per Unit may be included in NRA. For Developments using Multifamily Direct Loan funds the Remote Storage may only be included

in NRA if the storage area shares a wall with the residential living space. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas.

(83) Non-HTC Development--Sometimes referred to as Non-HTC Property. Any Development not utilizing Housing Tax Credits or Exchange funds.

(84) Notice of Funding Availability (NOFA)--A notice issued by the Department that announces funding availability, usually on a competitive basis, for multifamily rental programs requiring Application submission from potential Applicants.

(85) Off-Site Construction--Improvements up to the Development Site such as the cost of roads, water, sewer, and other utilities to provide access to and service the Site.

(86) Office of Rural Affairs--An office established within the Texas Department of Agriculture; formerly the Texas Department of Rural Affairs.

(87) One Year Period (1YP)--The period commencing on the date on which the Department and the Owner agree to the Qualified Contract price in writing and continuing for 12 calendar months.

(88) Owner--See Development Owner.

(89) Person--Without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization or entity of any nature whatsoever, and shall include any group of Persons acting in concert toward a common goal, including the individual members of the group.

(90) Person or Persons with Disabilities--With respect to an individual, means that such person has:

- (A) A physical or mental impairment that substantially limits one or more major life activities of such individual;
- (B) A record of such an impairment; or
- (C) Is regarded as having such an impairment, to include persons with severe mental illness and persons with substance abuse disorders.

(91) Physical Needs Assessment--See Scope and Cost Review.

(92) Place--An area defined as such by the United States Census Bureau, which, in general, includes an incorporated city, town, or village, as well as unincorporated areas known as Census Designated Places. Any part of a Census Designated Place that, at the time of Application, is within the boundaries of an incorporated city, town or village will be

considered as part of the incorporated area. The Department may provide a list of Places for reference.

(93) Post Award Activities Manual--The manual produced and amended from time to time by the Department which explains the post award requirements and provides guidance for the filing of such documentation.

(94) Potential Demand--The number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placement in service date.

(95) Preservation--Activities that extend the Affordability Period for rent-restricted Developments that are at risk of losing low-income use restrictions or subsidies.

(96) Primary Market--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §11.303 of this chapter from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(97) Primary Market Area (PMA)--See Primary Market.

(98) Principal--Persons that will be capable of exercising Control pursuant to §11.1(d) of this chapter (relating to the definition of Control) over a partnership, corporation, limited liability company, trust, or any other private entity.

(99) Pro Forma Rent--For a restricted Unit, the lesser of the Net Program Rent or the Market Rent. For an unrestricted Unit, the Market Rent. Contract Rents, if applicable, will be used as the Pro Forma Rent.

(100) Property--The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built or rehabilitated thereon in connection with the Application.

(101) Qualified Contract (QC)--A bona fide contract to acquire the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the Applicable Fraction (specified in the LURA) of the calculation as defined within §42(h)(6)(F) of the Code.

(102) Qualified Contract Price (QC Price)--Calculated purchase price of the Development as defined within Code, §42(h)(6)(F) and as further delineated in §10.408 of this title (relating to Qualified Contract Requirements).

(103) Qualified Contract Request (Request)--A request containing all information and items required by the Department relating to a Qualified Contract.

(104) Qualified Entity--Any entity permitted under Code, §42(i)(7)(A) and any entity controlled by such a qualified entity.

(105) Qualified Nonprofit Development--A Development which meets the requirements of Code, §42 (h)(5), includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.

(106) Qualified Nonprofit Organization--An organization that meets the requirements of Code §42(h)(5)(C) for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the property, when applicable, meets the requirements of Tex. Gov't Code §2306.6706, and §2306.6729, and Code, §42(h)(5), including having a Controlling interest in the Development.

(107) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the construction of Units on the same or another Development Site. At least one Unit must be reconstructed in order to qualify as Reconstruction. The total number of Units to be reconstructed will be determined by program requirements. Developments using Multifamily Direct Loan funds are required to follow the applicable federal requirements.

(108) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the Reconstruction of any Development Units on the Development Site, but does not include Adaptive Reuse. (§2306.004(26-a)) Reconstructed Units will be considered New Construction for purposes of calculating the Replacement Reserves under 10 TAC §11.302(d)(2)(I). More specifically, Rehabilitation is the repair, refurbishment or replacement of existing mechanical or structural components, fixtures and finishes. Rehabilitation will correct deferred maintenance, reduce functional obsolescence to the extent possible and may include the addition of: energy efficient components and appliances, life and safety systems; site and resident amenities; and other quality of life improvements typical of new residential Developments.

(109) Relevant Supply--The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:

(A) The proposed subject Units;

(B) Comparable Units in another proposed Development within the PMA in an Application submitted prior to the subject, based on the Department's evaluation process described in §11.201(6) of this chapter (relating to Procedural Requirements for Application Submission) that may not yet have been presented to the Board for consideration of approval; and

(C) Comparable Units in previously approved but Unstabilized Developments in the PMA.

(110) Report--See Underwriting Report.

(111) Request--See Qualified Contract Request.

(112) Reserve Account--An individual account:

- (A) Created to fund any necessary repairs or other needs for a Development; and
- (B) Maintained by a First Lien Lender or Bank Trustee.

(113) Right of First Refusal (ROFR)--An Agreement to provide a series of priority rights to negotiate for the purchase of a Property by a Qualified Entity or a Qualified Nonprofit Organization at a negotiated price at or above the minimum purchase price as defined in Code §42(i)(7) or as established in accordance with an applicable LURA.

(114) Rural Area--

(A) A Place that is located:

- (i) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;
- (ii) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an Urban Area; or
- (iii) within the boundaries of a local political subdivision that is outside the boundaries of an Urban Area.

(B) For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §11.204(5)(A) of this chapter (relating to Required Documentation for Application Submission) or as requested in accordance with §11.204(5)(B) of this chapter.

(115) Scope and Cost Review (SCR)--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The SCR provides an evaluation of the physical condition of an existing Property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the Property. The SCR must be prepared in accordance with §11.306 of this chapter (relating to Scope and Cost Review Guidelines), as it relates to a specific Development.

(116) Scoring Notice--Notification provided to an Applicant of the score for their Application after Staff review. More than one Scoring Notice may be issued for an Application.

(117) Single Room Occupancy (SRO)--An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.

(118) Site Control--Ownership or a current contract or series of contracts that meets the requirements of §11.204(10) of this chapter, that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the Owner or anyone else, to develop and

operate a Property and subject it to a LURA reflecting the requirements of any awards of assistance it may receive from the Department.

(119) Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, underground utilities, and site amenities.

(120) State Housing Credit Ceiling--The aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with applicable federal law, including Code, §42(h)(3)(C), and Treasury Regulation §1.42-14.

(121) Sub-Market--An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(122) Supportive Housing--A residential rental Development and Target Population meeting the requirements of subparagraphs (A) - (E) of this paragraph.

——(A) Be intended for and targeting occupancy for households in need of specialized and specific non- medical services in order to maintain housing or transition into independent living;

——(B) Be owned and operated by an Applicant or General Partner that must:

——(i) have supportive services provided by the Applicant, an Affiliate of the Applicant, or a Third Party provider if the service provider is able to demonstrate a record of providing substantive services similar to those proposed in the Application in residential settings for at least three years prior to the beginning of the Application Acceptance Period, or Application Submission Date for Multifamily Direct Loan Applications;

——(ii) _secure_ sufficient funds necessary to maintain the Supportive Housing Development's operations throughout the entire Affordability Period; ~~and~~

——(iii) __provide evidence of a history of fundraising activities reasonably deemed to be sufficient to address any unanticipated operating losses; ~~and~~

——(iv) provide a fully executed guaranty agreement whereby the Applicant or its Affiliate assume financial responsibility of any outstanding operating deficits, as they arise, and throughout the entire Affordability Period; ~~and~~

(v) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident. This process must also follow §1.204 of this title (regarding Reasonable Accommodations).

(l) The criminal screening criteria must not allow residents to reside in the Development ~~that are on the National or Texas Sex Offender website or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C.~~

~~802) who are subject to a lifetime sex offender registration requirement; and provide at least, for:~~

~~—(-a-) Permanent Temporary denial for a minimum of seven years based on criminal history at application or recertification of any felony conviction for murder related offense, sexual assault, kidnapping, or arson, or manufacture of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and~~

~~—(-b-) Temporary denial for a minimum of three years based on criminal history at application or recertification of any felony conviction for aggravated assault, robbery, drug possession, or drug distribution. discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;~~

~~(-c-) Temporary denial for a minimum of two years for non-violent felonies; and~~

~~(-d-) Temporary denial for a minimum of one year for Class A misdemeanors.~~

(II) The criminal screening criteria ~~may~~ must include provisions for approving applications despite the tenant's criminal history on the basis of mitigation evidence. mitigation of temporary denials. Applicants/tenants must be provided written notice of their ability to provide materials that support mitigation. Mitigation may be provided during initial tenant application or upon appeal after denial. ~~Mitigation may include personal statements/certifications, including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. The criteria may~~ must include provision for individual review of permanent or temporary denials if the conviction is more than 20-7 years old, or if the applicant/resident is over 50 years of age, and the prospective resident has no additional felony convictions in the last 20-7 years. Criminal screening criteria and mitigation must conform to federal regulations and official guidance, including HUD's 2016 Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records.

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, ~~or this subparagraph~~ (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

(C) Where supportive services are tailored for members of a household with specific needs, such as:

- (i) homeless or persons at-risk of homelessness;
- (ii) persons with physical, intellectual, or developmental disabilities;
- (iii) youth aging out of foster care;
- (iv) persons eligible to receive primarily non-medical home or community-based services;
- (v) persons transitioning out of institutionalized care;

(vi) persons unable to secure permanent housing elsewhere due to specific, non-medical, or other high barriers to access and maintain housing;

(vii) Persons with Special Housing Needs including households where one or more individuals have alcohol or drug addictions, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), HIV/AIDS, or is a veteran with a disability; or

(viii) other target populations that are served by a federal or state housing program in need of the type and frequency of supportive services characterized herein, as represented in the Application and determined by the Department on a case-by-case basis.

(D) Supportive services must meet the minimum requirements provided in clauses

(i) - (iv) of this subparagraph:

(i) regularly and frequently offered to all residents, primarily on-site;

(ii) easily accessible and offered at times that residents are able to use them;

(iii) must include readily available resident services or service coordination that either aid in addressing debilitating conditions, or assist residents in securing the skills, assets, and connections needed for independent living; and

(iv) a resident may not be required to access supportive services in order to qualify for or maintain tenancy in a rent restricted Unit that the household otherwise qualifies for; and,

(E) Supportive Housing Developments must meet the criteria of either clause (i) or (ii) of this subparagraph:

(i) not financed, except for construction financing, or a deferred-forgivable or deferred-payable construction-to-permanent Direct Loan from the Department, with any debt containing foreclosure provisions or debt that contains scheduled or periodic repayment provisions. A loan from a local government or instrumentality of local government is permissible if it is a deferred-forgivable or deferred-payable construction-to-permanent loan, with no foreclosure provisions or scheduled or periodic repayment provisions, and a maturity date after the end of the Affordability Period. For tax credit applications only, permanent foreclosable debt that contains scheduled or periodic repayment provisions (including payments subject to available cash-flow) is permissible if sourced by federal funds and otherwise structured to meet valid debt requirements for tax credit eligible basis considerations. In addition, permanent foreclosable, cash-flow debt provided by an Affiliate is permissible if originally sourced from charitable contributions or pass-through local government funds and the foreclosure provisions are triggered only by default on non-monetary default provisions. Developments meeting these requirements are not subject to §11.302(i)(4) & (5) of Subchapter D of this chapter (relating to Underwriting and Loan Policy). Any amendment to an Application or Underwriting Report resulting in the addition of debt prohibited under this definition will result in the revocation of IRS Form(s) 8609, and may not be made for Developments that have Direct Loans after a LURA is executed, except as a part of an approved Asset Management Division work out arrangement; or

(ii) financed with debt that meets feasibility requirements under Subchapter D of this chapter without exemptions and must also be supported by project-based rental or project-based operating subsidies for 25% of the Units evidenced by an executed agreement with an unaffiliated or governmental third party able to make that commitment, and meet all of the criteria in subclauses (I) - (VIII) of this clause:

(I) the Application includes documentation of how resident feedback has been incorporated into design of the proposed Development;

(II) the Development is located less than 1/2 mile from regularly-scheduled public transportation, including evenings and weekends;

(III) at least 10% of the Units in the proposed Development meet the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 Federal Register 29671 for persons with mobility impairments;

(IV) multiple systems will be in place for residents to provide feedback to Development staff;

(V) a resident is or will be a member of the Development Owner or service provider board of directors;

(VI) the Development will have a comprehensive written eviction prevention policy that includes an appeal process; and

(VII) the Development will have a comprehensive written services plan that describes the available services, identifying whether they are provided directly or through referral linkages, by whom, and in what location and during what days and hours. A copy of the services plan will be readily accessible to residents.

(F) Supportive housing Units included in an otherwise non-Supportive Housing Development do not meet the requirements of this definition.

(123) TDHCA Operating Database--Sometimes referred to as "TDHCA Database." A consolidation of recent actual income and operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described in Chapter 10, Subchapter F of this title (relating to Compliance Monitoring), and published on the Department's web site (www.tdhca.state.tx.us).

(124) Target Population--The designation of types of housing populations shall include Elderly Developments, and those that are Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations, although the Application may request that any other populations required for targeting, preference, or limitation by a federal or state fund source are identified.

(125) Tax-Exempt Bond Development--A Development requesting or having been awarded Housing Tax Credits and which receives a portion of its financing from the proceeds of Tax-Exempt Bonds which are subject to the state volume cap as described in Code, §42(h)(4), such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(126) Tax-Exempt Bond Process Manual--The manual produced and amended from time to time by the Department which explains the process and provides guidance for the filing of a Housing Tax Credit Application utilizing Tax-Exempt Bonds.

(127) Third Party--A Person who is not:

- (A) An Applicant, General Partner, Developer, or General Contractor;
- (B) An Affiliate to the Applicant, General Partner, Developer, or General Contractor;
- (C) Anyone receiving any portion of the administration, contractor, or Developer Fee from the Development; or
- (D) In Control with respect to the Development Owner.

(128) Total Housing Development Cost--The sum total of the acquisition cost, Hard Costs, soft costs, Developer Fee and General Contractor fee incurred or to be incurred through lease-up by the Development Owner in the acquisition, construction, rehabilitation, and financing of the Development.

(129) Transitional Housing--A Supportive Housing Development funded with HOME, NSP, or TCAP RF, and not layered with Housing Tax Credits that includes living Units with more limited individual kitchen facilities and is:

- (A) Used exclusively to facilitate the transition of homeless individuals and those at-risk of becoming homeless, to independent living within 24 months; and
- (B) Is owned by a Development Owner that includes a Governmental Entity or a nonprofit which provides temporary housing and supportive services to assist such individuals in, among other things, locating and retaining permanent housing. The limited kitchen facilities in individual Units must be appropriately augmented by suitable, accessible shared or common kitchen facilities.

(130) U.S. Department of Agriculture (USDA)--Texas Rural Development Office (TRDO) serving the State of Texas.

(131) U.S. Department of Housing and Urban Development (HUD)-regulated Building--A building for which the rents and utility allowances of the building are reviewed by HUD.

(132) Underwriter--The author(s) of the Underwriting Report.

(133) Underwriting Report--Sometimes referred to as the Report. A decision making tool prepared by the Department's Real Estate Analysis Division that contains a synopsis of the proposed Development and that reconciles the Application information, including its financials and market analysis, with the underwriter's analysis. The Report allows the Department and Board to determine whether the Development will be financially feasible as required by Code §42(m), or other federal or state regulations.

(134) Uniform Multifamily Application Templates--The collection of sample resolutions and form letters, produced by the Department, as may be required under this chapter or Chapters

12 and 13 of this title (relating to Multifamily Housing Bond Rules and Multifamily Direct Loan Rule, respectively) that may be used, (but are not required to be used), to satisfy the requirements of the applicable rule.

(135) Uniform Physical Condition Standards (UPCS)--As developed by the Real Estate Assessment Center of HUD.

(136) Unit--Any residential rental Unit in a Development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation.

(137) Unit Type--Units will be considered different Unit Types if there is any variation in the number of Bedrooms, full bathrooms or a square footage difference equal to or more than 120 square feet. A powder room is the equivalent of a half-bathroom, but does not by itself constitute a change in Unit Type.

(138) Unstabilized Development--A Development with Comparable Units that has been approved for funding by the Department's Board of Directors or is currently under construction or has not maintained a 90% occupancy level for at least 90 days following construction completion. A development may be deemed stabilized by the Underwriter based on factors relating to a development's lease-up velocity, Sub-Market rents, Sub-Market occupancy trends and other information available to the Underwriter. The Market Analyst may not consider such development stabilized in the Market Study.

(139) Urban Area--A Place that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than a Place described by subparagraph (A) within the definition of Rural Area in this subsection. For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §11.204(5) of this chapter.

(140) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation, §1.42-10 and §10.614 of this Title (relating to Utility Allowances).

(141) Work Out Development--A financially distressed Development for which the Owner or a primary financing participant is seeking a change in the terms of Department funding or program restrictions.

(e) Data. Where this chapter requires the use of American Community Survey or Housing & Urban Development data, the Department shall use the most current data available as of October 1, 2020, unless specifically otherwise provided in federal or state law or in the rules. All American Community Survey data must be 5-year estimates, unless otherwise specified. The availability of more current data shall be disregarded. Where other data sources are specifically required, such as NeighborhoodScout, the data available after October 1, but before Pre-Application Final Delivery Date, will be permissible. The NeighborhoodScout report submitted in the Application

must include the report date.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be received by the Department on or before 5:00 p.m. Austin local time on the day of the deadline. If the deadline falls on a weekend or holiday, the deadline is 5:00 p.m. Austin local time on the next day which is not a weekend or holiday and on which the Department is open for general operation. Unless otherwise noted or provided in statute, deadlines are based on calendar days. Deadlines, with respect to both date and time, cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that could not have been anticipated and makes timely adherence impossible. Applicants should further ensure that all required documents are included, legible, properly organized, and tabbed, and that materials in required formats involving digital media are complete and fully readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines.

(g) Documentation to Substantiate Items and Representations in an Application. In order to ensure the appropriate level of transparency in this highly competitive program, Applications and all correspondence and other information relating to each Application are posted on the Department's website and updated on a regular basis. Applicants must use the Application form posted online to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, meeting of threshold requirements, or timely requesting a waiver or determination. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the Deficiency process. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. Although a responsive narrative will be created after Application submission, all facts and materials to substantiate any item in response to such an Administrative Deficiency must have been clearly established at the time of submission of the Application.

(h) Board Standards for Review. Some issues may require or benefit from board review. The Board is not constrained to a particular standard, and while its actions on one matter are not binding as to how it will address another matter, the Board does seek to promote consistency with its policies, including the policies set forth in this chapter.

(i) Public Information Requests. Pursuant to Tex. Gov't Code §2306.6717, any pre-application and any full Application, including all supporting documents and exhibits, must be made available to the public, in their entirety, on the Department's website. The filing of a pre-application or Application with the Department shall be deemed as consent to the release of any and all information contained therein, including supporting documents and exhibits. As part of its certifications, the Applicant shall certify that the authors of the reports and other information and documents submitted with the Application have given their consent to the Applicant to submit all reports and other information and documents to the Department, and for the Department to publish anything submitted with the Application on its website and use such

information and documents for authorized purposes.

(j) Responsibilities of Municipalities and Counties. In considering resolutions regarding housing de-concentration issues, threshold requirements, or scoring criteria, municipalities and counties should consult their own staff and legal counsel as to whether their handling of actions regarding such resolution(s) are consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas (FHAST) form on file, any current Analysis of Impediments to Fair Housing Choice, any current Assessment of Fair Housing, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds.

(k) Request for Staff Determinations. Where the requirements of this Chapter do not readily align with the activities proposed in an Application, an Applicant may request and Department staff may provide a determination to an Applicant explaining how staff will review an Application in relation to the applicable rules. In no instance will staff provide a determination regarding a scoring item. Any such request must be received by the Department prior to submission of the pre-application (if applicable to the program) or Application (if no pre-application was submitted). Staff may, in its sole discretion, provide the request to the Board for it to make the determination. Staff's determination may take into account the articulated purpose of or policies addressed by a particular rule or requirement, materiality of elements, substantive elements of the development plan that relate to a term or definition, a common usage of the particular term, or other issues relevant to a rule or requirement. All such requests and determinations will be conveyed in writing. If the determination is finalized after submission of the pre-application or Application, the Department may allow corrections to the pre-application or the Application that are directly related to the issues in the determination. It is an Applicant's sole responsibility to request a determination and an Applicant may not rely on any determination for another Application regardless of similarities in a particular fact pattern. For any Application that does not request and subsequently receive a determination, the definitions and applicable rules will be applied as used and defined herein. An Applicant may appeal a determination for their Application, using the Appeal Process provided for in §11.902 of this chapter, if the determination provides for a treatment that relies on factors other than the explicit definition. A Board determination may not be appealed. A staff or Executive Director determination not timely appealed cannot be further appealed or challenged.

§11.2 Program Calendar for Housing Tax Credits

(a) Competitive HTC Deadlines. Non-statutory deadlines specifically listed in the Program Calendar may be extended by the Department for a period of not more than 5 business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Department that there is good cause for the extension.

Deadline	Documentation Required
01/04/2021	Application Acceptance Period Begins. Public Comment period starts.
01/08/2021	Pre-Application Final Delivery Date (including waiver requests).
02/15/2021	Deadline for submission of Application for .ftp access if pre-application not submitted.
03/01/2021	<p>End of Application Acceptance Period and Full Application Delivery Date (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Scope and Cost Reviews (SCRs); Appraisals; Primary Market Area Map; Site Design and Development Feasibility Report; all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors).</p> <p>Final Input from Elected Officials Delivery Date (including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5) of this chapter).</p>
04/01/2021	Market Analysis Delivery Date pursuant to §11.205 of this chapter.
05/03/2021	Deadline for Third Party Request for Administrative Deficiency.
Mid-May 2020	Scoring Notices Issued for Majority of Applications Considered “Competitive.”
06/18/2021	Public comment to be included in the Board materials relating to presentation for awards are due in accordance with 10 TAC §1.10.
June 2021	On or before June 30, publication of the list of Eligible Applications for Consideration for Award in July.
July 2021	On or before July 31, Board issuance of Final Awards.
Mid-August	Commitments are Issued.

Deadline	Documentation Required
11/01/2021	Carryover Documentation Delivery Date.
11/30/2021	Deadline for closing under §11.9(c)(8) (if applicable) (not subject to an extension under 10 TAC §11.2(a) pursuant to the requirements of 10 TAC §11.9(c)(8)).
07/01/2022	10% Test Documentation Delivery Date.
12/31/2023	Placement in Service.
Five business days after the date on the Deficiency Notice (without incurring point loss)	Administrative Deficiency Response Deadline (unless an extension has been granted).

(b) Tax-Exempt Bond and Direct Loan Development Dates and Deadlines. This section reflects key dates for all multifamily development programs except for the Competitive Housing Tax Credit Program. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Non-statutory deadlines specifically listed in this section may be extended by the Department for a period of not more than five business days provided; however, that the Applicant requests an extension prior to the date of the original deadline. Other deadlines may be found in 10 TAC Chapters 12 and 13 or a NOFA.

(1) Full Application Delivery Date. The deadline by which the Application must be received by the Department. For Direct Loan Applications, such deadline will generally be defined in the applicable NOFA and for Tax-Exempt Bond Developments, such deadlines are more fully explained in §11.201 of this chapter (relating to Procedural Requirements for Application Submission).

(2) Administrative Deficiency Response Deadline. Such deadline shall be five business days after the date on the deficiency notice, unless extended as provided for in 10 TAC §11.201(7) related to the Deficiency Process.

(3) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Scope and Cost Review (SCR), Appraisal (if applicable), Market Analysis and the Site Design and Development Feasibility Report). For Direct Loan Applications, the Third Party reports meeting specific requirements described in §11.205 of this chapter must be submitted with the Application in order for it to be considered a complete Application, unless the Application is made in

conjunction with an Application for Housing Tax Credits or Tax-Exempt Bond, in which case the Delivery Date for those programs will apply. For Tax-Exempt Bond Developments, the Third Party Reports must be received by the Department pursuant to §11.201(2) of this chapter.

(4) Resolutions Delivery Date. Resolutions required for Tax-Exempt Bond Developments must be received by the Department no later than 14 calendar days before the Board meeting at which consideration of the award will occur. If the Direct Loan Application is made in conjunction with an Application for Housing Tax Credits, or Tax-Exempt Bond Developments, the Resolution Delivery Date for those programs will apply to the Direct Loan Application.

(5) Challenges to Neighborhood Organization Opposition Delivery Date. Challenges must be received by the Department no later than 45 calendar days prior to the Board meeting at which consideration of the award will occur.

§11.3 Housing De-Concentration Factors

(a) Rules reciting statutory limitations are provided as a convenient reference only, and to the extent there is any deviation from the provisions of statute, the statutory language is controlling.

(b) Two Mile Same Year Rule (Competitive HTC Only).

(1) As required by Tex. Gov't Code §2306.6711(f), staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million, if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application within said county that is awarded in the same calendar year. If two or more Applications are submitted that would violate §2306.6711(f), the lower scoring Application will not be reviewed unless the higher scoring Application is terminated or withdrawn.

(2) This subsection does not apply if an Application is located in an area that, within the past five years, meets the requirements of Tex. Gov't Code §2306.6711(f-1), which excludes any municipality with a population of two million or more where a federal disaster has been declared by the Full Application Delivery Date as identified in §11.2(a) of this chapter, and the governing body of the municipality containing the Development has by vote specifically authorized the allocation of housing tax credits for the Development in a resolution submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter, and the municipality is authorized to administer disaster recovery funds as a subgrant recipient, for the disaster identified in the federal disaster declaration.

(c) Twice the State Average Per Capita (Competitive and Tax-Exempt Bond Only). As provided for in Tex. Gov't Code §2306.6703(a)(4), if a proposed Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time

the Application Acceptance Period Begins (or for Tax-Exempt Bond Developments, Applications submitted after the Application Acceptance Period Begins), then the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must include a resolution adopted by the Governing Body of the municipality or county, as applicable, setting forth a written statement of support, specifically citing Tex. Gov't Code §2306.6703(a)(4) in the text of the actual adopted resolution, and authorizing an allocation of Housing Tax Credits for the Development. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines Program Calendar) or Resolutions Delivery Date in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Multifamily Loan Development Dates and Deadlines), as applicable.

(d) One Mile Three Year Rule (Competitive and Tax-Exempt Bond Only). (§2306.6703(a)(3)).

(1) An Application that proposes the New Construction or Adaptive Reuse of a Development that is located one linear mile or less (measured between closest boundaries by a straight line on a map) from another development that meets all of the criteria in subparagraphs (A) - (C) of this paragraph shall be considered ineligible.

(A) A Development serves the same Target Population as the proposed Development, regardless of whether the Development serves general, Elderly, or Supportive Housing; and

(B) A Development has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and

(C) The Development in subparagraph B has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a proposed Development:

(A) That is using federal HOPE VI (or successor program) funds received through HUD;

(B) That is using locally approved funds received from a public improvement district or a tax increment financing district;

(C) That is using funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.);

(D) That is using funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.);

(E) That is located in a county with a population of less than one million;

(F) That is located outside of a metropolitan statistical area; or

(G) That the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required

documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter, regarding Competitive HTC Deadlines, or Resolutions Delivery Date in §11.2(b) of this chapter, regarding Tax-Exempt Bond and Direct Loan Development Dates and Deadlines, as applicable.

(3) Where a specific source of funding is referenced in paragraph (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application.

(e) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 20% Housing Tax Credit Units per total households as reflected in the Department's current Site Demographic Characteristics Report shall be considered ineligible unless the Governing Body of the appropriate municipality or county containing the Development has adopted a resolution stating the proposed Development is consistent with the jurisdiction's obligation to affirmatively further fair housing and that the Governing Body of the appropriate municipality or county containing the Development has no objection to the Application. Rehabilitation Developments are not required to obtain such resolution. The resolution must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter, regarding Competitive HTC Deadlines, or Resolutions Delivery Date in §11.2(b) of this chapter, regarding Tax-Exempt Bond and Direct Loan Development Dates and Deadlines, as applicable.

(f) Proximity of Development Sites. (Competitive HTC Only) In a county with a population that is less than one million, if two or more HTC Applications, regardless of the Applicant(s), are proposing Developments serving the same Target Population on sites separated by 1,000 feet or less, the lower scoring Application(s), including consideration of tie-breakers, will be considered ineligible and will not be reviewed unless the higher scoring Application is terminated or withdrawn.

(g) One Award per Census Tract Limitation (Competitive HTC Only). If two or more Competitive HTC Applications are proposing Developments in the same census tract in an urban subregion, the lower scoring Application(s), including consideration of tie breakers, will be considered ineligible and will not be reviewed unless the higher scoring Application is terminated or withdrawn. This subsection does not apply to Applications submitted under the USDA Set-Aside (10 TAC §11.5(2)) or the At-Risk Set-Aside (10 TAC §11.5(3)).

§11.4 Tax Credit Request and Award Limits

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate, or Guarantor (unless the Guarantor is also the General Contractor or provides the guaranty only during the construction period, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater than \$3 million in a single Application Round. Prior to posting the

agenda for the last Board meeting in June, an Applicant that has Applications pending for more than \$3 million in credit may notify staff in writing or by email of the Application(s) they will not pursue in order to bring their request within the \$3 million cap. Any other Applications they do not wish to pursue will remain on the waiting list if not otherwise terminated. If the Applicant has not made this self-selection by this date, staff will first select the Application(s) that will enable the Department to comply with the state and federal non-profit set-asides, and will then select the highest scoring Application, including consideration of tie-breakers if there are tied scores. The Application(s) that does not meet Department criteria will not be reviewed unless the Applicant withdraws an Application that is eligible for an award and has been reviewed. All entities that are under common Control are Affiliates. For purposes of determining the \$3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate, or Guarantor solely because it:

- (1) Raises or provides equity;
- (2) Provides "qualified commercial financing";
- (3) Is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or
- (4) Receives fees as a consultant or advisor that do not exceed \$200,000.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150% of the credit amount available in the subregion based on estimates released by the Department on December 1, or \$1,500,000, whichever is less, or \$2,000,000 for Applications under the At-Risk Set-Aside. In addition, for Elderly Developments in a Uniform State Service Region containing a county with a population that exceeds one million, the request may not exceed the final amount published on the Department's website after the annual release of the Internal Revenue Service notice regarding the credit ceiling. For all Applications, the Department will consider the amount in the funding request of the pre-application and Application to be the amount of Housing Tax Credits requested and will reduce the Applicant's request to the maximum allowable under this subsection through the underwriting process. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than \$2 million in a single Application Round. (§2306.6711(b)).

(c) Increase in Eligible Basis (30% Boost). Applications will be evaluated for an increase of up to 30% in Eligible Basis provided they meet the criteria identified in paragraphs (1) - (4) of this subsection. Staff will recommend no increase or a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. In no instance will the boost exceed more than the amount of credits required to create the HTC rent-restricted Units. The criteria in paragraph (3) of this subsection are not applicable to Tax-Exempt Bond Developments.

- (1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20% Housing Tax Credit Units per total households in the tract as reflected in the Department's current Site Demographic Characteristics Report. New

Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20% Housing Tax Credit Units per total households are not eligible for a 30% increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code, unless the Application includes a resolution acknowledging the Development is located in a census tract that has more than 20% Housing Tax Credits Units per total households and stating that the Governing Body of the appropriate municipality or county containing the Development has no objection to the Application. Rehabilitation Developments located in a QCT with 20% or greater Housing Tax Credit Units per total households are eligible for the boost and are not required to obtain such a resolution from the Governing Body. The Application must include a census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT; or

(2) The Development is located in a Small Area Difficult Development Area (SADDA) (based on Small Area Fair Market Rents as determined by the Secretary of HUD) that has high construction, land and utility costs relative to the AMGI. The Application must include the SADDA map that clearly shows the proposed Development is located within the boundaries of a SADDA; or

(3) For Competitive Housing Tax Credits, Development meets one of the criteria described in subparagraphs (A) - (F) of this paragraph pursuant to Code, §42(d)(5)(B)(v):

(A) The Development is located in a Rural Area;

(B) The Development is entirely Supportive Housing and is in accordance with 10 TAC §11.1(d)(122)(E) related to the definition of Supportive Housing;

(C) The Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria);

(D) The Applicant elects to restrict 10% of the proposed low income Units for households at or below 30% of AMGI. These Units may not be used to meet any scoring criteria, or used to meet any Multifamily Direct Loan program requirement;

(E) The Development is in an area covered by a concerted revitalization plan, is not an Elderly Development, and is not located in a QCT. A Development will be considered to be in an area covered by a concerted revitalization plan if it is eligible for and elects points under §11.9(d)(7) of this chapter; or

(F) The Development is located in a Qualified Opportunity Zone designated under the Bipartisan Budget Act of 2018 (H.R. 1892).

(4) For Tax-Exempt Bond Developments, as a general rule, a QCT or SADDA designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30% boost in its underwriting evaluation. The Department acknowledges guidance contained in the Federal Register regarding effective dates of QCT and SADDA designations. Pursuant to the Federal Register Notice, unless federal guidance states otherwise, complete HTC Applications (including all Third Party Reports) with a corresponding Certificate of Reservation that are submitted to the Department in the year the QCT or SADDA designation is effective may be underwritten to include the 30% boost,

provided there are no changes that would affect the materiality of the submission. Pursuant to the Federal Register Notice, a complete application (as defined in the Notice) may also be submitted to the bond issuer, in lieu of the Department, in the year the QCT or SADDA designation is effective. Where this is the case, the HTC Application must contain a certification from the issuer that speaks to the date on which such complete application (as defined in the Notice) was submitted. If the issuer is a member of the organizational structure then such certification must come from the bond counsel to the issuer. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter, regarding Competitive HTC Deadlines, or Resolutions Delivery Date in §11.2(b) of this chapter, regarding Tax-Exempt Bond and Direct Loan Development Dates and Deadlines, as applicable.

§11.5 Competitive HTC Set-Asides. (§2306.111(d)).

This section identifies the statutorily-mandated Set-asides which the Department is required to administer. An Applicant may elect to compete in each of the Set-asides for which the proposed Development qualifies. In order to be eligible to compete in the Set-aside, the Application must meet the requirements of the Set-aside as of the Full Application Delivery Date. Election to compete in a Set-aside does not constitute eligibility to compete in the Set-aside, and Applicants who are ultimately deemed not to qualify to compete in the Set-aside will be considered not to be participating in the Set-aside for purposes of qualifying for points under §11.9(e)(3) of this chapter (related to pre-application Participation). Commitments of Competitive HTCs issued by the Board in the current program year will be applied to each Set-aside, Rural regional allocation, Urban regional allocation, and USDA Set-aside for the current Application round as appropriate.

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)). At least 10% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of Code, §42(h)(5) and Tex. Gov't Code §2306.6729 and §2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this Set-aside (i.e., greater than 50% ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, for Qualified Nonprofit Development in the Nonprofit Set-aside the nonprofit entity or its nonprofit Affiliate or subsidiary must be the Developer or a co-Developer as evidenced in the development agreement. An Applicant that meets the requirements to be in the Qualified Nonprofit Set-aside is deemed to be applying under that Set-aside unless their Application specifically includes an affirmative election to not be treated under that Set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department reserves the right to request a change in this election or to not recommend credits for those unwilling to change elections if insufficient Applications in the Nonprofit Set-Aside are received. Applicants may not use different organizations to satisfy the state and

federal requirements of the Set-aside.

(2) USDA Set-Aside. (§2306.111(d-2)). At least 5% of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this Set-aside involves Rehabilitation it will be attributed to and come from the At- Risk Development Set-aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region and will compete within the applicable subregion unless the Application is receiving USDA Section 514 funding. Applications must also meet all requirements of Tex. Gov't Code §2306.111(d-2).

(A) Eligibility of Certain Developments to Participate in the USDA or Rural Set-asides. (§2306.111 (d-4)). A proposed or Existing Residential Development that, before September 1, 2013, has been awarded or has received federal financial assistance provided under Section 514, 515, or 516 of the Housing Act of 1949 (42 U.S.C. Section 1484, 1485, or 1486) may be attributed to and come from the At-Risk Development Set-aside or the Uniform State Service Region in which the Development is located, regardless of whether the Development is located in a Rural Area.

(B) All Applications that are eligible to participate under the USDA Set-aside will be considered Rural for all scoring items under this chapter. If a Property receiving USDA financing is unable to participate under the USDA Set-aside and it is located in an Urban subregion, it will be scored as Urban.

(3) At-Risk Set-Aside. (§2306.6714; §2306.6702).

(A) At least 15% of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6 of this chapter (relating to Competitive HTC Allocation Process). Through this Set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to 5% of the State Housing Credit Ceiling associated with this Set- aside may be given priority to Rehabilitation Developments under the USDA Set-aside.

(B) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(A) must meet the following requirements:

(i) Pursuant to Tex. Gov't Code §2306.6702(a)(5)(A)(i), a Development must have received the benefit of a subsidy in the form of a qualified below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive from any of the programs provided in subclauses (I) to (VIII) of this clause. Applications participating in the At-Risk Set-Aside must include evidence of the qualifying subsidy.

(I) Sections 221(d)(3) and (5), National Housing Act (12 U.S.C. Section 1715l);

(II) Section 236, National Housing Act (12 U.S.C. Section 1715z-1);

(III) Section 202, Housing Act of 1959 (12 U.S.C. Section 1701q);

(IV) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. Section

1701s);

(V) the Section 8 Additional Assistance Program for housing developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of Housing and Urban Development as specified by 24 C.F.R. Part 886, Subpart A;

(VI) the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development as specified by 24

C.F.R. Part 886, Subpart C;

(VII) Sections 514, 515, and 516, Housing Act of 1949 (42 U.S.C. Sections 1484, 1485, and 1486); or

(VIII) Section 42, Internal Revenue Code of 1986.

(ii) Any stipulation to maintain affordability in the contract granting the subsidy or any HUD-insured or HUD-held mortgage as described in §2306.6702(a)(5)(A)(ii)(a) will be considered to be nearing expiration or nearing the end of its term if the contract expiration will occur or the term will end within two years of July 31 of the year the Application is submitted. Developments with HUD-insured or HUD-held mortgages qualifying as At-Risk under §2306.6702(a)(5)(A)(ii)(b) will be considered eligible if the HUD-insured or HUD-held mortgage is eligible for prepayment.

(iii) Developments with existing Department LIHTC LURAs must have completed all applicable Right of First Refusal procedures prior to the pre-application Final Delivery Date.

(C) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(B) must meet one of the requirements under clause (i) or (ii) or (iii) of this subparagraph:

(i) Units to be Rehabilitated or Reconstructed must be owned by a public housing authority or a public facility corporation created by a public housing authority under Chapter 303, Local Government Code and received assistance under §9, United States Housing Act of 1937 (42 U.S.C. section 1437g); or

(ii) Units to be Rehabilitated or Reconstructed must have been proposed to be disposed of or demolished, or already disposed of or demolished, by a public housing authority or public facility corporation created by a public housing authority under Chapter 303, Local Government Code and received assistance under §9, United States Housing Act of 1937 (42 U.S.C. section 1437g) in the two-year period preceding the Application for housing tax credits; or

(iii) To the extent that an Application is eligible under Tex. Gov't Code §2306.6702(a)(5)(B)(iii), the Development must receive assistance through the Rental Assistance Demonstration (RAD) program administered by the United States Department of Housing and Urban Development (HUD). Applications must include evidence that RAD participation is included in the applicable public housing plan that was most recently approved by HUD, and evidence that HUD has approved the Units proposed for Rehabilitation or Reconstruction for participation in the RAD program; and

(iv) Notwithstanding any other provision of law, an At-Risk Development described by Tex. Gov't Code §2306.6702(a)(5)(B) that was previously allocated housing tax credits set aside under Subsection (a) does not lose eligibility for those credits if the portion of Units reserved for public housing as a condition of eligibility for the credits under Tex. Gov't Code §2306.6714 (a-1)(2) are later converted under RAD.

(D) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Tex. Gov't Code §2306.6702(a)(5)(i) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. Alternatively, pursuant to Tex. Gov't Code §2306.6702(a)(5)(B), an Applicant may propose relocation of the existing Units in an otherwise qualifying At-Risk Development if:

- (i) the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred with the units proposed for Rehabilitation or Reconstruction prior to the tax credit Carryover deadline;
- (ii) the Applicant seeking tax credits must propose the same number of restricted Units (the Applicant may, however, add market rate Units); and
- (iii) the new Development Site must either qualify for points on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria); OR
- (iv) the local Governing Body of the applicable municipality or county (if completely outside of a municipality) in which that Development is located must submit a resolution confirming that the proposed Development is supported by the municipality or county in order to carry out a previously adopted plan that meets the requirements of §11.9(d)(7). Development Sites that cross jurisdictional boundaries must provide such resolutions from both local governing bodies.

(E) If Developments at risk of losing affordability from the financial benefits available to the Development are able to retain, renew, or replace the existing financial benefits and affordability they must do so unless regulatory barriers necessitate elimination of all or a portion of that benefit for the Development.

- (i) Evidence of the legal requirements that will unambiguously cause the loss of affordability and that this will occur within the two calendar years of July 31 of the year the Application is submitted, and must be included with the application; and
- (ii) For Developments qualifying under Tex. Gov't Code §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25% of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1). If less than 100% of the public housing benefits are transferred to the proposed Development, an explanation of the disposition of the remaining public housing benefits must be included in the Application, as well as a copy of the HUD-approved plan for demolition and disposition.

(F) Nearing expiration on a requirement to maintain affordability includes Developments

eligible to request a Qualified Contract under Code, §42. Evidence must be provided in the form of a copy of the recorded LURA, the first year's IRS Forms 8609 for all buildings showing Part II of the form completed and, if applicable, documentation from the original application regarding the Right of First Refusal. The Application must also include evidence that any applicable Right of First Refusal procedures have been completed prior to the pre-application Final Delivery Date.

(G) An amendment to any aspect of the existing tax credit property sought to enable the Development to qualify as an At-Risk Development, that is submitted to the Department after the Application has been filed and is under review will not be accepted.

§11.6 Competitive HTC Allocation Process

This section identifies the general allocation process and the methodology by which awards are made.

(1) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region (subregion) Housing Tax Credits in an amount not less than \$600,000 in each Rural and Urban subregion, consistent with the Regional Allocation Formula developed in compliance with Tex. Gov't Code §2306.1115. As authorized by Tex. Gov't Code §2306.111(d-3), the Department will reserve \$600,000 in housing tax credits for Applications in rural areas in each uniform state service region. The process of awarding the funds made available within each subregion shall follow the process described in this section. Where a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate a recommendation for the Board's consideration based on the objectives of the regional allocation formula together with other policies and purposes set out in Tex. Gov't Code, Chapter 2306 and the Department shall provide the public the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the competitive ranking of Applications within a particular subregion or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the \$3 million credit limit per Applicant, the Department will make its recommendation based on the criteria described in §11.4(a) of this chapter. The Department will publish on its website on or before December 1, 2020, initial estimates of Regional Allocation Formula percentages and limits of credits available, and the calculations periodically, if those calculations change, until the credits are fully allocated.

(2) Credits Returned and National Pool Allocated After January 1. For any credits returned after January 1 and eligible for reallocation (not including credit returned and reallocated under force majeure provisions), the Department shall first return the credits to the subregion or set-aside from which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may

ultimately flow from the subregion and be awarded in the collapse process to an Application in another region, subregion or set-aside. For any credit received from the "national pool" after the initial approval of awards in late July, the credits will be added to any remaining credits and awarded to the next Application on the waiting list for the state collapse, if sufficient credits are available to meet the requirements of the Application as may be amended after underwriting review.

(3) Award Recommendation Methodology. (§2306.6710(a) - (f); §2306.111) The Department will assign, as described herein, Developments for review by the program and underwriting divisions. In general, Applications reviews will be conducted in the order described in subparagraphs (A) - (F) of this paragraph based upon the Applicant self-score and an initial program review. The procedure identified in subparagraphs (A) - (F) of this paragraph will also be used in making recommendations to the Board.

(A) USDA Set-Aside Application Selection (Step 1). The first set of reviews will be those Applications with the highest scores in the USDA Set-Aside until the minimum requirements stated in §11.5(2) of this chapter (relating to Competitive HTC Set-Asides. (§2306.111(d)) are attained. The minimum requirement may be exceeded in order to award the full credit request or underwritten amount of the last Application selected to meet the USDA Set-Aside requirement.

(B) At-Risk Set-Aside Application Selection (Step 2). The second set of reviews will be those Applications with the highest scores in the At-Risk Set-Aside statewide until the minimum requirements stated in §11.5(3) of this chapter (relating to At-Risk Set-Aside) are attained. This may require the minimum requirement to be exceeded to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement. This step may leave less than originally anticipated in the 26 subregions to award under the remaining steps.

(C) Initial Application Selection in Each Subregion (Step 3). The highest scoring Applications within each of the 26 subregions will then be selected provided there are sufficient funds within the subregion to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the subregions:

(i) In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code §2306.6711(h), and will publish such percentages on its website.

(ii) In accordance with Tex. Gov't Code, §2306.6711(g), in Uniform State Service Regions containing a county with a population that exceeds 1.7 million, the Board shall allocate competitive tax credits to the highest scoring development, if any, that is part of a concerted revitalization plan that meets the requirements of §11.9(d)(7)

(except for §11.9(d)(7)(A)(ii)(III) and §11.9(d)(7)(B)(iii)), is located in an urban subregion, and is within the boundaries of a municipality with a population that exceeds 500,000.

(D) Rural Collapse (Step 4). If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region (Rural subregion) that remain after award under subparagraph (C) of this paragraph, those tax credits shall be combined into one "pool" and then be made available in any other Rural Area in the state to the Application in the most underserved Rural subregion as compared to the subregion's allocation. This rural redistribution will continue until all of the tax credits in the "pool" are allocated to Rural Applications and at least 20% of the funds available to the State are allocated to Applications in Rural Areas. (§2306.111(d)(3)) In the event that more than one subregion is underserved by the same percentage, the priorities described in clauses (i) - (ii) of this subparagraph will be used to select the next most underserved subregion:

- (i) the subregion with no recommended At-Risk Applications from the same Application Round; and
- (ii) the subregion that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any subregion in the State, will be combined into one "pool." The funds will be used to award the highest scoring Application (not selected or eliminated in a prior step) in the most underserved subregion in the State compared to the amount originally made available in each subregion. In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available as calculated through the Regional Allocation Formula (RAF) for Elderly Developments within an urban subregion of that service region. Therefore, certain Applications for Elderly Developments may be excluded from receiving an award from the collapse. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code §2306.6711(h) and will publish such percentages on its website. This process will continue until the funds remaining are insufficient to award the next highest scoring Application that is not rendered ineligible through application of the elderly cap in the next most underserved subregion. At least seven calendar days prior to the July Board meeting of the Department at which final awards of credits are authorized, the Department will post on its website the most current 2020 State of Texas Competitive Housing Tax Credit Ceiling Accounting Summary which includes the Regional Allocation Formula percentages including the maximum funding request/award limits, the Elderly Development maximum percentages and limits of credits available, and the methodology used for the determination of the award determinations within the State Collapse. In the event that more than one subregion is underserved by the same degree, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved subregion:

- (i) the subregion with no recommended At-Risk Applications from the same Application Round; and

(ii) the subregion that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(F) Contingent Qualified Nonprofit Set-aside Step (Step 6). If an insufficient number of Applications participating in the Nonprofit Set-Aside are selected after implementing the criteria described in subparagraphs (A) - (E) of this paragraph to meet the requirements of the 10% Nonprofit Set-Aside, action must be taken to modify the criteria described in subparagraphs (A) - (E) of this paragraph to ensure the Set-aside requirements are met. Therefore, the criteria described in subparagraphs (C) - (E) of this paragraph will be repeated after selection of the highest scoring Application(s) under the Nonprofit Set-aside statewide are selected to meet the minimum requirements of the Nonprofit Set-Aside. This step may cause some lower scoring Applications in a subregion to be selected instead of a higher scoring Application not participating in the Nonprofit Set-aside.

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. The waiting list is not static. The allocation process will be used in determining the next Application to award. If credits are returned through any process, those credits will first be made available in the set-aside or subregion from which they were originally awarded. The first Application on the waiting list is in part contingent on the nature of the credits that became available for award. The Department shall hold all credit available after the late-July awards until September 30 in order to collect credit that may become available when tax credit Commitments are submitted. Credit confirmed to be available, as of September 30, may be awarded to Applications on the waiting list unless insufficient credits are available to fund the next Application on the waiting list. For credit returned after September 30, awards from the waiting list will be made when the remaining balance is sufficient to award the next Application as may be amended on the waiting list based on the date(s) of returned credit. Notwithstanding the foregoing, if decisions related to any returns or rescissions of tax credits are under appeal or are otherwise contested, the Department may delay awards until resolution of such issues. The Department will evaluate all waiting list awards for compliance with requested Set-asides. This may cause some lower scoring Applications to be selected instead of a higher scoring Application. Where sufficient credit becomes available to award an Application on the waiting list later in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline and changes to the Application as necessary to ensure to the extent possible that available resources are allocated by December 31. (§2306.6710(a) - (f); §2306.111).

(5) Credit Returns Resulting from Force Majeure Events. In the event that the Department receives a return of Competitive HTCs during the current program year from an Application that received a Competitive Housing Tax Credit award during any of the preceding three years, such returned credit will, if the Board determines that all of the requirements of this paragraph are met to its satisfaction, be allocated separately from the current year's tax credit allocation, and not be subject to the requirements of paragraph (2) of this section. The Board determination must indicate the year of the Multifamily Rules to be applied to the

Development. The Department's Governing Board may impose a deadline that is earlier than the Placed in Service Deadline and may impose conditions that were not placed on the original allocation. Requests to allocate returned credit separately where all of the requirements of this paragraph have not been met or requests for waivers of any part of this paragraph will not be considered. For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in §(b)(2)(C)(iii) of Treasury Regulation 1.42-14. The Board may approve the execution of a current program year Carryover Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "Force Majeure" events that occurred before issuance of Forms 8609. Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; unrelated party litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a Force Majeure event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. Force Majeure events must make construction activity impossible or materially impede its progress;

(B) Acts or events caused by the negligent or willful act or omission of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by Force Majeure. In order for rainfall, material shortages, or labor shortages to constitute Force Majeure, the Development Owner must clearly explain and document how such events could not have been reasonably foreseen and mitigated through appropriate planning and risk management. Staff may use Construction Status reports for the subject or other Developments in conducting their review and forming a recommendation to the Board.

(C) A Development Owner claiming Force Majeure must provide evidence of the type of event, as described in subparagraph (A) of this paragraph, when the event occurred, and that the loss was a direct result of the event;

(D) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all obligations not impeded by the event, including timely closing of all financing and start of construction, that the Development and Development Owner was properly insured and that the Department was timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph;

(E) The event prevents the Development Owner from meeting the placement in service

requirements of the original allocation;

(F) The requested current year Carryover Agreement allocates the same amount of credit as that which was returned; and

(G) The Department's Real Estate Analysis Division determines that the Development continues to be financially viable in accordance with the Department's underwriting rules after taking into account any insurance proceeds related to the event.

§11.7 Tie Breaker Factors

In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or statewide collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held. The tie breaker factors are not intended to specifically address a tie between equally underserved subregions in the rural or statewide collapse.

(1) Applications proposed to be located in a census tract with a poverty rate below the average poverty rate for all awarded Competitive HTC Applications from the past three years (with Region 11 adding an additional 15% to that value and Region 13 adding an additional 5% to that value). The poverty rate for each census tract will come from the most recent American Community Survey data. If a tie still persists, then the Development in the census tract with the highest percentage of statewide rent burden for renter households at or below 80% Area Median Family Income (AMFI), as determined by the U.S. Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy (CHAS) dataset and as reflected in the Department's current Site Demographic Characteristics Report.

(2) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development that serves the same Target Population and that was awarded less than 15 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph according to the property inventory included in the HTC Site Demographic Characteristics Report. The linear measurement will be performed from closest boundary to closest boundary of the Site presented at Pre-Application, if a pre-application is submitted, or the Site presented at full Application, whichever is closest.

§11.8 Pre-Application Requirements (Competitive HTC Only)

(a) General Submission Requirements. The pre-application process allows Applicants interested in pursuing an Application to assess potential competition across the 13 state service regions, subregions and set-asides. Based on an understanding of the potential competition they can make a more informed decision about whether they wish to proceed to prepare and submit an Application. A complete pre-application is a pre-application that meets all of the Department's criteria, as outlined in subsections (a) and (b) of this section.

(1) The pre-application must be submitted using the URL provided by the Department, as outlined in the Multifamily Programs Procedures Manual, along with the required pre-application fee as described in §11.901 of this chapter (relating to Fee Schedule), not later than the pre-application Final Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines Program Calendar). If the pre-application and corresponding fee is not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

(2) Only one pre-application may be submitted by an Applicant for each Development Site and for each Site Control document.

(3) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the pre-application is more limited in scope than the Application, pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as Applications, and pre-applications will thus be subject to the same consequences for violation, including but not limited to loss of points and termination of the pre-application.

(4) The pre-application becomes part of the full Application if the full Application claims pre-application points.

(5) Regardless of whether a Full Application is submitted, a pre-application may not be withdrawn after the Full Application Delivery Date described in 10 TAC §11.2(a) relating to Competitive HTC Deadlines Program Calendar.

(b) Pre-Application Threshold Criteria. Pursuant to Tex. Gov't Code §2306.6704(c) pre-applications will be terminated unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection:

(1) Submission of the Competitive HTC pre-application in the form prescribed by the Department which identifies at a minimum:

(A) Site Control meeting the requirements of §11.204(10) of this title (relating to Required Documentation for Application Submission). For purposes of meeting this specific

requirement related to pre-application threshold criteria, proof of consideration and any documentation required for identity of interest transactions is not required at the time of pre-application submission but will be required at the time of full application submission;

(B) Funding request;

(C) Target Population;

(D) Requested set-asides (At-Risk, USDA, Nonprofit, or Rural);

(E) Total Number of Units proposed;

(F) Census tract number in which the Development Site is located, and a map of that census tract with an outline of the proposed Development Site;

(G) Expected score for each of the scoring items identified in the pre-application materials;

(H) Proposed name of ownership entity; and

(I) Disclosure of the following Neighborhood Risk Factors under §11.101(a)(3):

(i) The Development Site is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com; and

(ii) The Development Site is located within the attendance zone of an elementary school, a middle school or a high school that has a TEA Accountability Rating of D for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding or a TEA Accountability Rating of F for the most recent year available prior to Application and a Met Standard Rating by the Texas Education Agency for the most recent available year preceding.

(2) Evidence in the form of a certification provided in the pre-application, that all of the notifications required under this paragraph have been made and that a reasonable search for applicable entities has been conducted. (§2306.6704).

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state 30 days prior to the beginning of the Application Acceptance Period whose boundaries include the entire proposed Development ~~Site as of the beginning of the Application Acceptance Period.~~

(B) Notification Recipients. No later than the date the pre-application is submitted, notification must be sent to all of the entities prescribed in clauses (i) - (viii) of this subparagraph. Developments located in an ETJ of a municipality are required to notify both municipal and county officials. The notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format included in the Public Notification Template provided in the Uniform 2020 Multifamily Application Template or in an alternative format that meets the applicable requirements and achieves the intended purpose. The Applicant is required to retain proof of delivery in the event the Department requests proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of delivery

for fax and e-mail. Regardless of the method of delivery, the Applicant must provide an accurate mailing address in the Pre-application. Officials to be notified are those officials in office at the time the pre-application is submitted. Between the time of pre-application (if made) and full Application, the boundaries of an official's jurisdictions may change. If there is a change in jurisdiction between pre-application and the Full Application Delivery Date, additional notifications must be made at full Application to any entity that has not been previously notified by the Applicant. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct entity constitutes notification.

- (i) Neighborhood Organizations on record with the state or county 30 days prior to the beginning of the Application Acceptance Period ~~—as of the beginning of the Application Acceptance Period~~ whose boundaries include the entire proposed Development Site;
- (ii) Superintendent of the school district in which the Development Site is located;
- (iii) Presiding officer of the board of trustees of the school district in which the Development Site is located;
- (iv) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (v) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (vi) Presiding officer of the Governing Body of the county in which the Development Site is located;
- (vii) All elected members of the Governing Body of the county in which the Development Site is located; and
- (viii) State Senator and State Representative of the districts whose boundaries include the proposed Development Site.

(C) Contents of Notification.

- (i) The notification must include, at a minimum, all of the information described in subclauses (I) - (VIII) of this clause.
 - (I) The Applicant's name, address, an individual contact name and phone number;
 - (II) The Development name, address, city, and county;
 - (III) A statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;
 - (IV) Whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;
 - (V) The physical type of Development being proposed (e.g. single family homes, duplex, apartments, high-rise, etc.);
 - (VI) The approximate total number of Units and approximate total number of Low-Income Units;
 - (VII) The residential density of the Development, i.e., the number of Units per acre; and
 - (VIII) Information on how and when an interested party or Neighborhood

Organization can provide input to the Department.

(ii) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve a population exclusively or as a preference unless such targeting or preference is documented in the Application and is in full compliance with all applicable state and federal laws, including state and federal fair housing laws; and

(iii) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

(c) Pre-Application Results. Only pre-applications which have satisfied all of the pre-application requirements, including those in §11.9(e)(3) of this chapter, will be eligible for pre-application points. The order and scores of those Developments released on the pre-application Submission Log do not represent a Commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the pre-application Submission Log. Inclusion of a pre-application on the pre-application Submission Log does not ensure that an Applicant will receive points for a pre-application.

(d) Applicants that may be requesting a Multifamily Direct Loan from the Department may submit a Request for Preliminary Determination ~~with the Pre-Application~~ on or before February 12. The results of evaluation of the Request may be used as evidence of review of the Development and the Principals for purposes of scoring under 10 TAC §11.9(e)(1)(E). Submission of a Request for Preliminary Determination does not obligate the Applicant to request Multifamily Direct Loan funds with their full Application.

§11.9 Competitive HTC Selection Criteria

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsections (b) - (e) of this section include those items required under Tex. Gov't Code, Chapter 2306, Code §42, and other criteria established in a manner consistent with Chapter 2306 and Code §42. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. The Application must include one or more maps indicating the location of the Development Site and the related distance to the applicable facility. Distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the facility, unless otherwise noted. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held. Due to the highly competitive nature of the program, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency. However, Department staff may provide the Applicant an opportunity to explain how they believe the Application, as

submitted, meets the requirements for points or otherwise satisfies the requirements.

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)) An Application may qualify for up to fifteen (15) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (6 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form. If the Development involves both Rehabilitation and Reconstruction or New Construction, the Reconstruction or New Construction Units must meet these requirements.

- (i) five-hundred fifty (550) square feet for an Efficiency Unit;
- (ii) six-hundred fifty (650) square feet for a one Bedroom Unit;
- (iii) eight-hundred fifty (850) square feet for a two Bedroom Unit;
- (iv) one-thousand fifty (1,050) square feet for a three Bedroom Unit; and
- (v) one-thousand two-hundred fifty (1,250) square feet for a four Bedroom Unit.

(B) Unit, Development Construction, and Energy and Water Efficiency Features (9 points). Applicants that elect in an Application to provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §11.101(b)(6)(B) of this title (relating to Unit, Development Construction, and Energy and Water Efficiency Features) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments will start with a base score of five (5) points and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) An Application may qualify to receive either one (1) or two (2) points if it meets one of the following conditions. Any Application that includes a HUB must include a narrative description of the HUB's experience directly related to the housing industry.

(A) The ownership structure contains either a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date or it contains a Qualified Nonprofit Organization, provided the Application is under the Nonprofit Set-Aside. The HUB or Qualified Nonprofit Organization must have some combination of ownership interest in each of the General Partner of the Applicant, Cash Flow from operations, and Developer Fee which taken together equal at least 50% and no less than 5% for any category. For HUD 202 Rehabilitation projects which prohibit for-profit ownership, ownership will not be required for a HUB or nonprofit, only for Cash Flow or Developer Fee; the total ownership percentage must still equal 50%, even if it is only attributable to one of the

two categories.

- (i) The HUB or Qualified Nonprofit Organization must materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. Material participation means that the HUB or Qualified Nonprofit is regularly, continuously, and substantially involved in providing services integral to the Development Team; providing services as an independent contractor is not sufficient.
- (ii) A Principal of the HUB or Qualified Nonprofit Organization cannot be a Related Party to or Affiliate, including the spouse, of any other Principal of the Applicant, Developer or Guarantor (excluding another Principal of said HUB or Qualified Nonprofit Organization). (2 points).

(B) The HUB or nonprofit Organization must be involved with the Development Services or in the provision of on-site tenant services during the Development's Affordability Period. 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, Developer or Guarantor (excluding another Principal of said HUB or Nonprofit Organization). Selecting this item because of the involvement of a nonprofit Organization does not make an Application eligible for the Nonprofit Set-Aside. (1 point).

(c) Criteria to serve and support Texans most in need.

(1) Income Levels of Residents. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42 (m)(1)(B)(ii)(I)) An Application may qualify for up to sixteen (16) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A), (B), (C), or (D) of this paragraph.

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs that propose to use either the 20-50 or 40-60 election under §42(g)(1)(A) or §42(g)(1)(B) of the Code, respectively:

- (i) At least 60% of all Low-Income Units at 50% or less of AMGI in a Supportive Housing Development proposed by a Qualified Nonprofit (16 points);
- (ii) At least 40 % of all Low-Income Units at 50% or less of AMGI (15 points);
- (iii) At least 30% of all Low-Income Units at 50% or less of AMGI (13 points); or
- (iv) At least 20% of all Low-Income Units at 50 %or less of AMGI (11 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph and that propose to use either the 20-50 or 40-60 election under §42(g)(1)(A) or §42(g)(1)(B) of the Code, respectively:

- (i) At least 60% of all Low-Income Units at 50% or less of AMGI in a Supportive Housing Development proposed by a Qualified Nonprofit (16 points);
- (ii) At least 20% of all Low-Income Units at 50% or less of AMGI (15 points);
- (iii) At least 15% of all Low-Income Units at 50% or less of AMGI (13 points); or

(iv) At least 10% of all Low-Income Units at 50% or less of AMGI (11 points).

(C) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs that propose to use the Average Income election under §42(g)(1)(C) of the Code:

- (i) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 54% or lower (15 points);
- (ii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 55% or lower (13 points); or
- (iii) The average income and Rent restriction for all Low-Income Units for the proposed Development will be 56% or lower (11 points).

(D) For Developments proposed to be located in the areas other than those listed in subparagraph (C) of this paragraph and that propose to use the Average Income election under §42(g)(1)(C) of the Code:

- (i) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 55% or lower (15 points);
- (ii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 56% or lower (13 points); or
- (iii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 57% or lower (11 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(E)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. If selecting points from §11.9(c)(1)(A) or §11.9(c)(1)(B), these levels are in addition to those committed under paragraph (1) of this subsection. If selecting points from §11.9(c)(1)(C) or §11.9(c)(1)(D), these levels are included in the income average calculation under paragraph (1) of this subsection. These units must be maintained at this rent level throughout the Affordability Period regardless of the Average Income calculation.

- (A) At least 20% of all Low-Income Units at 30% or less of AMGI for Supportive Housing Developments proposed by a Qualified Nonprofit (13 points);
- (B) At least 10% of all Low-Income Units at 30% or less of AMGI or, for a Development located in a Rural Area, 7.5% of all Low-Income Units at 30% or less of AMGI (11 points); or
- (C) At least 5% of all Low-Income Units at 30% or less of AMGI (7 points).

(3) Resident Services. (§2306.6710(b)(1)(G) and §2306.6725(a)(1)) A Development may qualify to receive up to eleven (11) points.

(A) The Applicant certifies that the Development will provide a combination of supportive services, which are listed in §11.101(b)(7) of this chapter, appropriate for the proposed residents and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change,

from time to time, the services offered; however, the overall points as selected at Application will remain the same. No fees may be charged to the residents for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. (10 points).

(B) The Applicant certifies that the Development will contact local nonprofit and governmental providers of services that would support the health and well-being of the Department's residents, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. Applicants may contact service providers on the Department list, or contact other providers that serve the general area in which the Development is located. (1 point).

(4) Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials. A Development is eligible for a maximum of seven (7) opportunity index points.

(A) A proposed Development is eligible for up to two (2) opportunity index points if it is located entirely within a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) of this subparagraph.

(i) The Development Site is located entirely within a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and a median household income rate in the two highest quartiles within the uniform service region. (2 points)

(ii) The Development Site is located entirely within a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with a median household income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile for median household income that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, without physical barriers such as (but not limited to) highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. For purposes of this scoring item, a highway is a limited-access road with a speed limit of 50 miles per hour or more; and, (1 point)

(B) An Application that meets one of the foregoing criteria in subparagraph (A) of this paragraph may qualify for additional points for any one or more of the following factors. Each amenity may be used only once for scoring purposes, unless allowed within the scoring item, regardless of the number of categories it fits. All members of the Applicant or Affiliates cannot have had an ownership position in the amenity or served on the board or staff of a nonprofit that owned or managed that amenity within the year preceding the Pre-Application Final Delivery Date. All amenities must be operational or have started Site Work at the Pre-Application Final Delivery Date. Any age restrictions associated with an amenity must positively correspond to the Target Population of the proposed

Development.

(i) For Developments located in an Urban Area (other than Applicants competing in the USDA Set- Aside), an Application may qualify to receive points through a combination of requirements in subclauses (I) - (XV) of this clause.

(I) The Development Site is located on a route, with sidewalks for pedestrians, that is 1/2 mile or less from the entrance to a public park with a playground or from a multiuse hike-bike trail. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. (1 point).

(II) The Development Site is located on a route, with sidewalks for pedestrians, that is within a specified distance from the entrance of a public transportation stop or station with a route schedule that provides regular service to employment and basic services. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. Only one of the following may be selected.

(-a-) The Development Site is 1/2 mile or less from the stop or station and the scheduled service is beyond 8 a.m. to 5 p.m., plus weekend service (both Saturday and Sunday). (1 point); or

(-b-) The Development Site is 1/2 mile or less from the stop or station and the scheduled service arrives every 15 minutes, on average, between 6 a.m. and 8 p.m., every day of the week. (2 points).

(III) The Development Site is located within 2 miles of a full-service grocery store. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed Development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point).

(IV) The Development Site is located within 2 miles of a pharmacy. For the purposes of this menu item only, the pharmacy may be claimed if it is within the same building as a grocery store. (1 point).

(V) The Development Site is located within 4 miles of a health-related facility, such as a full service hospital, community health center, minor emergency center, emergency room or urgent care facility. Physician offices and physician specialty offices are not considered in this category. (1 point).

(VI) The Development Site is within 3 miles of a center that is licensed by the Department of Family and Protective Services (DFPS) specifically to provide a school-age program or to provide a child care program for infants, toddlers, or pre-kindergarten. The Application must include evidence from DFPS that the

center meets the above requirements. (1 point)

(VII) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less as defined by neighborhoodscout.com, or local law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the census tract in which the Development Site is located. (1 point)

(VIII) The development Site is located within 2 miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open 50 hours or more per week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point)

(IX) The Development Site is located within 6 miles of an accredited university or community college, as confirmed by the Texas Higher Education Coordination Board (THECB). To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered community colleges, and to be considered for these purposes must confer at least associate's degrees. The university or community college must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item. (1 point)

(X) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as tabulated by the most recent American Community Survey 5-year Estimate. (1 point)

(XI) Development Site is within 2 miles of an indoor recreation facility available to the public. Examples include, but are not limited to, a gym, health club, a bowling alley, a theater, or a municipal or county community center. A facility that is primarily a restaurant or bar with recreational facilities is not eligible. (1 point)

(XII) Development Site is within 2 miles of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include, but are not limited to, swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point).

(XIII) Development Site is within 2 miles of community, civic or service organizations that provide regular and recurring substantive services, beyond exclusively congregational or member-affiliated activities, available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to

affiliation or membership). (1 point).

(XIV) Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point).

(XV) Development Site is located in the attendance zone of a general enrollment public school rated A or B by TEA for the most recently available rating. (1 point).

(ii) For Developments located in a Rural Area and any Application qualifying under the USDA set-aside, an Application may qualify to receive points through a combination of requirements in subclauses (I) - (XIV) of this clause.

(I) The Development Site is located within 5 miles of a full-service grocery store. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed Development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point).

(II) The Development Site is located within 5 miles of a pharmacy. For the purposes of this menu item only, the pharmacy may be claimed if it is within the same building as a grocery store. (1 point).

(III) The Development Site is located within 5 miles of health-related facility, such as a full service hospital, community health center, minor emergency center, or a doctor with a general practice that takes walk-in patients. Physician specialty offices are not considered in this category. (1 point).

(IV) The Development Site is located within 5 miles of a center that is licensed by the Department of Family and Protective Services (DFPS) specifically to provide a school-age program or to provide a child care program for infants, toddlers, or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point).

(V) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less, as defined by neighborhoodscout.com, or local law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the census tract in which the Development Site is located. (1 point).

(VI) The Development Site is located within 5 miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open 40 hours or more per week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point).

(VII) The Development Site is located within 5 miles of a public park with a playground. (1 point).

(VIII) The Development Site is located within 15 miles of an accredited university or community college, as confirmed by the Texas Higher Education Coordination Board (THECB). To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered community colleges, and to be considered for these purposes must confer at least associate's degrees. The university or community college must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item. (1 point).

(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher. (1 point).

(X) Development Site is within 4 miles of an indoor recreation facility available to the public. Examples include, but are not limited to, a gym, health club, a bowling alley, a theater, or a municipal or county community center. A facility that is primarily a restaurant or bar with recreational facilities is not eligible. (1 point).

(XI) Development Site is within 4 miles of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include, but are not limited to, swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point).

(XII) Development Site is within 4 miles of community, civic or service organizations that provide regular and recurring substantive services, beyond exclusively congregational or member-affiliated activities, available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership). (1 point).

(XIII) Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point).

(XIV) Development Site is located in the attendance zone of a general enrollment public school rated A or B by TEA for the most recently available rating. (1 point).

(5) Underserved Area. (§§2306.6725(b)(2); 2306.127(3), 42(m)(1)(C)(ii)). An Application may qualify to receive up to five (5) points if the Development Site meets the criteria described in subparagraphs (A) - (H) of this paragraph. Points are not cumulative and an Applicant is therefore limited to selecting one subparagraph. If an Application qualifies for points under paragraph §11.9(c)(4) of this subsection, then the Application is not eligible for points under subparagraphs (A) and (B) of this paragraph. Years are measured by deducting the most recent year of award on the property inventory of the Site Demographic Characteristics Report from January 1 of the current year. The Application must include evidence that the Development Site meets the requirements.

(A) The Development Site is located wholly or partially within the boundaries of a colonia as such boundaries are determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border. For purposes of this scoring item, the colonia must lack water, wastewater, or electricity provided to all residents of the colonia at a level commensurate with the quality and quantity expected of a municipality and the proposed Development must make available any such missing water, wastewater, and electricity supply infrastructure physically within the borders of the colonia in a manner that would enable the current dwellings within the colonia to connect to such infrastructure (2 points);

(B) The Development Site is located entirely within the boundaries of an Economically Distressed Area that has been awarded funds by the Texas Water Development Board in the previous five years ending at the beginning of the Application Acceptance Period (1 point);

(C) The Development Site is located entirely within a census tract that does not have another Development that was awarded less than 30 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report (4 points);

(D) For areas not scoring points for subparagraph (C), the Development Site is located entirely within a census tract that does not have another Development that was awarded less than 20 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report (3 points);

(E) For areas not scoring points for subparagraphs (C) or (D) of this paragraph, the Development Site is located entirely within a census tract that does not have another Development that was awarded less than 15 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report (2 points);

(F) The Development Site is located entirely within a census tract whose boundaries are

wholly within an incorporated area and the census tract itself and all of its contiguous census tracts do not have another Development that was awarded less than 15 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report. This item will apply in Places with a population of 100,000 or more, and will not apply in the At-Risk Set-Aside. (5 points)

(G) The Development Site is located entirely within a census tract where, according to American Community Survey 5-year Estimates, the population share of persons below 200% federal poverty level decreased by 10% or more and where the total number of persons at or above 200% federal poverty level had increased by 15% or more between the years 2010 and 2017. This measure is referred to as the Affordable Housing Needs Indicator in the Site Demographic Characteristics Report. (3 points); or

(H) An At-risk or USDA Development placed in service 25 or more years ago, that is still occupied, and that has not yet received federal funding, or LIHTC equity, for the purposes of Rehabilitation for the Development. If the Application involves multiple sites, the age of all sites will be averaged for the purposes of this scoring item. (3 points).

(6) Residents with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive up to three (3) points by serving Residents with Special Housing Needs.

(A) The Development must commit at least 5% of the total Units to Persons with Special Housing Needs. The Units identified for this scoring item may not be the same Units identified previously for the Section 811 PRA Program. For purposes of this subparagraph, Persons with Special Housing Needs is defined as a household where one or more individuals have alcohol or drug addictions, is a Colonia resident, a Person with a Disability, has Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), HIV/AIDS, homeless, veterans, and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to specifically market Units to Persons with Special Housing Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Housing Needs or held vacant, unless the Units receive HOME funds from any source. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Housing Needs, but will be required to continue to specifically market Units to Persons with Special Housing Needs. (2 points)

(B) If the Development has committed units under 10 TAC 11.9(c)(6)(A), the Development must commit at least an additional 2% of the total Units to Persons referred from the Continuum of Care or local homeless service providers to be made available for those experiencing homelessness. Rejection of an applicant's tenancy for those referred may not be for reasons of credit history or prior rental payment history. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to specifically market the 2% of Units through the

Continuum of Care and other homelessness providers local to the Development Site. In addition, the Department will require an initial minimum twelve-month period in Urban subregions, and an initial six-month period in Rural subregions, during which Units must either be occupied by Persons referred from the Continuum of Care or local homeless service providers, or held vacant, unless the Units receive HOME funds from any source. After the initial twelve-month or six-month period, the Development Owner will no longer be required to hold Units vacant but will be required to continue to provide quarterly notifications to the Continuum of Care and other homeless service providers local to the Development Site on the availability of Units at the Development Site. Applications in the At-risk or USDA set asides are not eligible for this scoring item. Developments are not eligible under this paragraph unless points have also been selected under 10 TAC 11.9(c)(6)(A). (1 point)

(7) Proximity to Job Areas. An Application may qualify to receive up to six (6) points if the Development Site is located in one of the areas described in subparagraphs (A) or (B) of this paragraph, and the Application contains evidence substantiating qualification for the points. Points are mutually exclusive and, therefore, an Applicant may only select points from subparagraph (A) or (B).

(A) Proximity to the Urban Core. A Development in a Place, as defined by the US Census Bureau, with a population over 190,000 may qualify for points under this item. The Development Site must be located within 4 miles of the main municipal government administration building if the population of the Place is 750,000 or more, or within 2 miles of the main municipal government administration building if the population of the city is 190,000 - 749,999. The main municipal government administration building will be determined by the location of regularly scheduled municipal Governing Body meetings. Distances are measured from the nearest property boundaries, not inclusive of non-contiguous parking areas. This scoring item will not apply to Applications under the At-Risk Set-Aside. (6 points)

(B) Proximity to Jobs. A Development may qualify for points under this subparagraph if it meets one of the criteria in clauses (i) - (vi) of this subparagraph. The data used will be based solely on that available through US Census' OnTheMap tool. Jobs counted are limited to those based on the work area, all workers, and all primary jobs. Only the 2017 data set will be used, unless a newer data set is posted to the US Census website on or before October 1, 2020. The Development will use OnTheMap's function to import GPS coordinates that clearly fall within the Development Site, and the OnTheMap chart/map report submitted in the Application must include the report date. This scoring item will not apply to Applications under the At-Risk or USDA Set-Aside.

- (i) The Development is located within 1 mile of 16,500 jobs. (6 points)
- (ii) The Development is located within 1 mile of 13,500 jobs. (5 points)
- (iii) The Development is located within 1 mile of 10,500 jobs. (4 points)
- (iv) The Development is located within 1 mile of 7,500 jobs. (3 points)
- (v) The Development is located within 1 mile of 4,500 jobs. (2 points)

(vi) The Development is located within 1 mile of 2,000 jobs. (1 point)

(8) Readiness to proceed in disaster impacted counties. Due to uncertainty linked to the COVID-19 pandemic, scoring for all Applicants under this item is suspended (no points may be requested, nor will they be awarded) for 2021 HTC Applications. An Application for a proposed Development that is located in a county declared by the Federal Emergency Management Agency to be eligible for individual assistance, within four years preceding December 1, 2020. Federal Emergency Management Agency declarations that apply to the entire state at any point in time prior to Application do not apply. The Applicant must provide a certification that they will close all financing and fully execute the construction contract on or before the last business day of November or as otherwise permitted under subparagraph (C) of this paragraph. For the purposes of this paragraph only, an Application may be designated as "priority." Applications in the At-Risk or USDA Set-asides are not eligible for these points. (5 points)

(A) Applications must include evidence that appropriate zoning will be in place at award and acknowledgement from all lenders and the syndicator of the required closing date.

(B) The Board cannot and will not waive the deadline and will not consider waiver under its general rule regarding waivers. Failure to close all financing and provide evidence of an executed construction contract by the November deadline will result in penalty under 10 TAC §11.9(f), as determined solely by the Board.

(C) Applications seeking points under this paragraph will receive an extension of the November deadline equivalent to the period of time they were not indicated as a priority Application, if they ultimately receive an award. The period of the extension begins on the date the Department publishes a list or log showing an Application without a priority designation, and ends on the earlier of the date a log is posted that shows the Application with a priority designation, or the date of award.

(d) Criteria promoting community support and engagement.

(1) Local Government Support. (§2306.6710(b)(1)(B)) An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) - (C) of this paragraph, as applicable. The resolution(s) must be dated prior to Final Input from Elected Officials Delivery Date and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2(a) of this chapter, relating to Competitive HTC Deadlines. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. A municipality or county should consult its own staff and legal counsel as to whether its handling of their actions regarding such resolution(s) are consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas (FHA) form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one

year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds. Resolutions received by the Department setting forth that the municipality and/or county objects to or opposes the Application or Development will result in zero points awarded to the Application for that Governing Body. Such resolutions will be added to the Application posted on the Department's website. Once a resolution is submitted to the Department it may not be changed or withdrawn. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

- (A) Within a municipality, the Application will receive:
 - (i) Seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development;
 - or
 - (ii) Fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

- (B) Within the extraterritorial jurisdiction of a municipality, the Application may receive points under clause (i) or (ii) of this subparagraph and under clause (iii) or (iv) of this subparagraph:
 - (i) Eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or
 - (ii) Seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; and
 - (iii) Eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or
 - (iv) Seven (7) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

- (C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:
 - (i) Seventeen (17) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or
 - (ii) Fourteen (14) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6725(a)(5)) The source of the funding cannot be the Applicant, Developer, or an Affiliate of the Applicant. The commitment of Development funding must be reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form or reflected in a lower cost in the Development Cost Schedule, such as notation of a reduction in building

permits and related costs. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction over the proposed Development stating they will provide a loan, grant, reduced fees or contribution of other value that equals \$500 or more for Applications located in Urban subregions or \$250 or more for Applications located in Rural subregions for the benefit of the Development. The letter must describe the value of the contribution, the form of the contribution, e.g. reduced fees or gap funding, and any caveats to delivering the contribution. Once a letter is submitted to the Department it may not be changed or withdrawn. (1 point)

(3) Declared Disaster Area. (§2306.6710(b)(1)(H)) An Application may receive ten (10) points if at the time of Application submission or at any time within the two-year period preceding the date of submission, the Development Site is located in an area declared to be a disaster area under the Tex. Gov't Code §418.014.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(I); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in current, valid existence with boundaries that contain the entire Development Site ~~30 days prior to the beginning of the Application Acceptance Period~~. In addition, the Neighborhood Organization must be on record 30 days prior to the beginning of the Application Acceptance period with the Secretary of State or county in which the Development Site is located as of the beginning of the Application Acceptance Period. Once a letter is submitted to the Department it may not be changed or withdrawn. The written statement must meet all of the requirements in subparagraph (A) of this paragraph. Letters received by the Department setting forth that the eligible Neighborhood Organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website. Written statements from the Neighborhood Organizations included in an Application and not received by the Department from the Neighborhood Organization will not be scored but will be counted as publiccomment.

(A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph.

(i) the Neighborhood Organization's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing address) of at least two individual members with authority to sign on behalf of the organization;

(ii) certification that the boundaries of the Neighborhood Organization contain the entire Development Site and that the Neighborhood Organization meets the definition pursuant to Tex. Gov't Code §2306.004(23-a) and includes at least two separate residential households;

(iii) certification that no person required to be listed in accordance with Tex. Gov't Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood

Organization, including any votestaken;

(iv) certification that at least 80% of the current membership of the Neighborhood Organization consists of homeowners and/or tenants living within the boundaries of the Neighborhood Organization; and

(v) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization should be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this paragraph, if and only if there is no Neighborhood Organization already in existence or on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of or placing on record of a Neighborhood Organization. Technical assistance is limited to:

(i) the use of a facsimile, copy machine/copying, email and accommodations at public meetings;

(ii) assistance in completing the QCP Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process;

(iii) presentation of information and response to questions at duly held meetings where such matter is considered; and

(iv) notification regarding deadlines for submission of responses to Administrative Deficiencies.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in clauses (i) - (vi) of this subparagraph. Points will not be cumulative. Where more than one written statement is received for an Application, the average of all statements received in accordance with this subparagraph will be assessed and awarded.

(i) nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(ii) eight (8) points for explicitly stated support from a Neighborhood Organization;

(iii) six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(iv) four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;

(v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; or

(vi) zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such statement is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date May 1, 2020. The Neighborhood Organization expressing opposition will be given seven calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed. Should the Neighborhood Organization's statements be found to be contrary to findings or determinations of a local Government Entity, or should the Neighborhood Organization not respond in seven calendar days, then the Application shall be eligible for four (4) points under subparagraph (C)(v) of this subsection.

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2); §2306.6710(g)) Applications may receive up to eight (8) points for express support, zero points for neutral statements, or have deducted up to eight (8) points for express opposition.

(A) Letter from a State Representative. To qualify under this subparagraph, letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and express whether the letter conveys support, neutrality, or opposition. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2(a) of this chapter, relating to Competitive HTC Deadlines. Letters received by the Department from State Representatives will be added to the Application posted on the Department's website. Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. If the office is vacant, the Application will be considered to have received a neutral letter. Neutral letters or letters that do not specifically refer to the Development will receive zero (0) points. A letter from a state representative expressing the level of community support may be expressly based

on the representative's understanding or assessments of indications of support by others, such as local government officials, constituents, or other applicable representatives of the community. In providing this letter, pursuant to Tex. Gov't Code §2306.6710(b)(1)(J), a representative may either express their position of support, opposition, or neutrality regarding the Application, which shall be presumed to reflect their assessment of the views of their constituents, or they may provide a statement of the support, opposition, or neutrality of their constituents regarding the Application without expressing their personal views on the matter.

(B) No Letter from a State Representative. To qualify under this subparagraph, no written statement can be received for an Application from the State Representative who represents the geographic area in which the proposed Development is located, unless the sole content of the written statement is to convey to the Department that no written statement of support, neutrality, or opposition will be provided by the State Representative for a particular Development. Points available under this subparagraph will be based on how an Application scores under §11.9(d)(1), of this section, relating to Local Government Support. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

(i) Within a municipality, the Application will receive:

- (I) Eight (8) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or
- (II) Zero (0) points for no resolution or a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; or
- (III) Negative eight (-8) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development.

(ii) Within the extraterritorial jurisdiction of a municipality, the Application will receive points under subclause (I) or (II) or (III) of this subparagraph and under subclause (IV) or (V) or (VI) of this subparagraph:

- (I) Four (4) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or
- (II) Zero (0) points for no resolution or a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; or
- (III) Negative four (-4) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development; and
- (IV) Four (4) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(V) Zero (0) points for no resolution or a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development; or

(VI) Negative four (-4) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development.

(iii) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

(I) Eight (8) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(III) Negative eight (-8) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development.

(6) Input from Community Organizations. (§2306.6725(a)(2)) Where, at the time of Application, the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization or there is a qualifying Neighborhood Organization that has given no statement or a statement of neutrality (as described in clauses (4)(C)(iv) or (v) of this subsection), then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters of support must be submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item. Letters received by the Department setting forth that the community organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website.

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The Applicant

must provide evidence that the community or civic organization remains in good standing by providing evidence from a federal or state government database confirming that the exempt status continues. An Organization must also provide evidence of its participation in the community in which the Development Site is located including, but not limited to, a listing of services or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts as described in subparagraph C), or taxing entities.

(B) An Application may receive two (2) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application may receive two (2) points for a letter of support from a Special Management District formed under Tex. Local Gov't Code chapter 375 whose boundaries, as of the Full Application Delivery Date as identified in §11.2(a) of this chapter, (relating to Competitive HTC Deadlines, Program Calendar for Competitive Housing Tax Credits), include the Development Site.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(7) Concerted Revitalization Plan. An Application may qualify for up to seven (7) points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(A) For Developments located in an Urban Area:

(i) An Application may qualify to receive points if the Development Site is located in a distinct area that was once vital and has lapsed into a condition requiring concerted revitalization, and where a concerted revitalization plan (plan or CRP) has been developed and executed.

(ii) A plan may consist of one or two, but complementary, local planning documents that together create a cohesive agenda for the plan's specific area. The plan and supporting documentation must be submitted using the CRP Application Packet. No

more than two local plans may be submitted for each proposed Development. A Consolidated Plan, One-year Action Plan or any other plan prepared to meet HUD requirements will not meet the requirements under this clause, unless evidence is presented that additional efforts have been undertaken to meet the requirements in clause (iii) of this subparagraph. The concerted revitalization plan may be a Tax Increment Reinvestment Zone (TIRZ) or Tax Increment Finance (TIF) or similar plan. A city- or county-wide comprehensive plan, by itself, does not equate to a concerted revitalization plan.

(iii) The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems. The Application must include a copy of the plan or a link to the online plan and a description of where specific information required below can be found in the plan. The plan must meet the criteria described in subclauses (I) - (IV) of this clause:

(I) The concerted revitalization plan, or each of the local planning documents that compose the plan, must have been adopted by the municipality or county in which the Development Site is located. The resolution adopting the plan, or if development of the plan and budget were delegated, the resolution of delegation and other evidence in the form of certifications by authorized persons confirming the adoption of the plan and budget, must be submitted with the application.

(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. Eligible problems that are appropriate for a concerted revitalization plan may include the following:

(-a-) long-term disinvestment, such as significant presence of residential or commercial blight, streets infrastructure neglect, or sidewalks in significant disrepair;

(-b-) declining quality of life for area residents, such as high levels of violent crime, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances or overt illegal activities; or

(-c-) lack of a robust economy for that neighborhood area, or, if economic revitalization is already underway, lack of new affordable housing options for long-term residents.

(III) The goals of the adopted plan must have a history of sufficient, documented and committed funding to accomplish its purposes on its established timetable. This funding must be flowing in accordance with the plan, such that the problems identified within the plan are currently being or have been sufficiently addressed.

(IV) The plan must either be current at the time of Application and must officially continue for a minimum of three years thereafter OR the work to address the items in need of mitigation or rehabilitation has begun and, additionally, the Applicant must include confirmation from a public official who oversees the plan that accomplishment of those objectives is on schedule and there are no budgetary or other obstacles to accomplishing the purposes of the plan.

(iv) If the Application includes an acceptable Concerted Revitalization Plan, up to seven (7) points will be awarded based on:

(I) A letter from the appropriate local official for the municipality (or county if the Development Site is completely outside of a municipality) providing documentation of measurable improvements within the revitalization area based on the targeted efforts outlined in the plan and in reference to the requirements of 10 TAC §11.9(d)(7)(A)(iii)(I-IV). The letter must also discuss how the improvements will lead to an appropriate area for the placement of housing (4 points); and

(II) A resolution by the municipality (or county if the Development Site is completely outside of a municipality) that explicitly identifies the proposed Development as contributing more than any other to the concerted revitalization efforts of the municipality or county (as applicable). A municipality or county may only identify one Development per CRP area during each Application Round for the additional points under this subclause, unless the concerted revitalization plan includes more than one distinct area within the city or county, in which case a resolution may be provided for each Development in its respective area. The resolution from the Governing Body of the municipality or county that approved the plan is required to be submitted in the Application. If multiple Applications submit resolutions under this subclause from the same Governing Body for the same CRP area, none of the Applications shall be eligible for the additional points, unless the resolutions address the respective and distinct areas described in the plan (2 points); and

(III) The development is in a location that would score at least five (5) points under Opportunity Index, §11.9(c)(4)(B), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii). (1 point)

(B) For Developments located in a Rural Area:

(i) The Rehabilitation, or demolition and Reconstruction, of a Development in a rural area that has been leased and occupied at 85% or greater for the six months preceding Application by low income households and which was initially constructed 25 or more years prior to Application submission as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program. The

occupancy percentage will not include Units that cannot be occupied due to needed repairs, as confirmed by the SCR or CNA. Demolition and relocation of units must be determined locally to be necessary to comply with the Affirmatively Furthering Fair Housing Rule, or if necessary to create an acceptable distance from Undesirable Site Features or Neighborhood Risk Factors. (4 points)

(ii) The Development is explicitly identified in a resolution by the municipality (or county if the Development Site is completely outside of a city) as contributing more than any other to the concerted revitalization efforts of the municipality or county (as applicable). Where a Development Site crosses jurisdictional boundaries, resolutions from all applicable governing bodies must be submitted. A municipality or county may only identify one single Development during each Application Round for each specific area to be eligible for the additional points under this subclause. If multiple Applications submit resolutions under this subclause from the same Governing Body for a specific area described in the plan, none of the Applications shall be eligible for the additional points (2 points); and

(iii) The development is in a location that would score at least five (5) points under Opportunity Index, §11.9(c)(4)(B), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4) (A)(i) and §11.9(c)(4)(A)(ii). (1 point)

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) To qualify for points, a 15-year pro forma itemizing all projected income including Unit rental rate assumptions, operating expenses and debt service, and specifying the underlying growth assumptions and reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party permanent lender. In addition to the signed pro forma, a lender approval letter must be submitted. An acceptable form of lender approval letter may be obtained in the Uniform Multifamily Application Templates:

(A) If the letter evidences review of the Development alone it will receive twenty-four (24) points; or

(B) If the letter is from the Third Party permanent lender and evidences review of the Development and the Principals, it will receive twenty-six (26) points; or

(C) If the Development is Supportive Housing and meets the requirements of 10 TAC §11.1(d)(122)(E)(i), it will receive twenty-six (26) points; or

(D) If the Development is part of the USDA set-aside and meets the requirements of 10 TAC §11.5(2) and the letter is from the Third Party construction lender, and evidences review of the Development and the Principals, it will receive twenty-six (26) points; or

(E) If the Department is the only permanent lender, and the Application includes the evaluation of the Request for Preliminary Determination submitted under 10 TAC §11.8(d), it will receive twenty-six (26) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) For the purposes of this scoring item, Eligible Building Costs will be defined as Building Costs voluntarily included in Eligible Basis for the purposes of determining a Housing Credit Allocation. Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and voluntary Eligible Hard Costs will include general contractor overhead, profit, and general requirements. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. If the proposed Development is a Supportive Housing Development, the NRA will include Common Area up to 75 square feet per Unit, of which at least 50 square feet will be conditioned.

(A) A high cost development is a Development that meets one or more of the following conditions:

- (i) the Development is elevator served, meaning it is either an Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;
- (ii) the Development is more than 75% single family design;
- (iii) the Development is Supportive Housing; or
- (iv) the Development Site qualifies for a minimum of five (5) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area.

(B) Applications proposing New Construction or Reconstruction or Adaptive Reuse will be eligible for twelve (12) points if one of the following conditions is met:

- (i) the voluntary Eligible Building Cost per square foot is less than \$78.73 per square foot;
- (ii) the voluntary Eligible Building Cost per square foot is less than \$84.36 per square foot, and the Development meets the definition of a high cost development;
- (iii) the voluntary Eligible Hard Cost per square foot is less than \$101.23 per square foot; or
- (iv) the voluntary Eligible Hard Cost per square foot is less than \$112.48 per square foot, and the Development meets the definition of high cost development.

(C) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

- (i) the voluntary Eligible Building Cost per square foot is less than \$84.36 per square foot;
- (ii) the voluntary Eligible Building Cost per square foot is less than \$89.98 per square foot, and the Development meets the definition of a high cost development;
- (iii) the voluntary Eligible Hard Cost per square foot is less than \$106.85 per square foot; or
- (iv) the voluntary Eligible Hard Cost per square foot is less than \$118.10 per square foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:

- (i) the voluntary Eligible Building Cost is less than \$101.23 per square foot; or
- (ii) the voluntary Eligible Hard Cost is less than \$123.72 per square foot.

(E) Applications proposing Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

- (i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than \$112.48 per square foot;
- (ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than \$146.22 per square foot, located in an Urban Area, and that qualify for 5 or more points under subsection (c)(4) of this section, related to Opportunity Index; or
- (iii) Eleven (11) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than \$146.22 per square foot.

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted by the Pre-Application Final Delivery Date. Applications that meet all of the requirements described in subparagraphs (A) - (H) of this paragraph will qualify for six (6) points:

(A) The total number of Units does not increase by more than 10% from pre-application to Application;

(B) The designation of the proposed Development as Rural or Urban remains the same;

(C) The proposed Development serves the same Target Population;

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self-score form) does not vary by more than four (4) points from what was reflected in the pre-application self-score;

(F) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application. The site at full Application may not require notification to any person or entity not required to have been notified at pre-application; and

(G) The Development Site does not have the following Neighborhood Risk Factors as described in 10 TAC §11.101(a)(3) that were not disclosed with the pre-application:

(i) the Development Site is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(ii) The Development Site is located within the attendance zone of an elementary school, a middle school or a high school that has a TEA Accountability Rating of D for

the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding or a TEA Accountability Rating of F for the most recent year available prior to Application and a Met Standard Rating by the Texas Education Agency for the most recent available year preceding.

(H) The pre-application met all applicable requirements.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least 5% of the total Units are restricted to serve households at or below 30% of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph:

- (i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 9% of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or
- (ii) if the Housing Tax Credit funding request is less than 9% of the Total Housing Development Cost (3 points); or
- (iii) if the Housing Tax Credit funding request is less than 10% of the Total Housing Development Cost (2 points); or
- (iv) if the Housing Tax Credit funding request is less than 11% of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50% of the Developer Fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(5) Extended Affordability. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) An Application may qualify to receive up to four (4) points for this item.

- (A) Development Owners that agree to extend the Affordability Period for a Development to 45 years total. (4 points)
- (B) Development Owners that agree to extend the Affordability Period for a Development to 40 years total. (3 points)
- (C) Development Owners that agree to extend the Affordability Period for a Development to 35 years total. (2 points)

(6) Historic Preservation. (§2306.6725(a)(6)) An Application may qualify to receive five (5) points if at least 75% of the residential Units shall reside within the Certified Historic Structure. The Development must receive historic tax credits before or by the issuance of Forms 8609. The Application must include either documentation from the Texas Historical Commission that the Property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status and evidence that the Texas Historic Commission received the request for determination of preliminary eligibility and supporting information on or before February 1 of the current year (5 points).

(7) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Tex. Gov't Code, §2306.6726 and the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).

(8) Funding Request Amount. The Application requests no more than 100% of the amount of LIHTC available within the subregion or set-aside as determined by the regional allocation formula on or before December 1, 2020. (1 point)

(f) Factors Affecting Scoring and Eligibility in current and future Application Rounds. Staff may recommend to the Board and the Board may find that an Applicant or Affiliate should be ineligible to compete in the following year's competitive Application Round or that it should be assigned a penalty deduction in the following year's competitive Application Round of no more than two points for each submitted Application (Tex. Gov't Code §2306.6710(b)(2)) because it meets the conditions for any of the items listed in paragraphs (1) - (4) of this subsection. For those items pertaining to non-statutory deadlines, an exception to the penalty may be made if the Board or Executive Director, as applicable, makes an affirmative finding setting forth that the need for an extension of the deadline was beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of deduction by the Board must include notice from the Department to the affected party not less than 14 days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions. The Executive Director may make a determination that the matter does not warrant point deduction only for paragraph (1). (§2306.6710(b)(2)) Any deductions assessed by the Board for paragraphs (1), (2), (3), or (4) of this subsection based on a Housing Tax Credit Commitment from a preceding Application round will be attributable to the Applicant or Affiliate of an Application submitted in the Application round referenced above.

(1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10% Test deadline(s) or has requested an extension of the Carryover submission deadline or the 10% Test deadline (relating to either submission or expenditure).

(2) If the Applicant or Affiliate failed to meet the commitment or expenditure requirements or benchmarks of their Contract with the Department for a HOME or National Housing Trust Fund award from the Department.

(3) If the Applicant or Affiliate, in the Competitive HTC round immediately preceding the current round, failed to meet the deadline to both close financing and provide evidence of an executed construction contract under 10 TAC §11.9(c)(8) related to construction in specific disaster counties.

(4) If the Developer or Principal of the Applicant has violated or violates the Adherence to Obligations.

§11.10 Third Party Request for Administrative Deficiency for Competitive HTC Applications

The purpose of the Third Party Request for Administrative Deficiency (RFAD) process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. Staff will consider the request and proceed as it deems appropriate under the applicable rules including, if the Application in question has a noncompetitive score relative to other Applications in the same Set-Aside or subregion or will not be eligible for an award through the collapse as outlined in 10 TAC §11.6(3), not reviewing the matter further. If the assertion(s) in the RFAD have been addressed through the Application review process, and the RFAD does not contain new information, staff will not review or act on it. The RFAD may not be used to appeal staff decisions regarding competing Applications (§2306.6715(b)). Any RFAD that questions a staff decision regarding staff's scoring of an Application filed by another Applicant will be disregarded. Requestors must provide, at the time of filing the request, all briefings, documentation, and other information that the requestor offers in support of the deficiency. A copy of the request and supporting information must be provided by the requestor directly to the Applicant at the same time it is provided to the Department. Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered.

Staff shall provide to the Board a written report summarizing each third party request for administrative deficiency and the manner in which it was addressed. Interested persons may provide testimony on this report before the Board takes any formal action to accept the report. The results of a RFAD may not be appealed by the Requestor. A scoring notice or termination notice that results from a RFAD may be appealed by the Applicant as further described in §11.902 of this chapter, relating to Appeals Process. Information received after the RFAD deadline will not be considered by staff or presented to the Board unless the information is of such a matter as to warrant a termination notice.

When the Board receives a report on the disposition of RFADs it may, for any staff disposition contained in the report, change the conclusion if it believes the change is necessary to bring the

result into compliance with applicable laws and rules as construed by the Board; or if based on public testimony, it believes staff's conclusion should be revisited, it may remand the RFAD to staff for further consideration, which may result in a reaffirmation, reversal, or modification.

SUBCHAPTER B SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS

§11.101 Site and Development Requirements and Restrictions

(a) Site Requirements and Restrictions. The purpose of this section is to identify specific requirements and restrictions related to a Development Site seeking multifamily funding or assistance from the Department.

(1) Floodplain. New Construction or Reconstruction Developments located within a 100 year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site in full compliance with the National Flood Protection Act and all applicable federal and state statutory and regulatory requirements. The Applicant will have to use floodplain maps and comply with regulation as they exist at the time of commencement of construction. Even if not required by such provisions, the Site must be developed so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain. If there are more stringent federal or local requirements they must also be met. Applicants requesting NHTF funds from the Department must also meet the federal environmental provisions under 24 CFR §93.301(f)(1)(vi). Applicants requesting HOME or NSP1 PI funds from the Department must meet the federal environmental provisions under 24 CFR Part 58, as in effect at the time of execution of the Contract between the Department and the Owner. If no FEMA Flood Insurance Rate Maps are available for the proposed Development Site, flood zone documentation must be provided from the local government with jurisdiction identifying the 100 year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from HUD or USDA are exempt from this requirement, to the extent NHTF is not being requested from the Department, but must state in the Tenant Rights and Resource Guide that part or all of the Development Site is located in a floodplain, and that it is encouraged that they consider getting appropriate insurance or take necessary precautions. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the 100 year floodplain provided the local government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application or the existing structures meet the requirements that are applicable for New Construction or Reconstruction Developments, as certified to by a Third Party engineer.

(2) Undesirable Site Features. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (VA) may be granted an exemption; however, depending on the undesirable site feature(s) staff may recommend mitigation still be provided as appropriate. Such an exemption must be requested at the time of or prior to the filing of an Application. Historic Developments that would otherwise qualify under §11.9(e)(6) of this chapter may be granted an exemption, and such exemption must be requested at the time of or prior to the filing of an Application. The

distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature, unless otherwise noted below. Where there is a local ordinance that specifies the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, then such smaller distances may be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. Pre-existing zoning does not meet the requirement for a local ordinance. If a state or federal cognizant agency would require a new facility under its jurisdiction to have a minimum separation from housing, the Department will defer to that agency and require the same separation for a new housing facility near an existing regulated or registered facility. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may issue a Deficiency. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit a request for pre-determination at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer such documentation may be submitted with the request for a pre-determination and staff may perform an assessment of the Development Site to determine Site eligibility. An Applicant should understand that any determination made by staff or the Board at that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the Undesirable Site Features become available while the Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated by staff and may result in deficiency or termination.

(A) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Texas Transportation Code §396.001;

(B) Development Sites located within 300 feet of a solid waste facility or sanitary landfill facility or illegal dumping sites (as such dumping sites are identified by the local municipality);

(C) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D) Development Sites in which any of the buildings or designated recreational areas (including pools), excluding parking areas, are to be located within 100 feet of the nearest line or structural element of any overhead high voltage transmission line, support

structures for high voltage transmission lines, or other similar structures. This does not apply to local service electric lines and poles;

(E) Development Sites located within 500 feet of active railroad tracks, measured from the closest rail to the boundary of the Development Site, unless:

- (i) the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone covering the area within 500 feet of the Development Site;
- (ii) the Applicant has engaged a qualified Third Party to perform a noise assessment and the Applicant commits to perform sound mitigation in accordance with HUD standards as if they were directly applicable to the Development; or
- (iii) the railroad in question is commuter or light rail;

(F) Development Sites located within 500 feet of heavy industry (i.e. facilities that require extensive use of land and machinery, produce high levels of external noise such as manufacturing plants, or maintains fuel storage facilities (excluding gas stations));

(G) Development Sites located within 10 miles of a nuclear plant;

(H) Development Sites in which the buildings are located within the accident potential zones or the runway clear zones of any airport;

(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids or Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance (PIPA);

(J) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily; or

(K) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents or render the Site inappropriate for housing use and which cannot be adequately mitigated. If staff believe that a Site should be deemed unacceptable under this provision due to information that was not included in the Application, it will provide the Applicant with written notice and an opportunity to respond.

(3) Neighborhood Risk Factors.

(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. For Competitive HTC Applications, an Applicant must disclose at pre-application as required by §11.8(b) of this chapter. For all other Applications, an Applicant may choose to disclose the presence of such characteristics at

the time the pre-application (if applicable) is submitted to the Department. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer such documentation may be submitted with the request for a pre-determination and staff may perform an assessment of the Development Site to determine Site eligibility. An Applicant should understand that any determination made by staff or the Board at that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the Neighborhood Risk Factors become available while the Tax- Exempt Bond Development or Direct Loan only Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated by staff and may result in staff issuing a Deficiency. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, staff will issue a Material Deficiency. An Applicant's own non-disclosure is not appealable as such appeal is in direct conflict with certifications made in the Application and within the control of the Applicant. The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and include, where applicable, a review as described in subparagraph (C) of this paragraph. Mitigation to be considered by staff, including those allowed in subparagraph (C) of this paragraph, are identified in subparagraph (D) of this paragraph. Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility.

(B) The Neighborhood Risk Factors include those noted in clauses (i) - (iv) of this subparagraph and additional information as applicable to the neighborhood risk factor(s) disclosed as provided in subparagraphs (C) and (D) of this paragraph must be submitted in the Application. In order to be considered an eligible Site despite the presence of Neighborhood Risk Factors, an Applicant must demonstrate actions being taken that would lead staff to conclude that there is a high probability and reasonable expectation the risk factor will be sufficiently mitigated or significantly improved prior to placement in service and that the risk factor demonstrates a positive trend and continued improvement. Conclusions for such reasonable expectation may need to be affirmed by an industry professional, as appropriate, and may be dependent upon the severity of the Neighborhood Risk Factor disclosed.

(i) the Development Site is located within a census tract that has a poverty rate above 40% for individuals (or 55% for Developments in regions 11 and 13).

(ii) the Development Site is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not

separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(iii) the Development Site is located within 1,000 feet (measured from nearest boundary of the Site to the nearest boundary of blighted structure) of multiple vacant structures that have fallen into such significant disrepair, overgrowth, or vandalism that they would commonly be regarded as blighted or abandoned.

(iv) the Development Site is located within the attendance zone of an elementary school, a middle school or a high school that has a TEA Accountability Rating of D for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding or a TEA Accountability Rating of F for the most recent year available prior to Application and a Met Standard Rating by the Texas Education Agency for the most recent available year preceding. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. Schools with an application process for admittance, limited enrollment or other requirements that may prevent a child from attending will not be considered as the closest school or the school which attendance zone contains the site. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. Sixth grade centers will be considered as part of the middle school rating. Elderly Developments, Developments encumbered by a TDHCA LURA on the first day of the Application Acceptance Period or date the pre-application is submitted (if applicable), and Supportive Housing SRO Developments or Supportive Housing Developments where all Units are Efficiency Units are exempt and are not required to provide mitigation for this subparagraph, but are still required to provide rating information in the Application and disclose the presence of the Neighborhood Risk Factor.

(C) Should any of the neighborhood risk factors described in subparagraph (B)(ii)-(iv) of this paragraph exist, the Applicant must submit the Neighborhood Risk Factors Report that contains the information described in clauses (i) - (viii) of this subparagraph, if such

information pertains to the Neighborhood Risk Factor(s) disclosed, and mitigation pursuant to subparagraph (D) of this paragraph so staff may conduct a further Development Site and neighborhood review. The Neighborhood Risk Factors Report cannot be supplemented or modified unless requested by staff through the deficiency process. Due to school closures as a result of COVID-19, mitigation for schools as described in subparagraphs (C) and (D) of this paragraph is not required for Applications submitted in 2021.

(i) a determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;

(ii) an assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;

(iii) an assessment concerning any of the features reflected in paragraph (2) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (2) of this subsection;

(iv) an assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the Primary Market Area, including comment on concentration based on the size of the Primary Market Area;

(v) an assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located;

(vi) an assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy;

(vii) A copy of the TEA Accountability Rating Report for each of the schools in the attendance zone containing the Development that received a TEA Accountability Rating of D for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding or a TEA Accountability Rating of F for the most recent year available prior to Application and a Met Standard Rating by the Texas Education Agency for the most recent available year preceding, along with a discussion of performance indicators and what progress has been made over the prior year, and progress relating to the goals and objectives identified in the campus improvement plan or turnaround plan pursuant to §39.107 of the Texas Education Code in effect. The actual campus improvement plan does not need to be submitted unless there is an update to the plan or if such update is not

available, information from a school official that speaks to progress made under the plan as further indicated under subparagraph (D)(iv) of this paragraph; and

(viii) Any additional information necessary to complete an assessment of the Development Site, as requested by staff.

(D) Information regarding mitigation of neighborhood risk factors should be relevant to the risk factors that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application, and should include the measures described in clauses (i) - (iv) of this subparagraph or such other mitigation as the Applicant determines appropriate to support a finding of eligibility. If staff determines that the Development Site cannot be found eligible and the Applicant appeals that decision to the Board, the Applicant may not present new information at the Board meeting. In addition to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing. Due to school closures as a result of COVID-19, mitigation for schools as described in subparagraphs (C) and (D) of this paragraph is not required for Applications submitted in 2021.

(i) mitigation for Developments in a census tract that has a poverty rate that exceeds 40% may include a resolution from the Governing Body of the appropriate municipality or county containing the Development, acknowledging the high poverty rate and authorizing the Development to move forward. A Neighborhood Risk Factors Report is not required to be submitted, the resolution alone will suffice. If the Development is located in the ETJ, the resolution would need to come from the county.

(ii) evidence by the most qualified person that the data and evidence establish that there is a reasonable basis to proceed on the belief that the crime data shows, or will show, a favorable trend such that within the next two years Part I violent crime for that location is expected to be less than 18 per 1,000 persons or the data and evidence reveal that the data reported on neighborhoodscout.com does not accurately reflect the true nature of what is occurring and what is actually occurring does not rise to the level to cause a concern to the Board over the level of Part I violent crime for the location. The data and evidence may be based on violent crime data from the city's police department or county sheriff's department, as applicable based on the location of the Development, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that yields a crime rate below the threshold indicated in this section or that would yield a crime rate below the threshold indicated in this section by the time the Development is placed into service. The instances of violent crimes within the police beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. The data must include incidents reported during the entire 2019 and 2020 calendar year. Violent crimes reported through the date of

Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the most qualified person (i.e. Chief of Police or Sheriff (as applicable) or the police officer/detective for the police beat or patrol area containing the proposed Development Site), including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts must be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. It is expected that such written statement would also speak to whether there is a reasonable expectation that based on the efforts underway there is crime data that reflects a favorable downward trend in crime rates. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typical scope of work and should include a security plan, partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the Applicant's existing properties should also be submitted, if applicable.

(iii) evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public or private investment. Acceptable mitigation to address extensive blight should include a plan, whereby it is contemplated such blight or infestation will have been remediated within no more than two years from the date of the award and that a responsible party will use the blighted property in a manner that complies with local ordinances. In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.

(iv) evidence of mitigation for each of the schools in the attendance zone that has a TEA Accountability Rating of D for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding or a TEA Accountability Rating of F for the most recent year available prior to Application and a Met Standard Rating by the Texas Education Agency for the most recent available year preceding may include satisfying the requirements of subclauses (I) - (III) of this clause.

(I) Documentation from a person authorized to speak on behalf of the school district with oversight of the school in question that indicates the specific plans in place and current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan and in restoring the school(s) to an acceptable rating status. The documentation should include actual data from progress already made under such plan(s) to date demonstrating favorable trends and should speak to the authorized persons assessment that the plan(s) and the

data supports a reasonable conclusion that the school(s) will have an acceptable rating by the time the proposed Development places into service. The letter may, to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, plans to implement early childhood education, and long-term trends that would point toward their achieving an A, B, or C Rating by the time the Development is placed in service. The letter from such education professional should also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so. Such assessment could include whether the team involved has employed similar strategies at prior schools and were successful.

(II) The Applicant provides evidence that it has entered into agreement with the applicable school district or elementary school that has not achieved a rating of A, B, or C, a Head Start provider with capacity in their charter, or a charter school provider to provide suitable and appropriately designed space on-site for the provision of an early childhood pre-K program at no cost to residents of the proposed Development. Suitable and appropriately designed space includes at a minimum a bathroom and large closet in the classroom space, appropriate design considerations made for the safety and security of the students, and satisfaction of the requirements of the applicable building code for school facilities. Such provision must be made available to the school or provider, as applicable, until the later of the elementary school that had not achieved a rating of A, B or C, or the school or provider electing to end the agreement. If a charter school or Head Start provider is the provider in the named agreement and that provider becomes defunct or no longer elects to participate in the agreement prior to the achievement of a rating of A, B or C, the Development Owner must document their attempt to identify an alternate agreement with one of the other acceptable provider choices. However if the contracted provider is the school district or the school who is lacking the A, B or C rating and they elect to end the agreement prior to the achievement of such rating, the Development will not be considered to be in violation of its commitment to the Department.

(III) The Applicant has committed that until such time the school(s) achieves a rating of A, B, or C it will operate an after school learning center that offers at a minimum 15 hours of weekly, organized, on-site educational services provided middle and high school children by a dedicated service coordinator or Third-Party entity which includes at a minimum: homework assistance, tutoring, test preparation, assessment of skill deficiencies and provision of assistance in remediation of those deficiencies (e.g., if reading below grade level is identified for a student, tutoring in reading skills is provided), research and writing skills, providing a consistent weekly schedule, provides for the ability to tailor assistance

to the age and education levels of those in attendance, and other evidence-based approaches and activities that are designed to augment classroom performance. Up to 20% of the activities offered may also include other enrichment activities such as music, art, or technology.

(E) In order for the Development Site to be found eligible, including when mitigation described in subparagraph (D) of this paragraph is not provided in the Application, despite the existence of one or more Neighborhood Risk Factors, the Applicant must explain how the use of Department funds at the Development Site is consistent with the goals in clauses (i) - (iii) of this subparagraph. If the Board grants an Appeal of staff's determination of Site eligibility, the Board shall document the reasons for a determination of eligibility.

(i) preservation of existing occupied affordable housing units to ensure they are safe and suitable or the new construction of high quality affordable housing units that are subject to federal rent or income restrictions; and

(ii) determination that the risk factor(s) that has been disclosed are not of such a nature or severity that should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph; or

(iii) no mitigation was provided, or in staff's determination the mitigation was considered unsatisfactory and the Applicant has requested a waiver of the presence of Neighborhood Risk Factors on the basis that the Development is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order and such documentation is submitted with the disclosure.

(4) Site and Neighborhood Standards (Direct Loan only). A New Construction Development requesting federal funds must meet the Site and Neighborhood Standards in 24 CFR §983.57(e)(2) or (3). A Development requesting NHTF funds that meets the federal definition of reconstruction in 24 CFR §93.2 must also meet these standards.

(b) Development Requirements and Restrictions. The purpose of this section is to identify specific restrictions on a proposed Development requesting multifamily funding by the Department.

(1) Ineligible Developments. A Development shall be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph apply.

(A) General Ineligibility Criteria.

(i) Developments such as hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities that are

usually classified as transient housing (as provided in Code §42(i)(3)(B)(iii) and (iv));

- (ii) any Development with any building(s) with four or more stories that does not include an elevator;
- (iii) a Housing Tax Credit Development that provides on-site continual or frequent nursing, medical, or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;
- (iv) a Development that proposes population limitations that violate §1.15 of this title (relating to Integrated Housing Rule);
- (v) a Development seeking Housing Tax Credits that will not meet the general public use requirement under Treasury Regulation, §1.42-9 or a documented exception thereto; or
- (vi) a Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, 104(d) requirements and proposing Rehabilitation or Reconstruction, if the Applicant is not proposing at least the one-for-one replacement of the existing Unit mix. Adding additional units would not violate this provision.

(B) Ineligibility of Elderly Developments.

- (i) any Elderly Development of two stories or more that does not include elevator service for any Units or Common Areas above the ground floor;
- (ii) any Elderly Development with any Units having more than two Bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, or security officer. These employee Units must be specifically designated as such; or
- (iii) any Elderly Development (including Elderly in a Rural Area) proposing more than 70% two-Bedroom Units.

(C) Ineligibility of Developments within Certain School Attendance Zones. Any Development that falls within the attendance zone of a school that has a TEA Accountability Rating of F for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding is ineligible with no opportunity for mitigation. Developments that are encumbered by a TDHCA LURA on the first day of the Application Acceptance Period or at the time of Pre-application (if applicable), an Elderly Development, or a Supportive Housing SRO Development or Supportive Housing Development where all Units are Efficiency Units are exempt.

(2) Development Size Limitations. The minimum Development size is 16 Units. Competitive Housing Tax Credit or Multifamily Direct Loan-only Developments involving New Construction or Adaptive Reuse in Rural Areas are limited to a maximum of 80 total Units. Tax-Exempt Bond Developments involving New Construction or Adaptive Reuse in a Rural Area are limited to a maximum of 120 total Units. Rehabilitation Developments do not have a limitation as to the maximum number of Units.

(3) Rehabilitation Costs. Developments involving Rehabilitation must establish a scope of work that will substantially improve the interiors of all units and exterior deferred

maintenance, and meet the minimum Rehabilitation amounts identified in subparagraphs (A) - (C) of this paragraph. Such amounts must be maintained through the issuance of IRS Forms 8609. For Developments with multiple buildings that have varying placed in service dates, the earliest date will be used for purposes of establishing the minimum Rehabilitation amounts. Applications must meet the Rehabilitation amounts identified in subparagraphs (A), (B) or (C) of this paragraph. For Tax-Exempt Bond Developments that include existing USDA funding that is continuing or new USDA funding, staff may consider the cost standard under subparagraph (A) of this paragraph on a case-by-case basis.

(A) For Housing Tax Credit Developments under the USDA Set-Aside the Rehabilitation will involve at least \$25,000 per Unit in Building Costs and Site Work;

(B) For Tax-Exempt Bond Developments, less than 20 years old, based on the placed in service date, the Rehabilitation will involve at least \$20,000 per Unit in Building Costs and Site Work. If such Developments are greater than 20 years old, based on the placed in service date, the Rehabilitation will involve at least \$30,000 per Unit in Building Costs and Site Work; or

(C) For all other Developments, the Rehabilitation will involve at least \$30,000 per Unit in Building Costs and Site Work

(4) Mandatory Development Amenities. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all of the amenities in subparagraphs (A) - (N) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (N) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), or (M) of this paragraph; however, access must be provided to a comparable amenity in a Common Area. All amenities listed below must be at no charge to the residents. Residents must be provided written notice of the applicable required amenities for the Development. The Board may waive one or more of the requirements of this paragraph for Developments that will include Historic Tax Credits, with evidence submitted with the request for amendment that the amenity has not been approved by the Texas Historical Commission or National Park Service, as applicable.

(A) All Bedrooms, the dining room and living room in Units must be wired with current cabling technology for data and phone;

(B) Laundry connections;

(C) Exhaust/vent fans (vented to the outside) in the bathrooms;

(D) Screens on all operable windows;

(E) Disposal and Energy-Star or equivalently rated dishwasher (not required for USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);

(F) Energy-Star or equivalently rated refrigerator;

(G) Oven/Range;

(H) Blinds or window coverings for all windows;

- (I) At least one Energy-Star or equivalently rated ceiling fan per Unit;
- (J) Energy-Star or equivalently rated lighting in all Units;
- (K) All areas of the Unit (excluding exterior storage space on an outdoor patio/balcony) must have heating and air-conditioning;
- (L) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half spaces per Unit for non- Elderly Developments and one space per Unit for Elderly Developments. The minimum number of required spaces must be available to the tenants at no cost. If parking requirements under local code rely on car sharing or similar arrangements, the LURA will require the Owner to provide the service at no cost to the tenants throughout its term;
- (M) Energy-Star or equivalently rated windows (for Rehabilitation Developments, only if windows are planned to be replaced as part of the scope of work); and
- (N) Adequate accessible parking spaces consistent with the requirements of the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 FR 29671, the Texas Accessibility Standards, and if covered by the Fair Housing Act, HUD's Fair Housing Act Design Manual.

(5) Common Amenities.

- (A) All Developments must include sufficient common amenities as described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points required in accordance with clauses (i) - (vi) of this subparagraph.
 - (i) Developments with 16 to 40 Units must qualify for four (4) points;
 - (ii) Developments with 41 to 76 Units must qualify for seven (7) points;
 - (iii) Developments with 77 to 99 Units must qualify for ten (10) points;
 - (iv) Developments with 100 to 149 Units must qualify for fourteen (14) points;
 - (v) Developments with 150 to 199 Units must qualify for eighteen (18) points; or
 - (vi) Developments with 200 or more Units must qualify for twenty-two (22) points.

(B) These points are not associated with any selection criteria points. The amenities must be for the benefit of all residents and made available throughout normal business hours and maintained throughout the Affordability Period. Residents must be provided written notice of the elections made by the Development Owner. If fees or deposits in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the requirement. All amenities must meet all applicable accessibility standards, including those adopted by the Department, and where a specific space or size requirement for a listed amenity is not specified then the amenity must be reasonably adequate based on the Development size. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site and the amenities selected must be distributed proportionately across all sites. In the case of additional phases of a Development any amenities that are anticipated to be shared with the first phase development cannot be claimed for purposes of meeting this requirement for the second phase. The second phase must include enough points to meet this requirement that are provided on the

Development Site, regardless of resident access to the amenity in another phase. All amenities must be available to all Units via an accessible route.

(C) The common amenities and respective point values are set out in clauses (i) - (v) of this subparagraph, which are grouped primarily for organizational purposes. Applicants are not required to select a specific number of amenities from each section. An Applicant can only count an amenity once; therefore combined functions (a library which is part of a community room) will only qualify for points under one category:

(i) Community Space for Resident Supportive Services

(l) Except in Applications where more than 10% of the units in the proposed Development are Supportive Housing SRO Units, an Application may qualify to receive half of the points required under 10 TAC §11.101(b)(5)(A)(i)-(vi) by electing to provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site. To receive the points the Applicant must commit to all of items (-a-) - (-c-) of this subclause.

(-a-) Space and Design. The educational space for the HQ Pre-K program must be provided on the Development Site and must be a suitable and appropriately designed space for educating children that an independent school district or open-enrollment charter school can utilize to establish and operate a HQ Pre-K program. This space includes at a minimum a bathroom and large closet in the classroom space; appropriate design considerations made for the safety and security of the students; including limited and secure ingress and egress to the classroom space; and satisfaction of the requirements of all applicable building codes for school facilities. The Applicant must provide in the Application a copy of the current school facility code requirements applicable to the Development Site and Owner and Architect certifications that they understand the associated space and design requirements reflected in those code requirements. The Application must also include acknowledgement by all lenders, equity providers and partners that the Application includes election of these points.

(-b-) Educational Provider. The Applicant must enter into an agreement, addressing all items as described in subitems (-1-) - (-5-) below, and provide evidence of such agreement to the Department on or before submission of the Cost Certification. Lack of evidence of such agreement by the deadline will be cause for rescission of the Carryover Agreement or Determination Notice, as applicable.

(-1-) The agreement must be between the Owner and any one of the following: a school district; open- enrollment charter school; or Education Service Center. Private schools and private childcare providers, whether nonprofit or for profit, are not eligible parties, unless the private school or private childcare provider has entered into a partnership with a school district or open-enrollment charter school to provide a HQ Pre-K program

in accordance with Texas Education Code Chapter 29, Subchapter E-1.

(-2-) The agreement must reflect that at the Development Site the educational provider will provide a HQ Pre-K program, in accordance with Texas Education Code Chapter 29, Subchapter E-1, at no cost to residents of the proposed Development and that is available for general public use, meaning students other than those residing at the Development may attend.

(-3-) Such agreement must reflect a provision that the option to operate the HQ Pre-K program in the space at the Development Site will continue to be made available to the school or provider until such time as the school or provider wishes to withdraw from the location. This provision will not limit the Owner's right to terminate the agreement for good cause.

(-4-) Such agreement must set forth the responsibility of each party regarding payment of costs to use the space, utility charges, insurance costs, damage to the space or any other part of the Development, and any other costs that may arise as the result of the operation of the HQ Pre-K program.

(-5-) The agreement must include provision for annual renewal, unless terminated under the provisions of item (-c-).

(-c-) If an education provider who has entered into an agreement becomes defunct or elects to withdraw from the agreement and provision of services at the location, as provided for in subitem (-b-)(-3-) of this subclause, the Owner must notify the Texas Commissioner of Education at least 30 days prior to ending the agreement to seek out any other eligible parties listed in subitem (-b-)(-1-) of this subclause above. If another interested open-enrollment charter school or school district is identified by the Texas Commissioner of Education or the Owner, the Owner must enter into a subsequent agreement with the interested open-enrollment charter school or school district and continue to offer HQ Pre-K services. If another interested provider cannot be identified, and the withdrawing provider certifies to the Department that their reason for ending the agreement is not due to actions of the Owner, the Owner will not be considered to be in violation of its commitment to the Department. If the Owner is not able to find a provider, they must notify the Commissioner annually of the availability of the space.

(II) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for children and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal 15 square feet times the total number of Units, but need not exceed 2,000 square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets or cabinetry (4 points);

(III) Multifunctional learning and care center(s) or conference room(s) with the

appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for adults and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal 10 square feet times the total number of Units, but need not exceed 1,000 square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets or cabinetry (2 points);

(IV) Service provider office in addition to leasing offices (1 point);

(ii) Safety

(I) Controlled gate access for entrance and exit areas, intended to provide access that is limited to the Development's tenancy (1 point);

(II) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);

(III) Twenty-four hour, seven days a week monitored camera/security system in each building. Monitoring may be on-site or off-site (2 points);

(IV) Twenty-four hour, seven days a week recorded camera / security system in each building (1 point);

(V) The provision of a courtesy patrol service that, at a minimum, answers after-hour resident phone calls regarding noise and crime concerns or apartment rules violations and that can dispatch to the apartment community a courtesy patrol officer in a timely manner (3 points);

(iii) Health/ Fitness / Play

(I) Accessible walking/jogging path, equivalent to the perimeter of the Development or a length that reasonably achieves the same result, separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);

(II) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 40 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (1 point);

(III) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 20 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (2 points);

- (IV) One Children's Playscape Equipped for five to 12 year olds, or one Tot Lot (2 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if clause (V) of this subparagraph is not selected; or
- (V) Two Children's Playscapes Equipped for five to 12 year olds, two Tot Lots, or one of each (4 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if clause (IV) of this subparagraph is not selected;
- (VI) Horseshoe pit; putting green; shuffleboard court; pool table; ping pong table; or similar equipment in a dedicated location accessible to all residents to play such games (1 point);
- (VII) Swimming pool (3 points);
- (VIII) Splash pad/water feature play area (1 point);
- (IX) Sport Court or field (including, but not limited to, Tennis, Basketball, Volleyball, Soccer or Baseball Field) (2 points);

(iv) Design / Landscaping

- (I) Full perimeter fencing that contains the parking areas and all amenities (excludes guest or general public parking areas) (2 points);
- (II) Enclosed community sun porch or covered community porch/patio (1 point);
- (III) Dog Park area that is fully enclosed (the perimeter fencing may be used for part of the enclosure) and intended for tenant owned dogs to run off leash (requires that the Development allow dogs) (1 point);
- (IV) Shaded rooftop or structural viewing deck of at least 500 square feet (2 points);
- (V) Porte-cochere (1 point);
- (VI) Lighted pathways along all accessible routes (1 point);
- (VII) a resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water (which may be subject to local water usage restrictions) (1 point);

(v) Community Resources

- (I) Gazebo, covered pavilion, or pergola with sitting area (seating must be provided) (1 point);
- (II) Community laundry room with at least one washer and dryer for every 40 Units (2 points);
- (III) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point). Grill must be permanently installed (no portable grills);
- (IV) Business center with workstations and seating internet access, 1 printer and at least one scanner which may be integrated with the printer, and either 2 desktop computers or laptops available to check-out upon request (2 points);

- (V) Furnished Community room (2 points);
- (VI) Library with an accessible sitting area (separate from the community room) (1 point);
- (VII) Activity Room stocked with supplies (Arts and Crafts, board games, etc.) (2 points);
- (VIII) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);
- (IX) Community Theater Room equipped with a 52 inch or larger screen or projection with surround sound equipment; DVD player or a streaming service at no cost to residents; and seating (3 points);
- (X) High-speed Wi-Fi of 10 Mbps download speed or more with coverage throughout the clubhouse or community building (1 point);
- (XI) High-speed Wi-Fi of 10 Mbps download speed or more with coverage throughout the Development (2 points);
- (XII) Bicycle parking that allows for, at a minimum, one bicycle for every five Units, within reasonable proximity to each residential building that allows for bicycles to be secured with lock (lock not required to be provided to tenant) (1 point);
- (XIII) Package Lockers. Automated Package Lockers provided at a location within the complex that can be accessed by residents 24/7 and at no charge to the resident. To qualify, there would need to be at least one locker for every eight residential units (2 points);
- (XIV) Recycling Service (includes providing a storage location and service for pick-up) (1 point);
- (XV) Community car vacuum station (1 point).

(6) Unit Requirements.

(A) Unit Sizes. Developments proposing New Construction or Reconstruction will be required to meet the minimum sizes of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with any selection criteria. Developments proposing Rehabilitation (excluding Reconstruction) or Supportive Housing Developments will not be subject to the requirements of this subparagraph. If the Development involves both Rehabilitation and Reconstruction or New Construction, the Reconstruction or New Construction Units must meet these requirements.

- (i) five hundred (500) square feet for an Efficiency Unit;
- (ii) six hundred (600) square feet for a one Bedroom Unit;
- (iii) eight hundred (800) square feet for a two Bedroom Unit;
- (iv) one thousand (1,000) square feet for a three Bedroom Unit; and
- (v) one thousand, two-hundred (1,200) square feet for a four Bedroom Unit.

(B) Unit, Development Construction, and Energy and Water Efficiency Features. Housing Tax Credit Applicants may select amenities for the score of an Application under this section, but must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values. Tax-

Exempt Bond Developments must include enough amenities to meet a minimum of nine (9) points. Direct Loan Applications not layered with Housing Tax Credits must include enough amenities to meet a minimum of four (4) points. The amenity shall be for every Unit at no extra charge to the tenant. The points selected at Application and corresponding list of amenities will be required to be identified in the LURA, and the points selected at Application must be maintained throughout the Affordability Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments and Supportive Housing Developments will start with a base score of five (5) points. At least two (2) points must be selected from clause (iii), Energy and Water Efficiency Features, of this subparagraph (B).

(i) Unit Features

- (I) Covered entries (0.5 point);
- (II) Nine foot ceilings in living room and all Bedrooms (at minimum) (1 point);
- (III) Microwave ovens (0.5 point);
- (IV) Self-cleaning or continuous cleaning ovens (0.5 point);
- (V) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to Bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the Property site (0.5 point);
- (VI) Covered patios or covered balconies (0.5 point);
- (VII) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);
- (VIII) Built-in (recessed into the wall) shelving unit (0.5 point);
- (IX) Breakfast Bar (a space, generally between the kitchen and dining area, that includes an area for seating although actual seating such as bar stools does not have to be provided) (0.5 point);
- (X) Walk-in closet in at least one Bedroom (0.5 point);
- (XI) 48" upper kitchen cabinets (1 point);
- (XII) Kitchen island (0.5 points);
- (XIII) Kitchen pantry with shelving (may include the washer/dryer unit for Rehabilitation Developments only) (0.5 point);
- (XIV) Natural stone or quartz countertops in kitchen and bath (1 point);
- (XV) Double vanity in at least one bathroom (0.5 point); and
- (XVI) Hard floor surfaces in over 50% of unit NRA (0.5 point).

(ii) Development Construction Features

- (I) Covered parking (may be garages or carports, attached or freestanding) and include at least one covered space per Unit (1.5 points);
- (II) Thirty year roof (0.5 point);
- (III) Greater than 30% stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious and metal siding) on all building exteriors; the

percentage calculation may exclude exterior glass entirely (2 points);
(IV) Electric Vehicle Charging Station (0.5 points);
(V) An Impact Isolation Class (IIC) rating of at least 55 and a Sound Transmission Class (STC) rating of 60 or higher in all Units, as certified by the architect or engineer of record (3 points); and
(VI) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Four (4) points may be selected from only one of the categories described in items (-a)-(-d-) of this subclause. If the Development involves scattered sites, there must be green building features incorporated into each site in order to qualify for these points.

(-a-) Enterprise Green Communities. The Development must incorporate all mandatory and optional items applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at <http://www.greencommunitiesonline.org>.

(-b-) Leadership in Energy and Environmental Design (LEED). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e., Certified, Silver, Gold or Platinum).

(-c-) ICC/ASHRAE - 700 National Green Building Standard (NGBS). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NGBS Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(-d-) 2018 International Green Construction Code.

(iii) Energy and Water Efficiency Features

- (I) Energy-Star or equivalently rated refrigerator with icemaker (0.5 point);
- (II) Energy-Star or equivalently rated laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (2 points);
- (III) Recessed LED lighting or LED lighting fixtures in kitchen and living areas (1 point);
- (IV) Energy-Star or equivalently rated ceiling fans in all Bedrooms (0.5 point);
- (V) EPA WaterSense or equivalent qualified toilets in all bathrooms (0.5 point);
- (VI) EPA WaterSense or equivalent qualified showerheads and faucets in all bathrooms (0.5 point);
- (VII) 15 SEER HVAC, or in Region 13, an efficient evaporative cooling system. For Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided, (1 point);
- (VIII) 16 SEER HVAC, for New Construction or Rehabilitation (1.5 points); and
- (IX) A rainwater harvesting/collection system or locally approved greywater

collectionsystem (0.5 points).

(7) Resident Supportive Services. The supportive services include those listed in subparagraphs (A) - (E) of this paragraph, which are grouped primarily for organizational purposes. Applicants are not required to select a specific number of services from each section. Tax Exempt Bond Developments must select a minimum of eight points; Direct Loan Applications not layered with Housing Tax Credits must include enough services to meet a minimum of four points. The points selected and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.619 of this title (relating to Monitoring for Social Services) and maintained throughout the Affordability Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. A Development Owner may be required to substantiate such service(s) if requested by staff. Should the QAP in subsequent years provide different services than those listed in subparagraphs (A) - (E) of this paragraph, the Development Owner may request an Amendment as provided in 10TAC §10.405(a)(2). The services provided should be those that will directly benefit the Target Population of the Development. Residents must be provided written notice of the elections made by the Development Owner. No fees may be charged to the residents for any of the services, there must be adequate space for the intended services and services offered should be accessible to all (e.g. exercises classes must be offered in a manner that would enable a person with a disability to participate). Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider. Unless otherwise noted in a particular clause, courses and services must be offered by an onsite instructor(s).

(A) Transportation Supportive Services

- (i) shuttle, at least three days a week, to a grocery store and pharmacy or a major, big-box retailer that includes a grocery store and pharmacy, OR a daily shuttle, during the school year, to and from nearby schools not served by a school bus system for children who live at the Development (3.5 points);
- (ii) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point);

(B) Children Supportive Services

- (i) provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site meeting the requirements of 10 TAC §11.101(b)(5)(C)(i)(I). (Half of the points required under 10 TAC §11.101(b)(7));
- (ii) Twelve hours of weekly, organized, on-site services provided to K-12 children by a dedicated service coordinator or third-party entity. Services include after-school and

summer care and tutoring, recreational activities, character building programs, mentee opportunities, test preparation, and similar activities that promote the betterment and growth of children and young adults (3.5 points);

(C) Adult Supportive Services

(i) Four hours of weekly, organized, on-site classes provided to an adult audience by persons skilled or trained in the subject matter being presented, such as English as a second language classes, computer training, financial literacy courses, health education courses, certification courses, GED preparation classes, resume and interview preparatory classes, general presentations about community services and resources, and any other course, class, or presentation that may equip residents with new skills that they may wish to develop (3.5 points);

(ii) annual income tax preparation (offered by an income tax prep service) or IRS-certified VITA (Volunteer Income Tax Assistance) program (offered by a qualified individual) that also emphasizes how to claim the Earned Income Tax Credit (1 point);

(iii) contracted career training and placement partnerships with local worksorce offices, culinary programs, or vocational counseling services; may include resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points);

(iv) external partnerships for provision of weekly substance abuse meetings at the Development Site (1 point);

(D) Health Supportive Services

(i) food pantry consisting of an assortment of non-perishable food items and common household items (i.e. laundry detergent, toiletries, etc.) accessible to residents at least on a monthly basis or upon request by a resident. While it is possible that transportation may be provided to a local food bank to meet the requirement of this resident service, the resident must not be required to pay for the items they receive at the food bank (2 points);

(ii) annual health fair provided by a health care professional (1 point);

(iii) weekly exercise classes (offered at times when most residents would be likely to attend) (2 points);

(iv) contracted onsite occupational or physical therapy services for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(E) Community Supportive Services

(i) partnership with local law enforcement or local first responders to provide quarterly on-site social and interactive activities intended to foster relationships with residents (such activities could include playing sports, having a cook-out, swimming, card games, etc.) (2 points);

(ii) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);

- (iii) twice monthly arts, crafts, and other recreational activities (e.g. Book Clubs and creative writing classes) (1 point);
- (iv) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, holiday celebrations, etc.) (1 point);
- (v) specific service coordination services offered by a qualified Owner or Developer, qualified provider or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (3 points);
- (vi) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);
- (vii) any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point);
- (viii) a part-time resident services coordinator with a dedicated office space at the Development or a contract with a third-party to provide the equivalent of 15 hours or more of weekly resident supportive services at the Development (2 points);
- (ix) provision, by either the Development Owner or a community partner, of an education tuition- or savings-match program or scholarships to residents who may attend college (2 points).

(8) Development Accessibility Requirements. All Developments must meet all specifications and accessibility requirements as identified in subparagraphs (A) - (F) of this paragraph and any other applicable state or federal rules and requirements. The accessibility requirements are further identified in the Certification of Development Owner as provided in the Application.

(A) The Development shall comply with the accessibility requirements under Federal law and as further defined in Chapter 1, Subchapter B of this title (relating to Accessibility Requirements). (§§2306.6722; 2306.6730)

(B) Regardless of building type, all Units accessed by the ground floor or by elevator (affected units) must comply with the visitability requirements in clauses (i) - (iii) of this subparagraph. Design specifications for each item must comply with the standards of the Fair Housing Act Design Manual. Buildings occupied for residential use on or before March 13, 1991 are exempt from this requirement. If the townhome Units of a Rehabilitation Development do not have a bathroom on the ground floor, the Applicant will not be required to add a bathroom to meet the requirements of clause (iii) of this subparagraph.

- (i) All common use facilities must be in compliance with the Fair Housing Design Act Manual;

(ii) To the extent required by the Fair Housing Design Act Manual, there must be an accessible or exempt route from common use facilities to the affected units;

(iii) Each affected unit must include the features in subclauses (I) - (V) of this clause.

(I) At least one zero-step, accessible entrance;

(II) At least one bathroom or half-bath with toilet and sink on the entry level. The layout of this bathroom or half-bath must comply with one of the specifications set forth in the Fair Housing Act Design Manual;

(III) The bathroom or half-bath must have the appropriate blocking relative to the toilet for the later installation of a grab bar, if ever requested by the tenant of that Unit;

(IV) There must be an accessible route from the entrance to the bathroom or half-bath, and the entrance and bathroom must provide usable width; and

(V) Light switches, electrical outlets, and thermostats on the entry level must be at accessible heights.

(C) The Development Owner is and will remain in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))

(D) All Applications proposing Rehabilitation (including Reconstruction) will be treated as substantial alteration, in accordance with Chapter 1, Subchapter B of this title (relating to Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act).

(E) For all Developments other than Direct Loan Developments, for the purposes of determining the appropriate distribution of accessible Units across Unit Types, only the number of Bedrooms and full bathrooms will be used to define the Unit Type, but accessible Units must have an equal or greater square footage than the square footage offered in the smallest non-accessible Unit with the same number of Bedrooms and full bathrooms. For Direct Loan Developments, for purposes of determining the appropriate distribution of accessible Units across Unit Types, the definition of Unit Type will be used.

(F) Alternative methods of calculating the number of accessible Units required in a Development must be approved by the Department prior to award or allocation.

SUBCHAPTER C APPLICATION SUBMISSION REQUIREMENTS, INELIGIBILITY CRITERIA, BOARD DECISIONS AND WAIVER OF RULES

§11.201 Procedural Requirements for Application Submission

This subchapter establishes the procedural requirements for Application submission. Only one Application may be submitted for a Development Site in an Application Round. While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original pre-application fee (as applicable) that was paid as long as no substantive evaluation was performed by the Department and the re-submitted Application relates to the same Development Site, consistent with §11.9(e)(3) regarding pre-application Site changes. Applicants are subject to the schedule of fees as set forth in §11.901 of this chapter (relating to Fee Schedule).

(1) General Requirements.

(A) An Applicant requesting funding from the Department must submit an Application in order to be considered for an award. An Application must be complete (including all required exhibits and supporting materials) and submitted by the required program deadline. If an Application, including the corresponding Application fee as described in §11.901 of this chapter, is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed not to have made an Application; provided, however, that errors in the calculation of applicable fees may be cured via an Administrative Deficiency. The deficiency period for curing fee errors will be 5:00 p.m. on the third business day following the date of the deficiency notice and may not be extended. Failure to cure such an error timely will be grounds for termination.

(B) Applying for multifamily funds from the Department is a technical process that must be followed completely. As a result of the competitive nature of some funding sources, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If checks or original Carryover Allocation Agreements are physically delivered to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. All Applications and all related materials are to be delivered electronically pursuant to the Multifamily Programs Procedures Manual. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Applicants must ensure that all documents are legible, properly organized and tabbed, and that materials are fully readable by the Department.

(C) The Applicant must timely upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. Each copy must be in a single file and individually bookmarked as further described in the Multifamily Programs

Procedures Manual. Additional files required for Application submission (e.g., Third Party Reports) outside the Uniform Application must also be uploaded to the secure web transfer server. It is the responsibility of the Applicant to confirm the upload to the Department's secure web transfer server was successful and to do so in advance of the deadline. Where there are instances of computer problems, mystery glitches, etc. that prevent the Application from being received by the Department prior to the deadline the Application may be terminated.

(D) Applications must include materials addressing each and all of the items enumerated in this chapter and other chapters as applicable. If an Applicant does not believe that a specific item should be applied, the Applicant must include, in its place, a statement identifying the required item, stating that it is not being supplied, and a statement as to why the Applicant does not believe it should be required.

(2) Filing of Application for Tax-Exempt Bond Developments. Applications must be submitted to the Department as described in either subparagraph (A) or (B) of this paragraph. Applications will be required to satisfy the requirements of this chapter and applicable Department rules that coincide with the year the Certificate of Reservation is issued. Those Applications that receive a Traditional Carryforward Designation will be subject to the QAP and applicable Department rules in place at the time the Application is received by the Department, unless determined otherwise by staff.

(A) Lottery Applications. Applicants participating in the TBRB lottery for private activity bond volume cap and whose Certificate of Reservation will be issued in January, the Applicant may submit the complete Application, including all required Third Party Reports, accompanied by the Application Fee described in §11.901 of this chapter as early as the beginning of December, to be tentatively scheduled for the March Board meeting. The Application must be submitted using the Draft Uniform Application released by the Department for the upcoming program year. Staff will require at least 90 days to review an Application, unless Department staff can complete its evaluation in sufficient time for an earlier Board consideration.

(B) Non-Lottery Applications.

(i) Applications designated as Priority 1 or 2 by the TBRB must submit the Application Fee described in §11.901 of this chapter and the complete Application, with the exception of the Third Party Reports, before the Certificate of Reservation can be issued by the TBRB. The Third Party Reports must be submitted on the fifth day of the month and the Application may be scheduled for a Board meeting at which the decision to issue a Determination Notice would be made approximately 90 days following such submission deadline. If the fifth day falls on a weekend or holiday, the submission deadline shall be on the next business day.

(ii) An Application designated as Priority 3 will not be accepted until after the TBRB has issued a Certificate of Reservation and may be submitted on the fifth day of the month. Priority 3 Application submissions must be complete, including all Third Party Reports and the required Application Fee described in §11.901 of this chapter, before they will be considered accepted by the Department and meeting the submission deadline for the applicable Board meeting date.

(iii) If, as of November, an Applicant is unable to obtain a Certificate of Reservation from the current program year because there is no private activity bond volume cap, an Applicant may submit a complete Application without a bond reservation, provided that, a copy of the inducement resolution is included in the Application, and a Certificate of Reservation is issued as soon as possible by BRB staff in January 2022. The determination as to whether a 2021 Application can be submitted and supplemented with 2022 forms and certifications, will be at the discretion of staff. Applicants are encouraged to communicate with staff any issues and timing considerations unique to a Development as early in the process as possible.

(C) The Department will require at least 90 days to review an Application, unless Department staff can complete its evaluation in sufficient time for an earlier Board consideration. Applicants should be aware that unusual financing structures, portfolio transactions, the need to resolve Administrative Deficiencies and changes made by an Applicant after the Application has been reviewed by staff may require additional time to review and the prioritization of Applications will be subject to the review priority established in paragraph (6) of this subsection.

(D) Department staff may choose to delay presentation to the Board in instances where an Applicant is not expected to close within a reasonable timeframe following the issuance of a Determination Notice. Applications that receive a Traditional Carryforward Designation will be subject to closing within the same general timeframe as would be typical of the Certificate of Reservation. This will be a condition of the award and reflected in the Determination Notice.

(E) Withdrawal of Certificate of Reservation. Applicants are required to notify the Department before 5:00 p.m. on the business day after the Certificate of Reservation is withdrawn. If, by the fifth business day following the withdrawal, a new Certificate of Reservation is not issued, the Application will be suspended. If a new Certificate of Reservation is not issued by 5:00 p.m. on the fifth business day following the date of the suspension, the Application will be terminated. Applicants must ensure once a Certificate of Reservation is issued, the Application as submitted is complete and all respective parts of the Development are in process such that closing under the Certificate of Reservation is achievable. Once a new Certificate of Reservation is issued, it will be at the Department's discretion to determine whether the existing Application can still be utilized for purposes of review or if a new Application, including payment of another Application Fee, must be submitted due to material changes. The Department will not prioritize the

processing of the new Application over other Applications under review once a new Certificate of Reservation is issued, regardless of the stage of review the Application was in prior to termination, or that it maintain the originally selected Board meeting for consideration of the Housing Tax Credits.

(3) Certification of Tax Exempt Bond Applications with New Docket Numbers. Applications that receive an affirmative Board Determination, but for which closing on the bonds does not occur prior to the Certificate of Reservation expiration date, and which subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. Upon the issuance of the Certificate of Reservation and corresponding new docket number, the Applicant must submit the Request for Determination Notice Reinstatement form along with the Determination Notice Reinstatement Fee described in §11.901 of this chapter. The Applicant should allow at least 30 days for staff review. The Application must meet the requirements described in subparagraphs (A) - (C) of this paragraph:

(A) The Application must remain unchanged with regard to: Site Control, total number of Units, unit mix (Bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, Target Population, scoring criteria (if TDHCA is bond issuer) and TBRB priority status including the effect on the inclusive capture rate. The entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as long as the financing structure and terms remain unchanged. Should any of the aforementioned items have changed, but in staff's determination and review such change is determined not to be material or determined not to have an effect on the original underwriting conclusions or program review then the Applicant may be allowed to submit the certification and subsequently have the Determination Notice re-issued. Notifications under §11.203 of this chapter (relating to Public Notifications (§2306.6705(9))) are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable; or

(B) The new docket number must be from the same program year as the original docket number or, for Applications that receive a new docket number from the program year that is immediately succeeding the program year of the original docket number, the requirements in clauses (i) and (ii) of this subparagraph must be met:

(i) the Applicant must certify that the Development will meet all rules and requirements in effect at the time the new docket number is issued; and

(ii) the Department must determine that the changes in the rules applicable to the program(s) under which the Application was originally awarded are not of a material nature that would necessitate a new Application and that any new forms and clarifications to the Application are of a nature that can be resolved through the Administrative Deficiency process; or

(C) if there are changes to the Application as referenced in subparagraph (A) of this paragraph or if such changes in the rules pursuant to subparagraph (B)(ii) of this paragraph are of a material nature the Applicant will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new Determination Notice to be issued. If there is public opposition but the Application remains the same pursuant to subparagraph (A) of this paragraph, a new Application will not be required to be submitted; however, the Application must be presented before the Board for consideration of the re-issuance of the Determination Notice.

(4) Withdrawal of Application. An Applicant may withdraw an Application prior to or after receiving an award of funding by submitting to the Department written notice of the withdrawal. To the extent a Direct Loan award is returned after Board approval, penalties may be imposed on the Applicant and Affiliates in accordance with 10 TAC §13.11(a).

(5) Evaluation Process. Applications believed likely to be competitive will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, Application reviews by the Department shall be conducted based upon the likelihood that an Application will be competitive for an award based upon the region, set-aside, self score, received date, or other ranking factors. Thus, non-competitive or lower scoring Applications may never be reviewed. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application and its relative position to other Applications, but no Application with a competitive ranking shall be skipped or otherwise overlooked. This initial assessment may be a high level assessment, not a full assessment. The Real Estate Analysis division shall underwrite Applications that received a full program review and remain competitive to determine financial feasibility and an appropriate funding amount. In making this determination, the Department will use §11.302 of this chapter (relating to Underwriting Rules and Guidelines) and §13.6 of this title (relating to Multifamily Direct Loan Rule) as applicable. The Department may have an external party perform all or part of the underwriting evaluation and components thereof to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation pursuant to §11.901(5) of this chapter (relating to Fee Schedule, Appeals and other Provisions). Applications will undergo a previous participation review in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation) and a Development Site may be evaluated by the Department or its agents through a physical site inspection or site visit, (which may include neighboring areas), independent of or concurrent with a site visit that may be performed in conjunction with §11.101(a)(3) (relating to Neighborhood Risk Factors). The Department may provide a scoring notice reflecting such score to the Applicant which will trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't. Code §2306.6715 and §11.902 of this chapter (relating to Appeals Process).

(6) Order of review of Applications under various Programs. This paragraph identifies how

ties or other matters will be handled when dealing with de-concentration requirements, capture rate calculations, and general order of review of Applications submitted under different programs.

(A) De-concentration and Capture Rate. Priority will be established based on the earlier date associated with an Application. The dates that will be used to establish priority are as follows:

- (i) for Tax-Exempt Bond Developments, the issuance date of the Certificate of Reservation issued by the TBRB; or in instances where there is a Traditional Carryforward Designation associated with an Application the Department will utilize the date the complete HTC Application associated with the Traditional Carryforward Designation is submitted to the Department; and
- (ii) for all other Developments, the date the Application is considered received by the Department; and
- (iii) notwithstanding the foregoing, after July 31 of the current program year, a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any Housing Tax Credit Application from the current Application Round on the waiting list.

(B) General Review Priority. Order of reviews of Applications under various multifamily programs will be established based on Department staff's consideration of any statutory timeframes associated with a program or Application in relation to the volume of Applications being processed. In general, those with statutory or more restrictive deadlines will be prioritized for review and processing ahead of those that are not subject to the same constraints. Due to the statutory constraints on the award and allocation of competitive tax credits, should any non-Competitive Housing Tax Credit Applications received during the competitive tax credit round include a request to be placed on the May, June, or July Board agendas, such Applications must be complete, including Third Party Reports that meet the requirements under the Underwriting and Loan Policy Rules, and the Applicant must not have submitted (outside of any request by staff via an Administrative Deficiency) revisions to the Application subsequent to its review by staff that would necessitate another review of the Application. Applicants are advised to keep this in consideration when planning the submission of an Application and issuance of the Certificate of Reservation. Should an Applicant submit an Application regardless of this provision, the Department is not obligated to include the Application on the requested Board meeting agenda and the Applicant should be prepared to be placed on a subsequent Board meeting agenda. In the event doing so could jeopardize the Applicant's ability to obtain a Determination Notice prior to the expiration of the Certificate of Reservation, the Department assumes no liability.

(7) Deficiency Process. The purpose of the deficiency process is to allow an Applicant to provide clarification, explanation, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in an efficient and effective review

of the Application. Deficiencies may be Administrative or Material, in either case they will be treated similarly in that Applicants may receive a deficiency notice and have an opportunity to respond. Applicants are encouraged to utilize manuals or other materials produced by staff, as additional guidance in conjunction with the rules to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, or meeting of threshold and eligibility requirements. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the deficiency process. Because the review of an Application occurs in several phases, deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail to the Applicant and one other contact party if identified in the Application. It is the Applicant's responsibility to ensure that e-mails sent from TDHCA staff to the Applicant or contact are not electronically blocked or redirected by a security feature as they will be considered to be received once they are sent. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period and may also be sent in response to reviews on post-award submissions. Responses are required to be submitted electronically as a PDF or multiple PDF files and must be uploaded to the Application's ServU http file. Emailed responses will not be accepted. A review of the response provided by the Applicant may reveal that issues initially identified as an Administrative Deficiency are actually determined to be beyond the scope of an Administrative Deficiency process, meaning they are Material Deficiencies not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an Administrative Deficiency response has been received or that such response is satisfactory. Communications from staff that the response was satisfactory do not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determinations regarding the sufficiency of documentation submitted to cure a Deficiency as well as the distinction between material and non-material missing information are reserved for the Director of Multifamily Finance, Executive Director, and Board.

(A) It is critical that the use of the deficiency process not unduly slow the review process, and since the process is intended to clarify or explain matters or obtain at the Department's request missing information, there is a reasonable expectation that a party responding to an Administrative Deficiency will be able to respond immediately. It is the responsibility of a person who receives a deficiency to address the matter in a timely manner so that staff has the ability to review the response by the close of business on the date by which resolution must be complete and the deficiency fully resolved. Merely submitting materials prior to that time places the responsibility on the responding party that if the materials do not fully resolve the matter there may be adverse consequences such as point deductions or termination. Extensions relating to Administrative Deficiency deadlines may only be extended up to five days if documentation needed to resolve the item is needed from a Third Party or the documentation involves Third Party signatures needed on certifications in the Application. A Deficiency response may not contain documentation that did not exist prior to submission of the pre- application or Full

Application, as applicable.

(B) Deficiencies for Competitive HTC Applications. Unless an extension has been timely requested and granted prior to the deadline, if a deficiency is not fully resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then five (5) points shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If deficiencies are not resolved by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated, subject to the Applicant's right to appeal. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, and may not add any set-asides, increase the requested credit amount, revise the Unit mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency. (§2306.6708(b); §2306.6708) Applicants may not use the Deficiency Process to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. To the extent that the review of deficiency documentation or the imposing of point reductions for late responses alters the score assigned to the Application, such score will be reflected in the updated application log published on the Department's website or a Scoring Notice may be issued.

(C) Deficiencies for Tax-Exempt Bond Developments. Unless an extension has been requested prior to the deadline, deficiencies must be resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice. Applications with unresolved deficiencies after 5:00 p.m. on the fifth business day following the date of the deficiency notice will be suspended from further processing and the Applicant will be provided with notice to that effect. If, on the fifth business day following the date of the suspension notice, there are deficiencies that remain unresolved, the Application will be terminated and the Applicant will be provided notice to that effect. Should an Applicant still desire to move forward with the Development, staff will require a completely new Application be submitted, along with a new Application Fee pursuant to §11.901 of this chapter. All of the deficiencies noted in the original deficiency notice must be incorporated into the re-submitted Application. Staff will proceed with a new review of the Application, but it will not be prioritized over other Applications that are under review or were submitted prior to its re-submission.

(D) Deficiencies for Direct Loan-only Applications. Deficiencies must be resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice. Applications with unresolved deficiencies after 5:00 p.m. on the fifth business day following the date of the deficiency notice will be suspended from further processing and the Applicant will be provided with notice to that effect. If, on the fifth business day following the date of the suspension notice, there are deficiencies that remain unresolved, the Application may be terminated and the Applicant will be provided notice to that effect. For purposes of priority under the Direct Loan set-asides, if the

outstanding item(s) are resolved during the suspension period, the date by which the final deficient item is submitted shall be the new received date pursuant to §13.5(c) of this chapter (relating to Multifamily Direct Loan Rule). Applicants should be prepared for additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section. Should an Applicant still desire to move forward with the Development after Termination, a completely new Application must be submitted, along with a new Application Fee, as applicable, pursuant to rule. All of the deficiencies noted in the original deficiency notice must be incorporated into the re-submitted Application, which will have a new Application Acceptance Date.

(8) Limited Reviews. If, after the submission of the Application, an Applicant identifies an error in the Application that could likely be the subject of a Deficiency, the Applicant may request a limited review of the specific and limited issues in need of clarification or correction. The issue may not relate to the score of an Application. This limited review may only cover the specific issue and not the entire Application. If the limited review results in the identification of an issue that requires correction or clarification, staff will request such through the Deficiency process as stated in paragraph (7) of this section, if deemed appropriate. A limited review is intended to address:

(A) Clarification of issues that Department staff would have difficulty identifying due to the omission of information that the Department may have access to only through Applicant disclosure, such as a prior removal from a tax credit transaction or participation in a Development that is not identified in the previous participation portion of the Application; or

(B) Technical correction of non-material information that would cause an Application deemed non-competitive to be deemed competitive and, therefore, subject to a staff review. For example, failure to mark the Nonprofit Set-Aside in an Application that otherwise included complete submission of documentation for participation in the Nonprofit Set-Aside.

(9) Challenges to Opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such comment is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §11.2 of this chapter and no later than May 1 of the current year for Competitive HTC Applications. The Neighborhood Organization expressing opposition will be given seven calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis by staff will be provided to a fact finder, chosen by the Department, for review and a determination. The fact finder will not make determinations as to the accuracy of the statements presented, but only regarding

whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

§11.202 Ineligible Applicants and Applications

The purpose of this section is to identify those situations in which an Application or Applicant may be considered ineligible for Department funding and subsequently terminated. Such matters may be brought to the attention of staff by anyone, including members of the general public. The items listed in this section include those requirements in Code, §42, Tex. Gov't Code, Chapter 2306, and other criteria considered important by the Department, and does not represent an exhaustive list of ineligibility criteria that may otherwise be identified in applicable rules, federal statutes or regulations, or a specific program NOFA. The Application may include, or Department staff may request, documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development. One or more of the matters enumerated in paragraph (1) of this section may also serve as a basis for debarment, or the assessment of administrative penalties, and nothing herein shall limit the Department's ability to pursue any such matter. Failure to provide disclosure may be cause for termination.

(1) Applicants. An Applicant may be considered ineligible if any of the criteria in subparagraphs (A) - (N) of this paragraph apply to those identified on the organizational chart for the Applicant, Developer and Guarantor. An Applicant is ineligible if the Applicant, Developer, or Guarantor:

(A) Has been or is barred, suspended, or terminated from participation in a state or Federal program, including those listed in the U.S. government's System for Award Management (SAM); (§2306.0504)

(B) Has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within 15 years preceding the received date of Application or Pre-Application submission (if applicable);

(C) Is, at the time of Application, subject to an order in connection with an enforcement or disciplinary action under state or federal securities law or by the NASD; subject to a federal tax lien (other than a contested lien for which provision has been made); or the subject of a proceeding in which a Governmental Entity has issued an order to impose penalties, suspend funding, or take adverse action based on an allegation of financial misconduct or uncured violation of material laws, rules, or other legal requirements governing activities considered relevant by the Governmental Entity;

(D) Has materially breached a contract with a public agency, and, if such breach is permitted to be cured under the contract, has been given notice of the breach and a reasonable opportunity to cure, and failed to cure that breach within the time specified

in the notice of breach;

(E) Has misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Developer's participation in contracts with the agency, and the amount of financial assistance awarded to the Developer by the agency;

(F) Has been found by the Board to be ineligible based on a previous participation review performed in accordance with Chapter 1 Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee);

(G) Is delinquent in any loan, fee, or escrow payments to the Department in accordance with the terms of the loan, as amended, or is otherwise in default with any provisions of such loans, and for which no repayment plan has been approved by the Department;

(H) Has failed to cure any past due fees owed to the Department within the time frame provided by notice from the Department and at least 10 days prior to the Board meeting at which the decision for an award is to be made;

(I) Would be prohibited by a state or federal revolving door or other standard of conduct or conflict of interest statute, including Tex. Gov't Code, §2306.6733, or a provision of Tex. Gov't Code, Chapter 572, from participating in the Application in the manner and capacity they are participating;

(J) Has, without prior approval from the Department, had previous Contracts or Commitments that have been partially or fully Deobligated during the 12 months prior to the submission of the Application, and through the date of final allocation due to a failure to meet contractual obligations, and the Person is on notice that such Deobligation results in ineligibility under this chapter;

(K) Has provided false or misleading documentation or made other intentional or negligent material misrepresentations or omissions in or in connection with an Application (and certifications contained therein), Commitment, or Determination Notice for a Development;

(L) Was the Owner or Affiliate of the Owner of a Department assisted rental Development for which the federal affordability requirements were prematurely terminated and the affordability requirements have not been re-affirmed or Department funds repaid;

(M) Fails to disclose, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, that has terminated voluntarily or involuntarily within the past 10 years, or plans to or is negotiating to terminate, their relationship with any other affordable housing development. The disclosure must identify the person or persons and

development involved, the identity of each other development, and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. An Application may be referred to the Board for a determination of a person's fitness to be involved as a Principal with respect to an Application, which may include a staff recommendation, using the factors described in clauses (i) - (v) of this subparagraph as considerations:

- (i) the amount of resources in a Development and the amount of the benefit received from the Development;
- (ii) the legal and practical ability to address issues that may have precipitated the termination or proposed termination of the relationship;
- (iii) the role of the person in causing or materially contributing to any problems with the success of the development;
- (iv) the person's compliance history, including compliance history on other developments; and
- (v) any other facts or circumstances that have a material bearing on the question of the person's ability to be a compliant and effective participant in their proposed role as described in the Application; or

(N) Fails to disclose in the Application any voluntary compliance agreement or similar agreement with any governmental agency that is the result of negotiation regarding noncompliance of any affordable housing Development with any requirements. Any such agreement impacting the proposed Development or any other affordable housing Development controlled by the Applicant must be disclosed.

(2) Applications. An Application shall be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph apply to the Application:

(A) A violation of Tex. Gov't Code, §2306.1113, exists relating to Ex Parte Communication. An ex parte communication occurs when an Applicant or Person representing an Applicant initiates substantive contact (other than permitted social contact) with a board member, or vice versa, in a setting other than a duly posted and convened public meeting, in any manner not specifically permitted by Tex. Gov't Code, §2306.1113(b). Such action is prohibited. For Applicants seeking funding after initial awards have been made, such as waiting list Applicants, the ex parte communication prohibition remains in effect so long as the Application remains eligible for funding. The ex parte provision does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may, or will be present; provided that no matters related to any Application being considered by the Board may be discussed;

(B) The Application is submitted after the Application submission deadline (time or date); is missing multiple parts of the Application; or has a Material Deficiency; or

(C) For any Development utilizing Housing Tax Credits or Tax-Exempt Bonds:

- (i) at the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been a person covered by Tex. Gov't Code, §2306.6703(a)(1);
- (ii) if the Application is represented or communicated about by a Person that would prompt the violations covered by Tex. Gov't Code §2306.6733; or
- (iii) the Applicant proposes to replace in less than 15 years any private activity bond financing of the Development described by the Application, unless the exceptions in Tex. Gov't Code §2306.6703(a)(2) are met.

§11.203 Public Notifications. (§2306.6705(9))

A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications must not be older than three months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments and Direct Loan Applications, notifications must not be older than three months prior to the date the complete Application is submitted. If notifications were made in order to satisfy requirements of pre-application submission (if applicable to the program) for the same Application, then no additional notification is required at Application. However, re-notification is required by all Applicants who have submitted a change from pre-application to Application that reflects a total Unit increase of greater than 10% or a 5% increase in density (calculated as units per acre) as a result of a change in the size of the Development Site. In addition, should the jurisdiction of the official holding any position or role described in paragraph (2) of this section change between the submission of a pre- application and the submission of an Application, Applicants are required to notify the new entity no later than the Full Application Delivery Date.

(1) Neighborhood Organization Notifications.

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the beginning of the Application Acceptance Period and whose boundaries include the entire proposed Development Site. As used in this section, "on record with the state" means on record with the Secretary of State.

(B) The Applicant must list, in the certification form provided in the pre-application and Application, all Neighborhood Organizations on record with the county or state as of 30 days prior to the beginning of the Application Acceptance Period and whose boundaries include the proposed Development Site ~~as of the submission of the Application~~, and the Applicant must certify that a reasonable search for applicable entities has been conducted.

(2) Notification Recipients. No later than the date the Application is submitted, notification

must be sent to all of the entities identified in subparagraphs (A) - (H) of this paragraph. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with return receipt requested or similar tracking mechanism. A template for the notification is included in the Application Notification Template provided in the Application. Evidence of notification is required in the form of a certification provided in the Application. The Applicant is required to retain proof of delivery in the event it is requested by the Department. Evidence of proof of delivery is demonstrated by a signed receipt for mail or courier delivery and confirmation of receipt by recipient for fax and e-mail. Officials to be notified are those in office at the time the Application is submitted. Note that between the time of pre-application (if made) and full Application, the boundaries of their jurisdictions may change. Meetings and discussions do not constitute notification.

- (A) Neighborhood Organizations on record with the state or county as of 30 days prior to the beginning of the Application Acceptance Period whose boundaries include the entire Development Site;
- (B) Superintendent of the school district in which the Development Site is located;
- (C) Presiding officer of the board of trustees of the school district in which the Development Site is located;
- (D) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (E) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (F) Presiding officer of the Governing Body of the county in which the Development Site is located;
- (G) All elected members of the Governing Body of the county in which the Development Site is located; and
- (H) State Senator and State Representative of the districts whose boundaries include the Development Site.

(3) Contents of Notification.

- (A) The notification must include, at a minimum, all information described in clauses (i) - (viii) of this subparagraph.
 - (i) the Applicant's name, address, individual contact name, and phone number;
 - (ii) the Development name, address, city and county;
 - (iii) a statement indicating the program(s) to which the Applicant is applying with the Texas Department of Housing and Community Affairs;
 - (iv) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse or Rehabilitation;
 - (v) the physical type of Development being proposed (e.g. single family homes, duplex, apartments, high-rise etc.);
 - (vi) the total number of Units proposed and total number of Low-Income Units proposed;
 - (vii) the residential density of the Development, i.e., the number of Units per acre; and

(viii) information on how and when an interested party or Neighborhood Organization can provide input to the Department.

(B) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will target, provide a preference, or serve a Target Population exclusively, unless such population limitation, targeting, or preference is documented in the Application, and is or will be in full compliance with all applicable state and federal laws, including state and federal fair housing laws; and

(C) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

§11.204 Required Documentation for Application Submission

The purpose of this section is to identify the threshold documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. Unless stated otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program.

(1) Certification, Acknowledgement and Consent of Development Owner. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by the Development Owner and addresses the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification and that they have given it with all required authority and with actual knowledge of the matters certified.

(A) The Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or, if no local building codes are in place, then to the most recent version of the International Building Code.

(B) This Application and all materials submitted to the Department constitute records of the Department subject to Tex. Gov't Code, Chapter 552. Any person signing the Certification acknowledges that they have the authority to release all materials for publication on the Department's website, that the Department may publish them on the Department's website and release them in response to a request for public information, and make other use of the information as authorized by law.

(C) All representations, undertakings and commitments made by Applicant in the Application process expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which

the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment by the Department. If any such representations, undertakings and commitments concern or relate to the ongoing features or operation of the Development, they shall be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also enforceable by the Department and the residents of the Development, including enforcement by administrative penalties for failure to perform (consistent with Chapter 2, Subchapter C of this title relating to Administrative Penalties), in accordance with the Land Use Restriction Agreement.

(D) The Development Owner has read and understands the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.

(E) The Development Owner agrees to implement a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Development Owner will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609 or, if the Development does not have Housing Tax Credits, release of retainage.

(F) The Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Tex. Gov't Code, §2306.6734.

(G) The Development Owner will specifically market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will specifically market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.

(H) The Development Owner will comply with any and all notices required by the Department.

(I) If the Development has an existing LURA with the Department, the Development Owner will comply with the existing restrictions.

(2) Applicant Eligibility Certification. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by any individuals required to be listed on the organizational chart and also meeting the definition of Control. The certification must identify the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under

§11.202 of this chapter (relating to Ineligible Applicants and Applications).

(3) Engineer/Architect Certification Form. The certification, addressing all of the accessibility requirements applicable to the Development Site, must be executed by the Development engineer or accredited architect after careful review of the Department's accessibility requirements, and including Tex. Gov't Code §2306.6722 and §2306.6730.

(4) Notice, Hearing, and Resolution for Tax-Exempt Bond Developments. In accordance with Tex. Gov't Code, §2306.67071, the following actions must take place with respect to the filing of an Application and any Department awards for a Tax-Exempt Bond Development.

(A) Prior to submission of an Application to the Department, an Applicant must provide notice of the intent to file the Application in accordance with §11.203 of this chapter (relating to Public Notifications (§2306.6705(9))).

(B) The Governing Body of a municipality must hold a hearing if the Development Site is located within a municipality or the extra territorial jurisdiction (ETJ) of a municipality. The Governing Body of a county must hold a hearing unless the Development Site is located within a municipality. For Development Sites located in an ETJ the county and municipality must hold hearings; however, the county and municipality may arrange for a joint hearing. The purpose of the hearing(s) must be to solicit public input concerning the Application or Development and the hearing(s) must provide the public with such an opportunity. The Applicant may be asked to substantively address the concerns of the public or local government officials.

(C) An Applicant must submit to the Department a resolution of no objection from the applicable Governing Body. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution, a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any FFAST form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds such as HOME or CDBG funds. For an Application with a Development Site that is:

(i) within a municipality, the Applicant must submit a resolution from the Governing Body of that municipality;

(ii) within the ETJ of a municipality, the Applicant must submit both:

(I) A resolution from the Governing Body of that municipality; and

(II) A resolution from the Governing Body of the county; or

(iii) within a county and not within a municipality or the ETJ of a municipality, a resolution from the Governing Body of the county.

(D) For purposes of meeting the requirements of subparagraph (C) of this paragraph, the resolution(s) must be submitted no later than the Resolutions Delivery Date described in

§11.2(b) of this chapter (relating to Tax-Exempt Bond and Direct Loan Development Dates and Deadlines). An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Applicants should ensure that the resolutions all have the appropriate references and certifications or the resolution may be determined by staff to be invalid. The resolution(s) must certify that:

- (i) notice has been provided to the Governing Body in accordance with Tex. Gov't Code, §2306.67071 (a);
- (ii) the Governing Body has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed Development;
- (iii) the Governing Body has held a hearing at which public comment may be made on the proposed Development in accordance with Tex. Gov't Code, §2306.67071(b); and
- (iv) after due consideration of the information provided by the Applicant and public comment, the Governing Body does not object to the proposed Application.

(5) Designation as Rural or Urban.

(A) Each Application must identify whether the Development Site is located in an Urban Area or Rural Area of a Uniform State Service Region. The Department shall make available a list of Places meeting the requirements of Tex. Gov't Code, §2306.004(28-a)(A) and (B), for designation as a Rural Area and those that are an Urban Area in the Site Demographics Characteristics Report. Some Places are municipalities. For any Development Site located in the ETJ of a municipality and not in a Place, the Application shall have the Rural Area or Urban Area designation of the municipality whose ETJ within which the Development Site is located. For any Development Site not located within the boundaries of a Place or the ETJ of a municipality, the applicable designation is that of the closest Place.

(B) Certain areas located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area can request a Rural designation from the Department for purposes of receiving an allocation Housing Tax Credits (§2306.6740). In order to apply for such a designation, a letter must be submitted from a duly authorized official of the political subdivision or census designated place addressing the factors outlined in clauses (i) - (vi) of this subparagraph. Photographs and other supporting documentation are strongly encouraged. In order for the area to be designated Rural by the Department for the current Application Round, such requests must be made no later than December 15 of the previous year. If staff is able to confirm the findings outlined in the request, the Rural designation will be granted without further action and will remain in effect until such time that the population as described in clause (i) of this subparagraph exceeds 25,000. In the event that staff is unable to confirm the information contained in the request, the Applicant will be given an opportunity to supplement their case. If, after receiving any supplemental information, staff still cannot confirm the rural nature of the Application, a recommendation for denial will be presented to the Board.

- (i) the population of the political subdivision or census designated place does not exceed 25,000;

(ii) the characteristics of the political subdivision or census designated place and how those differ from the characteristics of the area(s) with which it shares a contiguous boundary;

(iii) the percentage of the total border of the political subdivision or census designated place that is contiguous with other political subdivisions or census designated places designated as urban. For purposes of this assessment, less than 50% contiguity with urban designated places is presumptively rural in nature;

(iv) the political subdivision or census designated place contains a significant number of unimproved roads or relies on unimproved roads to connect it to other places;

(v) the political subdivision or census designated place lacks major amenities commonly associated with urban or suburban areas; and

(vi) the boundaries of the political subdivision or census designated place contain, or are surrounded by, significant areas of undeveloped or agricultural land. For purposes of this assessment, significant being more than one-third of the total surface area of political subdivision/census designated place, or a minimum of 1,000 acres immediately contiguous to the border.

(6) Experience Requirement. Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application, unless an experience certificate was issued by the Department in the years 2014-2020, which may be submitted as acceptable evidence of this requirement. Experience of multiple parties may not be aggregated to meet this requirement.

(A) A natural Person, with control of the Development who intends and has the ability to remain in control through placement in service, who is also a Principal of the Developer, Development Owner, or General Partner must establish that they have experience that has included the development and placement in service of 150 units or more. Applicants requesting Multifamily Direct Loan funds only may meet the alternative requirement at §13.5(h)(1) of this title (relating to Experience). ~~Serving only as the HUB for a Development does not meet this requirement. An agreement between a HUB listed as a participant on a previous Application and the person in control of that same Application does not meet this requirement.~~ Acceptable documentation to meet this requirement shall include any of the items in clauses (i) - (ix) of this subparagraph:

—(i) American Institute of Architects (AIA) Document (A102) or (A103) 2007 - Standard Form of Agreement between Owner and Contractor;

—(ii) AIA Document G704--Certificate of Substantial Completion;

—(iii) AIA Document G702--Application and Certificate for Payment;

—(iv) Certificate of Occupancy;

—(v) IRS Form 8609 (only one per development is required);

—(vi) HUD Form 9822;

(vii) Development agreements;

(viii) partnership agreements; or

(ix) other documentation satisfactory to the Department verifying that a Principal of the Development Owner, General Partner, or Developer has the required experience.

(B) The names on the forms and agreements in subparagraph (A)(i) - (ix) of this paragraph must reflect that the individual seeking to provide experience is a Principal of the Development Owner, General Partner, or Developer as listed in the Application. For purposes of this requirement any individual attempting to use the experience of another individual or entity must demonstrate they had the authority to act on their behalf that substantiates the minimum 150 unit requirement.

(C) For competitive HTC Applications, if a Principal is determined by the Department to not have the required experience, a replacement Principal will not be allowed.

(D) Notwithstanding the foregoing, no person may be used to establish such required experience if that Person or an Affiliate of that Person would not be eligible to be an Applicant themselves.

(7) Financing Requirements.

(A) Non-Department Debt Financing. Interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department must be included in the Application. For any Development that is a part of a larger development plan on the same site, the Department may request and evaluate information related to the other components of the development plan in instances in which the financial viability of the Development is in whole or in part dependent upon the other portions of the development plan. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required or elected in accordance with this Chapter or Chapter 13 of this title (relating to Multifamily Direct Loan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with Code §42(g) if the Development will receive housing tax credits. The income and corresponding rent restrictions will be reflected in the LURA. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) - (iv) of this subparagraph.

(i) financing is in place as evidenced by:

(I) A valid and binding loan agreement; and

(II) A valid recorded deed(s) of trust lien on the Development in the name of the Development Owner as grantor in favor of the party providing such financing; and

(ii) term sheets for interim and permanent loans issued by a lending institution or

mortgage company must:

- (I) Have been signed by the lender;
- (II) Be addressed to the Development Owner or Affiliate;
- (III) For a permanent loan, include a minimum loan term of 15 years with at least a 30 year amortization or for non-amortizing loan structures a term of not less than 30 years;
- (IV) Include either a committed and locked interest rate, or the currently projected interest rate and the mechanism for determining the interest rate;
- (V) Include all required Guarantors, if known;
- (VI) Include the principal amount of the loan;
- (VII) Include an acknowledgement of the amounts and terms of all other anticipated sources of funds and if the Application reflects an intent to elect income averaging there must be an acknowledgement to that effect in the term sheet; and
- (VIII) Include and address any other material terms and conditions applicable to the financing. The term sheet may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits, if applicable.

(iii) For Developments proposing to refinance an existing USDA Section 514, 515, or 516 loan, a letter from the USDA confirming that it has been provided with the Preliminary Assessment Tool.

(iv) For Direct Loan Applications or Tax-Exempt Bond Development Applications utilizing FHA financing, the Application shall include the applicable pages from the HUD Application for Multifamily Housing Project. If the HUD Application has not been submitted at the time the Application is submitted then a statement to that effect should be included in the Application along with an estimated date for submission. Applicants should be aware that staff's underwriting of an Application will not be finalized and presented to the Board until staff has evaluated the HUD Application relative to the Application.

(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified and described in the Application. Applicants must provide evidence that an application for such gap financing has been made. Acceptable documentation may include a letter from the funding entity confirming receipt of an application or a term sheet from the lending agency which clearly describes the amount and terms of the financing. Other Department funding requested with Housing Tax Credit Applications must be on a concurrent funding period with the Housing Tax Credit Application, and no term sheet is required for such a request. A term loan request must comply with the applicable terms of the NOFA under which an Applicant is applying.

(C) Owner Contributions. If the Development will be financed in part with a capital contribution or debt by the General Partner, Managing General Partner, any other partner or investor that is not a partner providing the syndication equity, a Guarantor or a

Principal in an amount that exceeds 5% of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or depository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds are and will remain readily available at Commitment and until the required investment is completed. Regardless of the amount, all capital contributions other than syndication equity will be deemed to be a part of, and therefore added to, the Deferred Developer Fee for feasibility purposes under §11.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless the contribution is a seller note equal to or less than the acquisition price of the subject Development, the Development is a Supportive Housing Development, the Development is not supported with Housing Tax Credits, or the ownership structure includes a nonprofit organization with a documented history of fundraising sufficient to support the development of affordable housing.

(D) Equity Financing. (§2306.6705(2) and (3)) If applicable to the program, the Application must include a term sheet from a syndicator that, at a minimum, includes:

- (i) an estimate of the amount of equity dollars expected to be raised for the Development;
- (ii) the amount of Housing Tax Credits requested for allocation to the Development Owner;
- (iii) pay-in schedules;
- (iv) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis; and
- (v) include an acknowledgement of the amounts and terms of all other anticipated sources of funds and if the Application reflects an intent to elect income averaging there must be an acknowledgement to that effect in the term sheet.

(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes all aspects of the financing plan for the Development, including as applicable the sources and uses of funds; construction, permanent and bridge loans, rents, operating subsidies, project-based assistance, and replacement reserves; and the status (dates and deadlines) for applications, approvals and closings, etc. associated with the term sheets for all funding sources. For Applicants requesting Direct Loan funds, Match, as applicable, must be documented with a letter from the anticipated provider of Match indicating the provider's willingness and ability to make a financial commitment should the Development receive an award of Direct Loan funds. The information provided must be consistent with all other documentation in the Application.

(8) Operating and Development Cost Documentation.

(A) Fifteen-year Pro forma. All Applications must include a 15-year pro forma estimate of

operating expenses, in the form provided by the Department. Any "other" debt service included in the pro forma must include a description.

(B) Utility Allowances. This exhibit, as provided in the Application, must be submitted along with documentation from the source of the utility allowance estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate and must comply with the requirements of §10.614 of this title (relating to Utility Allowances), including deadlines for submission. Where the Applicant uses any method that requires Department review, documentation indicating that the requested method has been granted by the Department must be included in the Application.

(C) Operating Expenses. This exhibit, as provided in the Application, must be submitted indicating the anticipated operating expenses associated with the Development. Any expenses noted as "other" in any of the categories must include a description. "Miscellaneous" or other nondescript designations are not acceptable.

(D) Rent Schedule. This exhibit, as provided in the Application, must:

- (i) indicate the type of Unit designation based on the Unit's rent and income restrictions;
- (ii) reflect the rent and utility limits available at the time the Application is submitted;
- (iii) reflect gross rents that cannot exceed the maximum rent limits unless documentation of project-based rental assistance is provided and rents are consistent with such assistance and applicable legal requirements;
- (iv) have a Unit mix and net rentable square footages that are consistent with the site plan and architectural drawings;
- (v) if applying for Direct Loan funds:
 - (I) Direct Loan-restricted Units will generally be designated "floating" unless specifically disallowed under the program specific rules;
 - (II) if HOME, TCAP RF, and/or NSP PI are the anticipated fund source, the Application must have at least 90% of the Direct Loan-restricted Units be available to households or families whose incomes do not exceed 60% of the Area Median Income;
 - (III) in which HOME or TCAP RF are the anticipated fund source have at least 20% of the Direct Loan-restricted Units available to households or families whose incomes do not exceed 50% of the Area Median Income;
 - (IV) in which NHTF is the anticipated fund source, have 100% of the Direct Loan-restricted Units available to households or families whose incomes do not exceed the greater of 30% of the Area Median Income or whose income is at or below the poverty line;
 - (V) in which NSP PI is the anticipated fund source, have at least 25% of the Direct Loan-restricted Units available to households or families whose incomes do not exceed 50% of the Area Median Income; and
- (vi) if proposing to elect income averaging, Units restricted by any fund source other than housing tax credits must be specifically identified, and all restricted Units,

regardless of fund source, must be included in the average calculation.

(E) Development Costs. This exhibit, as provided in the Application, must include the contact information for the person providing the cost estimate and must meet the requirements of clauses (i) and (ii) of this subparagraph.

(i) Applicants must provide a detailed cost breakdown of projected Site Work costs (excluding site amenities), if any, prepared by a Third Party engineer or cost estimator. If Site Work costs (excluding site amenities) exceed \$15,000 per Unit and are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis.

(ii) If costs for Off-Site Construction are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then an Off-Site Cost Breakdown prepared by a Third Party engineer must be provided. The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes and the source of their cost estimate. If any Off-Site Construction costs are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those costs should be included in Eligible Basis. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the Development matches the fact pattern in PLR 200916007.

(F) Rental Assistance/Subsidy. (§2306.6705(4)) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds. Such documentation shall, at a minimum, identify the source and annual amount of the funds, the number of units receiving the funds, and the term and expiration date of the contract or other agreement.

(G) Occupied Developments. The items identified in clauses (i) - (vi) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins. If the Application includes a request for Direct Loan funds, Applicants must follow the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and other HUD requirements including Section 104(d) of the Housing and Community Development Act. HUD Handbook 1378 provides guidance and template documents. Failure to follow URA or 104(d) requirements will make the proposed Development ineligible for Direct Loan funds and may lead to penalty under §13.11(b) of this title (relating to Multifamily Direct Loan Rule). If one or more of the items described in clauses (i) - (vi) of this subparagraph is not applicable based

upon the type of occupied structures on the Development Site, the Applicant must provide an explanation of such non- applicability. Applicant must submit:

- (i) at least one of the items identified in subclauses (I) - (IV) of this clause:
 - (I) Historical monthly operating statements of the Existing Residential Development for 12 consecutive months ending not more than three months from the first day of the Application Acceptance Period;
 - (II) The two most recent consecutive annual operating statement summaries;
 - (III) The most recent consecutive six months of operating statements and the most recent available annual operating summary; or
 - (IV) All monthly or annual operating summaries available; and
- (ii) a rent roll not more than six months old as of the first day the Application Acceptance Period that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and any vacant units;
- (iii) a written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))
- (iv) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))
- (v) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or to ensure compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and
- (vi) if applicable, evidence that the relocation plan has been submitted to all appropriate legal or governmental agencies or bodies. (§2306.6705(6))

(9) Architectural Drawings. All Applications must include the items identified in subparagraphs (A) – (D) of this paragraph, unless specifically stated otherwise, and must be consistent with all applicable exhibits throughout the Application. The drawings must have a legible scale and show the dimensions of each perimeter wall and floor heights.

(A) For all Developments a site plan must be submitted that includes the items identified in clauses (i) - (xii) of this subparagraph:

- (i) states the size of the site on its face;
- (ii) includes a Unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application in labeling buildings and Units;
- (iii) includes a table matrix specifying the square footage of Common Area space on a building by building basis;
- (iv) identifies all residential and common buildings in place on the Development Site and labels them consistently with the Rent Schedule and Building/Unit Type Configuration forms provided in the Application;
- (v) shows the locations (by Unit and floor) of mobility and hearing/visual accessible Units (unless included in residential building floor plans);
- (vi) clearly delineates the flood plain boundary lines or states there is no floodplain;
- (vii) indicates placement of detention/retention pond(s) or states there are no detention ponds;

- (viii) describes, if applicable, how flood mitigation or other required mitigation will be accomplished;
- (ix) indicates the location and number of parking spaces, garages, and carports;
- (x) indicates the location and number of accessible parking spaces, garages, and carports, including van accessible spaces;
- (xi) includes information regarding local parking requirements; and
- (xii) indicates compliant accessible routes or if a route is not accessible a cite to the provision in the Fair Housing Design Manual providing for its exemption.

(B) Building floor plans must be submitted for each building type. Building floor plans must include the locations of the accessible Units and must also include square footage calculations for balconies, breezeways, corridors and any other areas not included in net rentable area;

(C) Unit floor plans for each type of Unit must be included in the Application and must include the square footage for each type of Unit. Unit floor plans must be submitted for the accessible Units. Applications for Adaptive Reuse are only required to include Unit floor plans for each distinct floor plan such as one-Bedroom, or two-Bedroom, and for all floor plans that vary in Net Rentable Area by 10% from the typical floor plan; and

(D) Elevations must be submitted for each side of each building type (or include a statement that all other sides are of similar composition as the front) and include a percentage estimate of the exterior composition and proposed roof pitch. Applications for Rehabilitation and Adaptive Reuse may submit photographs if the Unit configurations are not being altered and post-renovation drawings must be submitted if Unit configurations are proposed to be altered.

(10) Site Control.

(A) Evidence that the Development Owner has Site Control must be submitted. If the evidence is not in the name of the Development Owner, then an Affiliate of the Development Owner must have Site Control that allows for an ability to assign the Site Control to the Development Owner. All of the sellers of the proposed Property for the 36 month period prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development Team must be identified at the time of Application. The Department may request documentation at any time after submission of an Application of the Development Owner's ability to compel title of any Affiliated property acquisition(s) and the Development Owner must be able to promptly provide such documentation or the Application, award, or Commitment may be terminated. The Department acknowledges and understands that the Property may have one or more encumbrances at the time of Application submission and the Department will take into account whether any such encumbrance is reasonable within the legal and financial ability of the Development Owner to address without delaying development on the timeline contemplated in the Application. Tax-Exempt Bond Lottery Applications must have Site

Control valid through December 1 of the prior program year with the option to extend through March 1 of the current program year.

(B) In order to establish Site Control, one of the items described in clauses (i) - (iii) of this subparagraph must be provided. In the case of land donations, Applicants must demonstrate that the entity donating the land has Site Control as evidenced through one of the items described in clauses (i) - (iii) of this subparagraph or other documentation acceptable to the Department.

(i) a recorded warranty deed vesting indefeasible title in the Development Owner or, if transferrable to the Development Owner, an Affiliate of the Owner, with corresponding executed settlement statement (or functional equivalent for an existing lease with at least 45 years remaining); or

(ii) a contract or option for lease with a minimum term of 45 years that includes a price; address or legal description; proof of consideration in the form specified in the contract; and expiration date; or

(iii) a contract for sale or an option to purchase that includes a price; address or legal description; proof of consideration in the form specified in the contract; and expiration date.

(C) If the acquisition can be characterized as an identity of interest transaction, as described in §11.302 of this chapter, regarding Underwriting Rules and Guidelines, then the documentation required as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.

(D) If ingress and egress to a public right of way are not part of the Property described in the site control documentation, the Applicant must provide evidence of an easement, leasehold, or similar documented access, along with evidence that the fee title owner of the property agrees that the LURA may extend to the access easement by the time of Commitment, Determination Notice or Contract (as applicable).

(E) If control of the entire proposed Development Site requires that a plat or right of way be vacated to remove a right of way or similar dedication, evidence that the vacation/re-platting process has started must be included in the Application, and evidence of control of the entire Development Site must be provided by the time of Commitment, Determination Notice or Contract (as applicable).

(11) Zoning. (§2306.6705(5)) Acceptable evidence of zoning for all Developments must include one of subparagraphs (A) - (D) of this paragraph. In instances where annexation of a Development Site occurs while the Application is under review, the Applicant must submit evidence of appropriate zoning with the Commitment or Determination Notice. Letters evidencing zoning status must be no more than 6-months old at Application submission, except where such evidence is for an area where there is no zoning and such letters must be updated annually by the political subdivision.

(A) No Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision that has no zoning; or

(B) Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating the Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development; or

(C) Requesting a Zoning Change. The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate has made formal application for a required zoning change and that the jurisdiction has received a release whereby the Applicant has agreed to hold the political subdivision and all other parties harmless in the event the appropriate zoning is not granted. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice; or

(D) Zoning for Rehabilitation Developments. In an area with zoning, the Application must include documentation of current zoning. If the Property is currently conforming but with an overlay that would make it a non-conforming use as presently zoned, the Application must include a letter from a local government official with appropriate jurisdiction which addresses the items in clauses (i) - (v) of this subparagraph:

- (i) a detailed narrative of the nature of non-conformance;
- (ii) the applicable destruction threshold;
- (iii) that it will allow the non-conformance;
- (iv) Owner's rights to reconstruct in the event of damage; and
- (v) penalties for noncompliance.

(12) Title Commitment/Policy. A title commitment or title policy must be submitted that includes a legal description that is consistent with the Site Control. If the title commitment or policy is dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, then a letter from the title company indicating that nothing further has transpired during the six-month period on the commitment or policy must be submitted.

(A) The title commitment must list the name of the Development Owner as the proposed insured and list the seller or lessor as the current owner of the Development Site.

(B) The title policy must show that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner.

(13) Ownership Structure and Previous Participation.

(A) The Department assumes that the Applicant will be able to form any one or more

business entities, such as a limited partnership, that are to be engaged in the ownership of a Development as represented in the Application, and that all necessary rights, powers, and privileges including, but not limited to, Site Control will be transferable to that entity. The formation of the ownership entity, qualification to do business (if needed), and transfer of any such rights, powers, and privileges must be accomplished as required in this chapter and 10 TAC Chapters 12 and 13, as applicable.

(B) Organizational Charts. A chart must be submitted that clearly illustrates the organizational structure of the proposed Development Owner and of any Developer and Guarantor, identifying all Principals thereof and providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable, whether directly or through one or more subsidiaries, whether or not they have Control. Persons having Control should be specifically identified on the Chart. Individual board members and executive directors of nonprofit entities, governmental bodies, and corporations, as applicable, must be included in this exhibit and trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries. The List of Organizations form, as provided in the Application, must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development.

(C) Previous Participation. Evidence must be submitted that each individual and entity shown on the organizational charts described in subparagraph (A) of this paragraph has provided a copy of the completed previous participation information to the Department. Individual Principals of such entities identified on the organizational chart and on the List of Organizations form, must provide the previous participation information, unless excluded from such requirement pursuant to Chapter 1 Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee). The information must include a list of all Developments that are, or were, previously under ownership or Control of the Applicant or each Principal, including any Person providing the required experience. All participation in any Department funded or monitored activity, including non-housing activities, as well as Housing Tax Credit developments or other programs administered by other states using state or federal programs must be disclosed. The individuals providing previous participation information must authorize the parties overseeing such assistance to release compliance histories to the Department.

(D) Direct Loan. In addition to the information required in (B) and (C) of this subparagraph, if the Applicant is applying for Direct Loan funds then the Applicant must also include the definitions of Person, Affiliate, Principal, and Control found in 2 CFR Part 180, when completing the organizational chart and the Previous Participation information.

(14) Nonprofit Ownership. Applications that involve a §501(c)(3) or (4) nonprofit, housing finance corporation or public facility corporation as the General Partner or Owner shall submit the documentation identified in subparagraph (A) or (B) of this paragraph, as

applicable. Additionally, a resolution approved at a regular meeting of the majority of the board of directors of the nonprofit, indicating their awareness of the organization's participation in each specific Application, and naming all members of the board and employees who may act on its behalf, must be provided.

(A) Competitive HTC Applications for the Nonprofit Set-Aside. Applications for Competitive Housing Tax Credits involving a §501(c)(3) or (4) nonprofit General Partner and which meet the Nonprofit Set-Aside requirements, must submit all of the documents described in clauses (i) to (v) of this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609. (§2306.6706) Applications that include an affirmative election to not be treated under the Nonprofit Set-Aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being Affiliated with a nonprofit, only need to submit the documentation in subparagraph (B) of this paragraph.

(i) An IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code;

(ii) The Nonprofit Participation exhibit as provided in the Application, including a list of the names and contact information for all board members, directors, and officers;

(iii) A Third Party legal opinion stating:

(I) That the nonprofit organization is not Affiliated with or Controlled by a for-profit organization and the basis for that opinion;

(II) That the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside pursuant to Code, §42(h)(5) and the basis for that opinion;

(III) That one of the exempt purposes of the nonprofit organization is to provide low-income housing;

(IV) That the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board. If the Application includes a request for Community Housing Development Corporation (CHDO) funds, no member of the board may receive compensation, including the chief staff member;

(V) That the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement;and

(VI) That the nonprofit organization has the ability to do business as a nonprofit in Texas;

(iv) a copy of the nonprofit organization's most recent financial statement as prepared by a Certified Public Accountant; and

(v) evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:

(I) in this state, if the Development is located in a Rural Area; or

(II) not more than ninety (90) miles from the Development, if the Development is

not located in a Rural Area.

(B) All Other Applications. Applications that involve a §501(c)(3) or (4) nonprofit, housing finance corporation or public facility corporation as the General Partner or Owner must submit an IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code; and the Nonprofit Participation exhibit as provided in the Application. If the Application involves a nonprofit that is not exempt from taxation under §501(c)(3) or (4) of the Code, then they must disclose in the Application the basis of their nonprofit status. Housing finance corporations or public facility corporations that do not have such IRS determination letter shall submit documentation evidencing creation under their respective chapters of the Texas Local Government Code and corresponding citation for an exemption from taxation.

(15) Feasibility Report. This report, compiled by the Applicant or Third Party Consultant, and prepared in accordance with this paragraph, which reviews site conditions and development requirements of the Development and Development Site, is required and must meet all of the criteria provided in subparagraphs (A) to (F) of this paragraph. Acquisition and Rehabilitation Applications are exempted from this requirement. If an Application involves Acquisition and Rehabilitation along with other activities, the Feasibility Report is required for the entire Development.

(A) For all Applications, careful focus and attention should be made regarding any atypical items materially impacting costs or the successful and timely execution of the Development plan. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(B) An Executive Summary must provide a narrative overview of the Development in sufficient detail that would help a reviewer of the Application better understand the site, the site plan, off site requirements (including discussion of any seller contributions or reimbursements), any other unique development requirements, and their impact on Site Work and Off- Site Construction costs. It should specifically describe any atypical or unusual factors that will impact site design or costs.

(C) The Report should contain a general statement regarding the level of due diligence that has been done relating to site development (including discussions with local government development offices). Where ordinances or similar information is required, provide website links rather than copies of the ordinance. Additionally, it should contain:

- (i) a summary of zoning requirements,
- (ii) subdivision requirements,
- (iii) property identification number(s) and millage rates for all taxing jurisdictions,
- (iv) development ordinances,

- (v) fire department requirements,
- (vi) site ingress and egress requirements, and
- (vii) building codes, and local design requirements impacting the Development.

(D) Survey as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey or Category 1B - Standard Land Boundary Survey). Surveys (excluding those for Rehabilitation Developments) may not be older than 24 months from the beginning of the Application Acceptance Period.

(E) Preliminary site plan for New Construction or Adaptive Reuse Developments prepared by the civil engineer with a statement that the plan materially adheres to all applicable zoning, site development, and building code ordinances. The site plan must identify all structures, site amenities, parking spaces and driveways, topography (using either existing seller topographic survey or U.S. Geological Survey (USGS)/other database topography), site drainage and detention, water and waste water utility tie-ins, general placement of retaining walls, set-back requirements, and any other typical or locally required items. Off-site improvements required for utilities, detention, access or other requirement must be shown on the site plan or ancillary drawings.

(F) Architect or civil engineer prepared statement describing the entitlement, site development permitting process and timing, building permitting process and timing, and an itemization specific to the Development of total anticipated impact, site development permit, building permit, and other required fees.

§11.205 Required Third Party Reports

The Environmental Site Assessment, Scope and Cost Review, Appraisal (if applicable), and the Market Analysis must be submitted no later than the Third Party Report Delivery Date as identified in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Direct Loan Development Dates and Deadlines). For Competitive HTC Applications, the Environmental Site Assessment, Scope and Cost Review, Appraisal (if applicable), and the Primary Market Area map (with definition based on census tracts, and site coordinates in decimal degrees, area of PMA in square miles, and list of census tracts included) must be submitted no later than the Full Application Delivery Date as identified in §11.2(a) of this title (relating to Competitive HTC Deadlines Program Calendar) and the Market Analysis must be submitted no later than the Market Analysis Delivery Date as identified in §11.2(a) of this chapter.

For Competitive HTC Applications, if the reports, in their entirety, are not received by the deadline, the Application will be terminated. An electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name and Development location are required. All Third Party reports must be prepared in accordance with Subchapter D of this chapter (relating to Underwriting and Loan

Policy). The Department may request additional information from the report provider or revisions to the report as needed. In instances of non-response by the report provider, the Department may substitute in-house analysis. The Department is not bound by any opinions expressed in the report.

(1) Environmental Site Assessment. This report, required for all Developments and prepared in accordance with the requirements of §11.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines), must not be dated more than 12 months prior to the date of Application submission for non-Competitive Applications, or the first day of the Application Acceptance Period for Competitive HTC Applications. If this timeframe is exceeded, then a letter or updated report must be submitted, dated not more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report.

(A) Existing Developments funded by USDA will not be required to supply this information; however, it is the Applicant's responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(B) If the report includes a recommendation that an additional assessment be performed, then a statement from the Applicant must be submitted with the Application indicating that those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations, then evidence indicating that the mitigating recommendations have been carried out must be submitted at cost certification.

(2) Market Analysis. The Market Analysis, required for all Developments and prepared in accordance with the requirements of §11.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. If the report is older than six months, but not more than 12 months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, the Qualified Market Analyst that prepared the report may provide a statement that reaffirms the findings of the original Market Analysis. The statement may not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications and must be accompanied by the original Market Analysis.

(A) The report must be prepared by a disinterested Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §11.303 of this chapter.

(B) Applications in the USDA Set-Aside proposing Rehabilitation with residential structures at or above 80% occupancy at the time of Application submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §11.304 of this chapter (relating to Appraisal Rules and Guidelines), will satisfy the requirement for a Market Analysis; however, the Department may request additional information as needed. (§2306.67055; §42(m)(1)(A)(iii))

(C) It is the responsibility of the Applicant to ensure that this analysis forms a sufficient basis for the Applicant to be able to use the information obtained to ensure that the Development will comply with fair housing laws.

(3) Scope and Cost Review (SCR). This report, required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Developments and prepared in accordance with the requirements of §11.306 of this chapter (relating to Scope and Cost Review Guidelines), must not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. If the report is older than six months, but not more than 12 months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, the report provider may provide a statement that reaffirms the findings of the original SCR. The statement may not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications and must be accompanied by the original SCR. For Developments which require a capital needs assessment from USDA the capital needs assessment may be substituted for the SCR and may be more than six months old, as long as USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §11.306 of this chapter. All Rehabilitation Developments financed with Direct Loans must also submit a capital needs assessment estimating the useful life of each major system. This assessment must include a comparison between the local building code and the International Existing Building Code of the International Code Council. The report must be accompanied by the Department's SCR Supplement in the form of an excel workbook as published on the Department's website.

(4) Appraisal. This report, required for all Rehabilitation and Adaptive Reuse Developments and prepared in accordance with the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines), is required for any Application claiming any portion of the building acquisition in Eligible Basis, and Identity of Interest transactions pursuant to Subchapter D of this chapter, must not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. For Developments that require an appraisal from USDA, the appraisal may be more than six months old, as long as USDA has confirmed in writing that the existing appraisal is still acceptable.

§11.206 Board Decisions (§§2306.6725(c);2306.6731; and 42(m)(1)(A)(iv))

The Board's decisions regarding awards shall be based upon the Department's staff and the Board's evaluation of the proposed Developments' consistency with, and fulfillment of, the criteria and requirements set forth in this chapter, Chapter 13 of this title (relating to the Multifamily Direct Loan Rule) and other applicable Department rules and other applicable state, federal and local legal requirements, whether established in statute, rule, ordinance, NOFA, official finding, or court order. The Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause, and the reasons for any decision that conflicts with the recommendations made by Department staff. Good cause includes the Board's decision to apply discretionary factors where authorized. The Department reserves the right to reduce the amount of funds requested in an Application, condition the award recommendation or terminate the Application based on the Applicant's inability to demonstrate compliance with program requirements.

§11.207 Waiver of Rules

An Applicant may request a waiver from the Board in writing at or prior to the submission of the pre-application (if applicable) or the Application or subsequent to an award. Waiver requests on Competitive HTC Applications will not be accepted between submission of the Application and any award for the Application. Staff may identify and initiate a waiver request as part of another Board action request. Where appropriate, the Applicant must submit with the requested waiver any plans for mitigation or alternative solutions. Any such request for waiver must be specific to the unique facts and circumstances of an actual proposed Development and must be submitted to the Department in the format required in the Multifamily Programs Procedures Manual. Any waiver, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved. All waiver requests must meet the requirements of paragraphs (1) and (2) of this subsection.

(1) A waiver request made at or prior to pre-application or Application must establish that the need for the waiver is not within the control of the Applicant. In applicable circumstances, this may include limitations of local building or zoning codes, limitations of existing building structural elements for Adaptive Reuse or Rehabilitation (excluding Reconstruction) Developments, required amenities or design elements in buildings designated as historic structures that would conflict with retaining the historic nature of the building(s), or provisions of the design element or amenity that would not benefit the tenants due to limitations of the existing layout or design of the units for Adaptive Reuse or Rehabilitation (excluding Reconstruction) Developments. A recommendation for a waiver may be subject to the Applicant's provision of alternative design elements or amenities of a similar nature or that serve a similar purpose. Waiver requests for items that were elected to meet scoring criteria or where the Applicant was provided a menu of options to meet the requirement will not be considered to satisfy this paragraph as such waiver request would be within the Applicant's control.

(2) The waiver request must establish how, by granting the waiver, it better serves the policies

and purposes articulated in Tex. Gov't Code, §§2306.001, 2306.002, 2306.359, and 2306.6701, (which are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program) than not granting the waiver.

(3) The Board may not grant a waiver to provide directly or implicitly any forward commitments or to waive any requirement contained in statute. The Board may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the Qualified Allocation Plan to the extent authorized by a governor declared disaster proclamation suspending regulatory requirements.

SUBCHAPTER D UNDERWRITING AND LOAN POLICY

§11.301 General Provisions

This subchapter applies to the underwriting, Market Analysis, appraisal, Environmental Site Assessment, Direct Loan, and Scope and Cost Review standards employed by the Department. This subchapter provides rules for the underwriting review of an affordable housing Development's financial feasibility and economic viability that ensures the most efficient allocation of resources while promoting and preserving the public interest in ensuring the long-term health of an awarded Application and the Department's portfolio. In addition, this subchapter guides staff in making recommendations to the Executive Award and Review Advisory Committee (EARAC or the Committee), Executive Director, and the Board to help ensure procedural consistency in the determination of Development feasibility (Texas Government Code, §§2306.081(c), 2306.185, and 2306.6710(d)). Due to the unique characteristics of each Development, the interpretation of the rules and guidelines described in this subchapter is subject to the discretion of the Department and final determination by the Board.

§11.302 Underwriting Rules and Guidelines

(a) General Provisions. Pursuant to Tex. Gov't Code, §2306.148 and §2306.185(b), the Board is authorized to adopt underwriting standards as set forth in this section. Furthermore, for Housing Credit Allocation, Code §42(m)(2), requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. Additionally, 24 CFR Parts 92 and 93, as further described in CPD Notice 15-11 require the Department to adopt rules and standards to determine the appropriate Multifamily Direct Loan feasibility. The rules adopted pursuant to the Tex. Gov't Code and the Code are developed to result in an Underwriting Report (Report) used by the Board in decision making with the goal of assisting as many Texans as possible by providing no more financing than necessary based on an independent analysis of Development feasibility. The Report generated in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development.

(b) Report Contents. The Report provides a synopsis and reconciliation of the Application information submitted by the Applicant. For the purpose of this subchapter the term Application includes additional documentation submitted after the initial award of funds that is relevant to any subsequent reevaluation. The Report contents will be based upon information that is provided in accordance with and within the timeframes set forth in this chapter, 10 TAC Chapters 11, 12, or 13, or in a Notice of Funds Availability (NOFA), as applicable.

(c) Recommendations in the Report. The conclusion of the Report, if being recommended, includes a recommended award of funds or Housing Credit Allocation Amount and states any feasibility or other conditions to be placed on the award. The award amount is based on the lesser of the amounts determined using the methods in paragraphs (1) to (3) of this subsection:

(1) Program Limit Method. For Housing Credit Allocations, this method is based upon calculation of Eligible Basis after applying all cost verification measures and program limits as described in this section. The Applicable Percentage used is defined in §11.1(d) of this chapter (relating to Definitions). For Department programs other than Housing Tax Credits, this method is based upon calculation of the funding limit in current program rules or NOFA at the time of underwriting.

(2) Gap Method. This method evaluates the amount of funds needed to fill the gap created by Total Housing Development Cost less total non-Department-sourced funds or Housing Tax Credits. In making this determination, the Underwriter resizes any anticipated Deferred Developer Fee downward (but not less than zero) before reducing the amount of Department funds or Housing Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Housing Tax Credits. In making this determination and based upon specific conditions set forth in the Report, the Underwriter may assume adjustments to the financing structure (including treatment of a Cash Flow loan as if fully amortizing over its term) or make adjustments to any Department financing, such that the cumulative Debt Coverage Ratio (DCR) conforms to the standards described in this section. For Housing Tax Credit Developments at cost certification, timing adjusters may be considered as a reduction to equity proceeds for this purpose. Timing adjusters must be consistent with and documented in the original partnership agreement (at admission of the equity partner) but relating to causes outside of the Developer's or Owner's control. The equity partner must provide a calculation of the amount of the adjuster to be used by the Underwriter.

(3) The Amount Requested. The amount of funds that is requested by the Applicant. For Housing Tax Credit Developments (exclusive of Tax-Exempt Bond Developments) this amount is limited to the amount requested in the original Application documentation.

(d) Operating Feasibility. The operating feasibility of a Development funded by the Department is tested by analyzing its Net Operating Income (NOI) to determine the Development's ability to pay debt service and meet other financial obligations throughout the Affordability Period. NOI is determined by subtracting operating expenses, including replacement reserves and taxes, from rental and other income sources.

(1) Income. In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's income pro forma by determining the appropriate rental rate per unit based on subsidy contracts, program limitations including but not limited to Utility Allowances, actual rents supported by rent rolls and Market Rents and other market conditions. Miscellaneous income, vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are used unless well-documented support is provided and independently verified by the Underwriter.

(A) Rental Income. The Underwriter will review the Applicant's proposed rent schedule and determine if it is consistent with the representations made throughout the

Application. The Underwriter will independently calculate a Pro Forma Rent for comparison to the Applicant's estimate in the Application.

(i) Market Rents. The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst and other market data sources. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Gross Program Rent at 60% AMI, or 80% if the Applicant will make the Income Average election. As an alternative, if the Applicant submits Market Rents that are up to 30% higher than the Gross Program Rent at 60% AMGI gross rent, or Gross Program Rent at 80% AMGI gross rent and the Applicant will make the Income Average election, and the Applicant submits an investor commissioned market study with the application, the Underwriter has the discretion to use the market rents supported by the investor commissioned market study in consideration of the independently determined rents. The Applicant must also provide a statement by the investor indicating that they have reviewed the market study and agree with its conclusions.

(ii) Gross Program Rent. The Underwriter will use the Gross Program Rents for the year that is most current at the time the underwriting begins. When underwriting for a simultaneously funded competitive round, all Applications are underwritten with the Gross Program Rents for the same year. If Gross Program Rents are adjusted by the Department after the close of the Application Acceptance Period, but prior to publication of the Report, the Underwriter may adjust the Effective Gross Income (EGI) to account for any increase or decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.

(iii) Contract Rents. The Underwriter will review rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The Underwriter will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the Applicant's proposed rents may be used as the Pro Forma Rent, with the recommendations of the Report conditioned upon receipt of final approval of such an increase. Tenant-based vouchers or tenant-based rental assistance are not included as Income.

(iv) Utility Allowances. The Utility Allowances used in underwriting must be in compliance with all applicable federal guidance, and §10.614 of this title (relating to Utility Allowances). Utility Allowances must be calculated for individually metered tenant paid utilities.

(v) Net Program Rents. Gross Program Rent less Utility Allowance.

(vi) Actual Rents for existing Developments will be reviewed as supported by a current rent roll. For Unstabilized Developments, actual rents will be based on the most recent units leased with occupancy and leasing velocity considered. Actual rents may be adjusted by the Underwriter to reflect lease-up concessions and other market considerations.

(vii) Collected Rent. Represents the monthly rent amount collected for each Unit Type. For rent- assisted units, the Contract Rent is used. In absence of a Contract Rent, the lesser of the Net Program Rent, Market Rent or actual rent is used.

(B) Miscellaneous Income. All ancillary fees and miscellaneous secondary income, including but not limited to, late fees, storage fees, laundry income, interest on deposits, carport and garage rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a \$5 to \$20 per Unit per month range. Exceptions may be made at the discretion of the Underwriter and must be supported by either the normalized operating history of the Development or other existing comparable properties within the same market area.

(i) The Applicant must show that a tenant will not be required to pay the additional fee or charge as a condition of renting a Unit and must show that the tenant has a reasonable alternative.

(ii) The Applicant's operating expense schedule should reflect an itemized offsetting line-item associated with miscellaneous income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.

(iii) Collection rates of exceptional fee items will generally be heavily discounted.

(iv) If an additional fee is charged for the optional use of an amenity, any cost associated with the construction, acquisition, or development of the hard assets needed to produce the amenity must be excluded from Eligible Basis.

(C) Vacancy and Collection Loss. The Underwriter generally uses a normalized vacancy rate of 7.5% (5% vacancy plus 2.5% for collection loss). The Underwriter may use other assumptions based on conditions in the immediate market area. 100% project-based rental subsidy developments and other well documented cases may be underwritten at a combined 5% vacancy rate at the discretion of the Underwriter if the immediate market area's historical performance reflected in the Market Analysis is consistently higher than a 95% occupancy rate.

(D) Effective Gross Income (EGI). EGI is the total of Collected Rent for all Units plus Miscellaneous Income less Vacancy and Collection Loss. If the Applicant's pro forma EGI is within 5% of the EGI independently calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating the underwritten DCR the Underwriter's pro forma will be used unless the Applicant's pro forma meets the requirements of paragraph (3) of this subsection.

(2) Expenses. In determining the first year stabilized operating expense pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate based upon the characteristics of each Development, including the location, utility structure, type, the size and number of Units, and the Applicant's management plan. Historical, stabilized and certified financial statements of an existing Development or Third Party quotes specific to a Development will reflect the strongest data points to predict future performance. The Underwriter may review actual operations on the Applicant's other properties monitored by the Department, if any, or review the proposed management company's comparable properties. The Department's database of properties located in the same market area or region as the proposed Development also provides data points; expense data from the Department's database is available on the Department's website. Data from the Institute of Real Estate Management's (IREM) most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as PHA Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(A) General and Administrative Expense. (G&A)--Accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. G&A does not include partnership related expenses such as asset management, accounting or audit fees. Costs of tenant services are not included in G&A.

(B) Management Fee. Fee paid to the property management company to oversee the operation of the Property and is most often based upon a percentage of EGI as documented in an existing property management agreement or proposal. Typically, 5% of EGI is used, though higher percentages for rural transactions may be used. Percentages as low as 3% may be used if well documented.

(C) Payroll Expense. Compensation, insurance benefits, and payroll taxes for on-site office, leasing and maintenance staff. Payroll does not include Third-Party security or tenant services contracts. Staffing specific to tenant services, security or other staffing not related to customary property operations should be itemized and included in other expenses or tenant services expense.

(D) Repairs and Maintenance Expense. Materials and supplies for the repairs and maintenance of the Development including Third-Party maintenance contracts. This line-item does not include costs that are customarily capitalized that would result from major replacements or renovations.

(E) Utilities Expense. Gas and electric energy expenses paid by the Development. Estimates of utility savings from green building components, including on-site renewable

energy, must be documented by an unrelated contractor or component vendor.

(F) Water, Sewer, and Trash Expense (WST). Includes all water, sewer and trash expenses paid by the Development.

(G) Insurance Expense. Cost of Insurance coverage for the buildings, contents, and general liability, but not health or workman's compensation insurance.

(H) Property Tax. Includes real property and personal property taxes but not payroll taxes.

(i) An assessed value will be calculated based on the capitalization rate published by the county taxing authority. If the county taxing authority does not publish a capitalization rate, a capitalization rate of 10% or a comparable assessed value may be used.

(ii) Other assessed values or property tax estimates may be used based on development specific factors as determined by the Underwriter.

(iii) If the Applicant proposes a property tax exemption or Payment in Lieu of Taxes (PILOT) agreement the Applicant must provide documentation in accordance with §10.402(d) of this title (relating to Documentation Submission Requirements at Commitment of Funds). At the underwriter's discretion, such documentation may be required prior to Commitment or Determination Notice if deemed necessary.

(I) Replacement Reserves. Periodic deposits to a reserve account to pay for the future replacement or major repair of building systems and components (generally items considered capitalized costs). The Underwriter will use a minimum reserve of \$250 per Unit for New Construction and Reconstruction Developments and \$300 per Unit for all other Developments. The Underwriter may require an amount above \$300 for the Development based on information provided in the Scope and Cost Review (SCR) or, for existing USDA developments, an amount approved by USDA. The Applicant's assumption for reserves may be adjusted by the Underwriter if the amount provided by the Applicant is insufficient to fund capital needs as documented by the SCR during the first fifteen (15) years of the long term pro forma. Higher reserves may be used if documented by a primary lender or syndicator.

(J) Other Operating Expenses. The Underwriter will include other reasonable, customary and documented property-level operating expenses such as audit fees, security expense, telecommunication expenses (tenant reimbursements must be reflected in EGI) and TDHCA's compliance fees. For Developments financed by USDA, a Return to Owner (RTO) may be included as an operating expense in an amount consistent with the maximum approved by USDA or an amount determined by the Underwriter. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees.

(K) Resident Services. Resident services are not included as an operating expense or included in the DCR calculation unless:

(i) There is a documented financial obligation on behalf of the Owner with a unit of state or local government to provide resident supportive services at a specified dollar amount. The financial obligation must be identified by the permanent lender in their term sheet and the dollar amount of the financial obligation must be included in the DCR calculation on the permanent lender's 15-year pro forma at Application. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred; or,

(ii) The Applicant demonstrates a history of providing comparable supportive services and expenses at existing affiliated properties within the local area. Except for Supportive Housing Developments, the estimated expense of supportive services must be identified by the permanent lender in their term sheet and included in the DCR calculation on the 15-year pro forma. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred;

(iii) On-site staffing or pro ration of staffing for coordination of services only, and not the provision of services, can be included as a supportive services expense without permanent lender documentation.

(L) Total Operating Expenses. The total of expense items described in 10 TAC 11.302(d)(2) subparagraphs (A) - (K) of this paragraph. If the Applicant's total expense estimate is within 5% of the final total expense figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR, the Underwriter's independent calculation will be used unless the Applicant's first year stabilized pro forma meets the requirements of paragraph (3) of this subsection.

(3) Net Operating Income (NOI). The difference between the EGI and total operating expenses. If the Applicant's first year stabilized NOI figure is within 5% of the NOI calculated by the Underwriter, the Applicant's NOI is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR, the Underwriter's calculation of NOI will be used unless the Applicant's first year stabilized EGI, total operating expenses, and NOI are each within 5% of the Underwriter's estimates. For Housing Tax Credit Developments at cost certification, actual NOI will be used as adjusted for stabilization of rents and extraordinary lease-up expenses. Permanent lender and equity partner stabilization requirements documented in the loan and partnership agreements will be considered in determining the appropriate adjustments and the NOI used by the Underwriter.

(4) Debt Coverage Ratio. DCR is calculated by dividing NOI by the sum of the debt service payments on all permanent or foreclosable lien(s) with scheduled and periodic payment requirements, including any required debt service on a Direct Loan subject to the applicable Notice of Funding Availability (NOFA) or other program requirements, and any on-going loan related fees such as credit enhancement fees or loan servicing fees. If executed loan

documents do not exist, loan terms including principal and interest payments are calculated based on the terms indicated in the most current term sheet(s). Otherwise, actual terms indicated in the executed loan documents will be used. Term sheet(s) must indicate the minimum DCR required by the lender for initial underwriting as well as for stabilization purposes. Unusual or non-traditional financing structures may also be considered.

(A) Interest Rate. The rate documented in the term sheet(s) or loan document(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide the base rate index or methodology for determining the variable rate index and any component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate assumption, or the Applicant must submit a separate statement from the lender with an estimate of the interest rate as of the date of such statement. At initial underwriting, the Underwriter may adjust the underwritten interest rate assumption based on market data collected on similarly structured transactions or rate index history. Private Mortgage Insurance premiums and similar fees are not included in the interest rate but calculated on outstanding principal balance and added to the total debt service payment.

(B) Amortization Period. For purposes of calculating DCR, the permanent lender's amortization period will be used if not less than 30 years and not more than 40 years. Up to 50 years may be used for federally sourced or insured loans. For permanent lender debt with amortization periods less than 30 years, 30 years will be used. For permanent lender debt with amortization periods greater than 40 years, 40 years will be used. For non-Housing Tax Credit transactions a lesser amortization period may be used if the Direct Loans will be fully amortized over the same period as the permanent lender debt.

(C) Repayment Period. For purposes of projecting the DCR over a 30 year period for Developments with permanent financing structures with balloon payments in less than 30 years, the Underwriter will carry forward debt service based on a full amortization at the interest rate stated in the term sheet(s).

(D) Acceptable Debt Coverage Ratio Range. Except as set forth in clauses (i) or (ii) of this subparagraph, the acceptable first year stabilized pro forma DCR must be between a minimum of 1.15 and a maximum of 1.35 (maximum of 1.50 for Housing Tax Credit Developments at cost certification).

(i) If the DCR is less than the minimum, the recommendations of the Report may be based on a reduction to debt service and the Underwriter will make adjustments to the financing structure in the priority order presented in subclauses (I) – (IV) of this clause subject to Direct Loan NOFA requirements and program rules:

- (I) A reduction to the interest rate of a Direct Loan;
- (II) An increase in the amortization period of a Direct Loan;
- (III) A reduction in the principal amount of a Direct Loan; and
- (IV) An assumed reduction in the permanent loan amount for non-Department

funded loans based upon the rates and terms in the permanent loan term sheet(s) as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(ii) Except for Developments financed with a Direct Loan as the senior debt and the DCR is greater than the maximum, the recommendations of the Report may be based on an increase to debt service and the Underwriter will make adjustments to the assumed financing structure in the priority order presented in subclauses (I) - (III) of this clause subject to Direct Loan NOFA requirements and program rules:

(I) an increase to the interest rate of a Direct Loan up to the lesser of the maximum interest rate pursuant to a Direct Loan NOFA or the interest rate on any senior permanent debt or if no senior permanent debt a market rate determined by the Underwriter based on current market interest rates;

(II) or a decrease in the amortization period on a Direct Loan but not less than 30 years;

(III) an assumed increase in the permanent loan amount for non-Department proposed financing based upon the rates and terms in the permanent loan term sheet as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(iii) For Housing Tax Credit Developments, a reduction in the recommended Housing Credit Allocation Amount may be made based on the Gap Method described in subsection (c)(2) of this section as a result of an increased debt assumption, if any.

(iv) For Developments financed with a Direct Loan subordinate to FHA financing, DCR on the Direct Loan will be calculated using 75% of the Surplus Cash (as defined by the applicable FHA program).

(v) The Underwriter may limit total debt service that is senior to a Direct Loan to produce an acceptable DCR on the Direct Loan and may limit total debt service if the Direct Loan is the senior primary debt.

(5) Long Term Pro forma. The Underwriter will create a 30-year operating pro forma using the criteria provided in subparagraphs (A) to (C) of this paragraph:

(A) The Underwriter's or Applicant's first year stabilized pro forma as determined by paragraph (3) of this subsection.

(B) A 2% annual growth factor is utilized for income and a 3% annual growth factor is utilized for operating expenses except for management fees that are calculated based on a percentage of each year's EGI.

(C) Adjustments may be made to the long term pro forma if satisfactory support documentation is provided by the Applicant or as independently determined by the

Underwriter.

(e) Total Housing Development Costs. The Department's estimate of the Total Housing Development Cost will be based on the Applicant's Development cost schedule to the extent that costs can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For New Construction Developments, the Underwriter's total cost estimate will be used unless the Applicant's Total Housing Development Cost is within 5% of the Underwriter's estimate. The Department's estimate of the Total Housing Development Cost for Rehabilitation Developments or Adaptive Reuse Developments will be based on the estimated cost provided in the SCR for the scope of work as defined by the Applicant and §11.306(a)(5) of this chapter (relating to SCR Guidelines); the Underwriter may make adjustments to the SCR estimated costs. If the Applicant's cost estimate is utilized and the Applicant's line item costs are inconsistent with documentation provided in the Application or program rules, the Underwriter may make adjustments to the Applicant's Total Housing Development Cost.

(1) Acquisition Costs.

(A) Land, Reconstruction, and Adaptive Reuse Acquisition.

(i) For a non-identity of interest acquisition of land, or a Reconstruction or Adaptive Reuse Development, the underwritten acquisition cost will be the amount(s) reflected in the Site Control document(s) for the Property. At Cost Certification, the acquisition cost used will be the actual amount paid as verified by the settlement statement.

(ii) For an identify of interest acquisition of land, or a Reconstruction or Adaptive Reuse Development, the underwritten acquisition cost will be the lesser of the amount reflected in the Site Control documents for the property or the appraised value as determined by an appraisal that meets the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines). An acquisition will be considered an identity of interest transaction when an Affiliate of the seller is an Affiliate of, or a Related Party to, any Owner at any level of the Development Team or a Related Party lender; and

(I) is the current owner in whole or in part of the Property; or

(II) has or had within the prior 36 months the legal or beneficial ownership of the property or any portion thereof or interest therein regardless of ownership percentage, control or profit participation prior to the first day of the Application Acceptance Period or in the case of a tax-exempt bond or 4% tax credit application the Application Date.

(iii) For all identity of interest acquisitions, the cost used at cost certification will be limited to the acquisition cost underwritten in the initial Underwriting of the Application.

(iv) In cases where more land will be acquired (by the Applicant or a Related Party) than will be utilized as the Development Site and the remainder acreage is not accessible for use by tenants or dedicated as permanent and maintained green space, the acquisition cost that will be allocated to the proposed Development Site will be based on an appraisal containing segregated values for the total acreage to be

acquired, the acreage for the Development Site and the remainder acreage. The Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).

(B) Acquisition and Rehabilitation. The underwritten acquisition cost for an Acquisition and Rehabilitation Development will be the appraised value as determined by an appraisal that meets the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines).

(C) USDA Rehabilitation Developments. The underwritten acquisition cost for developments financed by USDA will be the transfer value approved by USDA.

(D) Eligible Basis on Acquisition of Buildings. Building acquisition cost included in Eligible Basis is limited to the appraised value of the buildings, exclusive of land value, as determined by the appraisal

(2) Off-Site Costs. The Underwriter will only consider costs of Off-Site Construction that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(3) Site Work Costs. The Underwriter will only consider costs of Site Work, including site amenities, that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(4) Building Costs.

(A) New Construction and Reconstruction. The Underwriter will use the Marshall and Swift Residential Cost Handbook, other comparable published Third-Party cost estimating data sources, historical final cost certifications of previous Housing Tax Credit developments and other acceptable cost data available to the Underwriter to estimate Building Cost. Generally, the "Average Quality" multiple, townhouse, or single family costs, as appropriate, from the Marshall and Swift Residential Cost Handbook or other comparable published Third-Party data source, will be used based upon details provided in the Application and particularly building plans and elevations. Costs for multi-level parking structures must be supported by a cost estimate from a Third Party contractor with demonstrated experience in structured parking construction. The Underwriter will consider amenities, specifications and development types not included in the Average Quality standard. The Underwriter may consider a sales tax exemption for nonprofit General Contractors.

(B) Rehabilitation and Adaptive Reuse.

(i) The Applicant must provide a scope of work and narrative description of the work to be completed. The narrative should speak to all Off-Site Construction, Site Work,

and building components including finishes and equipment, and development amenities. The narrative should be in sufficient detail so that the reader can understand the work and it must generally be arranged consistent with the line-items on the SCR Supplement and must also be consistent with the Development Cost Schedule of the Application.

(ii) The Underwriter will use cost data provided on the SCR Supplement if adequately described and substantiated in the SCR report as the basis for estimating Total Housing Development Costs.

(5) Contingency. Total contingency, including any soft cost contingency, will be limited to a maximum of 7% of Building Cost plus Site Work and Off-Site Construction for New Construction and Reconstruction Developments, and 10% of Building Cost plus Site Work and Off-Site Construction for Rehabilitation and Adaptive Reuse Developments. For Housing Tax Credit Developments, the percentage is applied to the sum of the eligible Building Cost, eligible Site Work costs and eligible Off-Site Construction costs in calculating the eligible contingency cost.

(6) General Contractor Fee. General Contractor fees include general requirements, contractor overhead, and contractor profit. General requirements include, but are not limited to, on-site supervision or construction management, off-site supervision and overhead, jobsite security, equipment rental, storage, temporary utilities, and other indirect costs. General Contractor fees are limited to a total of 14% on Developments with Hard Costs of \$3 million or greater, the lesser of \$420,000 or 16% on Developments with Hard Costs less than \$3 million and greater than \$2 million, and the lesser of \$320,000 or 18% on Developments with Hard Costs at \$2 million or less. Any contractor fees to Affiliates or Related Party subcontractors regardless of the percentage of the contract sum in the construction contract (s) will be treated collectively with the General Contractor Fee limitations. For Housing Tax Credit Developments, the percentages are applied to the sum of the Eligible Hard Costs in calculating the eligible contractor fees. For Developments also receiving financing from USDA, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or USDA requirements. Additional fees for ineligible costs will be limited to the same percentage of ineligible Hard Costs but will not be included in Eligible Basis.

(7) Developer Fee.

(A) For Housing Tax Credit Developments, the Developer Fee included in Eligible Basis cannot exceed 15% of the project's eligible costs, less Developer Fee, for Developments proposing 50 Units or more and 20% of the project's eligible costs, less Developer Fee, for Developments proposing 49 Units or less. If the Development is an additional phase, proposed by any Principal of the existing tax credit Development, the Developer Fee may not exceed 15%, regardless of the number of Units.

(B) For Housing Tax Credit Developments, any additional Developer Fee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs (15% for Developments with 50 or more Units, or 20% for Developments with 49 or fewer Units). Any Developer Fee above this limit will be excluded from Total Housing Development Costs. All fees to Affiliates or Related Parties for work or guarantees determined by the Underwriter to be typically completed or provided by the Developer or Principal(s) of the Developer will be considered part of Developer Fee.

(C) For Housing Tax Credit Developments, Eligible Developer Fee is multiplied by the appropriate Applicable Percentage depending on whether it is attributable to acquisition or rehabilitation basis.

(D) For non-Housing Tax Credit Developments, the percentage can be up to 7.5%, but is based upon Total Housing Development Cost less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in paragraph (8) of this subsection, reserves, and any identity of interest acquisition cost.

(8) Financing Costs. All fees required by the construction lender, permanent lender and equity partner must be indicated in the term sheets. Eligible construction period interest is limited to the lesser of actual eligible construction period interest, or the interest on one year's fully drawn construction period loan funds at the construction period interest rate indicated in the term sheet(s). For tax-exempt bond transactions up to 24 months of interest may be included. Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related Party or Affiliate construction loans is only included in Eligible Basis with documentation satisfactory to the Underwriter that the loan will be at a market interest rate, fees and loan terms and the Related Party lender can demonstrate that it is routinely engaged in construction financing to unrelated parties.

(9) Reserves. Except for the underwriting of a Housing Tax Credit Development at cost certification, the Underwriter will utilize the amount described in the Applicant's project cost schedule if it is within the range of two to six months of stabilized operating expenses plus debt service. Alternatively, the Underwriter may consider a greater amount proposed by the First Lien Lender or syndicator if the detail for such greater amount is found by the Underwriter to be both reasonable and well documented. Reserves do not include capitalized asset management fees, guaranty reserves, tenant services reserves or other similar costs. Lease up reserves, exclusive of initial start-up costs, funding of other reserves and interim interest, may be considered with documentation showing sizing assumptions acceptable to the Underwriter. In no instance at initial underwriting will total reserves exceed 12 months of stabilized operating expenses plus debt service (and only for USDA or HUD financed rehabilitation transactions the initial deposits to replacement reserves and transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Pursuant to §10.404(c) of this title (relating to Operative Reserve Accounts), and for the underwriting of a Housing Tax Credit Development at cost certification, operating reserves that will be

maintained for a minimum period of five years and documented in the Owner's partnership agreement or the permanent lender's loan documents will be included as a development cost.

(10) Soft Costs. Eligible soft costs are generally costs that can be capitalized in the basis of the Development for tax purposes. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Code. Generally the Applicant's costs are used however the Underwriter will use comparative data and Third Party CPA certification as to the capitalization of the costs to determine the reasonableness of all soft costs.

(11) Additional Tenant Amenities. For Housing Tax Credit Developments and after submission of the cost certification package, the Underwriter may consider costs of additional building and site amenities (suitable for the Target Population being served) proposed by the Owner in an amount not to exceed 1.5% of the originally underwritten Hard Costs. The additional amenities must be included in the LURA.

(12) Special Reserve Account. For Housing Tax Credit Developments at cost certification, the Underwriter may include a deposit of up to \$2,500 per Unit into a Special Reserve Account as a Development Cost.

(f) Development Team Capacity and Development Plan.

(1) The Underwriter will evaluate and report on the overall capacity of the Development Team by reviewing aspects, including but not limited to those identified in subparagraphs (A) - (D) of this paragraph:

(A) Personal credit reports for development sponsors, Developer Fee recipients and those individuals anticipated to provide guarantee(s) in cases when warranted. The Underwriter may evaluate the credit report and identify any bankruptcy, state or federal tax liens or other relevant credit risks for compliance with eligibility and debarment requirements as found in Chapter 2 of this title (relating to Enforcement);

(B) Quality of construction, Rehabilitation, and ongoing maintenance of previously awarded housing developments by review of construction inspection reports, compliance on-site visits, findings of UPCS violations and other information available to the Underwriter;

(C) For Housing Tax Credit Developments, repeated or ongoing failure to timely submit cost certifications, requests for and clearance of final inspections, and timely response to deficiencies in the cost certification process; and

(D) Adherence to obligations on existing or prior Department funded developments with

respect to program rules and documentation.

(2) While all components of the Development plan may technically meet the other individual requirements of this section, a confluence of serious concerns and unmitigated risks identified during the underwriting process may result in an Application being determined to be infeasible by the Underwriter. Any recommendation made under this subsection to deny an Application for a Grant, Direct Loan or Housing Credit Allocation is subject to Appeal as further provided for in §11.902 of this chapter (relating to Appeals).

(g) Other Underwriting Considerations. The Underwriter will evaluate additional feasibility elements as described in paragraphs (1) - (4) of this subsection.

(1) Interim Operating Income. Interim operating income listed as a source of funds must be supported by a detailed lease-up schedule and analysis.

(2) Floodplains. The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:

(A) The Applicant must pursue and receive a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR-F); or

(B) The Applicant must identify the cost of flood insurance for the buildings and for the tenant's contents for buildings within the 100-year floodplain and certify that the flood insurance will be obtained; and

(C) The Development must be proposed to be designed to comply with the QAP, Program Rules and NOFA, and applicable Federal or state requirements.

(3) Proximity to Other Developments. The Underwriter will identify in the Report any Developments funded or known and anticipated to be eligible for funding within one linear mile of the subject. Distance is measured in a straight line from nearest boundary point to nearest boundary point.

(4) Direct Loans. In accordance with the requirements of 24 CFR §§92.250 and 93.300(b), a request for a Direct Loan will not be recommended for approval if the first year stabilized pro forma Cash Flow, after deducting any payment due to the Developer on a deferred developer fee loan and scheduled payments on cash flow loans, divided by the Development Owner's equity exceeds 10%, or a higher amount not to exceed 12% may be approved by the underwriter for unique ownership capital structures or as allowed by a federally insured loan program. For this purpose, Cash Flow may be adjusted downward by the Applicant electing to commit any Cash Flow in excess of the limitation to a special reserve account, in

accordance with 10 TAC §10.404(d). For capital structures without Development Owner equity, a maximum of 75% of on-going Cash Flow, after deducting any payment due to the Developer on a deferred developer fee loan and scheduled payments on cash flow loans, may be distributed to the Development Owner and the remaining 25% must be deposited to a special reserve account, in accordance with 10 TAC §10.404(d). If the Direct Loan is not recommended for approval, the remaining feasibility considerations under this section will be based on a revised sources schedule that does not contain the Direct Loan.

(h) Work Out Development. As also described in §11.302(h), Developments that are underwritten subsequent to Board approval in order to refinance or gain relief from restrictions may be considered infeasible based on the guidelines in this section, but may be characterized as "the best available option" or "acceptable available option" depending on the circumstances and subject to the discretion of the Underwriter as long as the option analyzed and recommended is more likely to achieve a better financial outcome for the property and the Department than the status quo.

(i) Feasibility Conclusion. A Development will be characterized as infeasible if paragraph (1) or (2) of this subsection applies. The Development will be characterized as infeasible if one or more of paragraphs (3) (4) of this subsection applies unless paragraph (6)(B) of this subsection also applies.

(1) Gross Capture Rate, AMGI Band Capture Rates, and Individual Unit Capture Rate. The method for determining capture rates for a Development is defined in §11.303 of this chapter. The Underwriter will independently verify all components and conclusions of the capture rates and may, at their discretion, use independently acquired demographic data to calculate demand and may make a determination of the capture rates based upon an analysis of the Sub-market. The Development:

(A) Is characterized as an Elderly Development and the Gross Capture Rate or any AMGI band capture rate exceeds 10%; or

(B) Is outside a Rural Area and targets the general population, and the Gross Capture Rate or any AMGI band capture rate exceeds 10% (or 15% for Tax-Exempt Bond Developments located in an MSA (as defined in the HTC Site Demographics Characteristics Report) with a population greater than one million if the average physical occupancy is 92.5% or greater for all stabilized affordable housing developments located within a 20 minute drive time, as supported by the Market Analyst, from the subject Development); or

(C) Is in a Rural Area and targets the general population, and the Gross Capture Rate or any AMGI band capture rate exceeds 30%; or

(D) Is Supportive Housing and the Gross Capture Rate or any AMGI band capture rate exceeds 30%; or,

(E) Has an Individual Unit Capture Rate for any Unit Type greater than 65%.

(F) Developments meeting the requirements of subparagraph (A), (B), (C), (D) or (E) of this paragraph may avoid being characterized as infeasible if clause (i) or (ii) of this subparagraph apply.

(i) Replacement Housing. The proposed Development is comprised of affordable housing which replaces previously existing affordable housing within the Primary Market Area as defined in §11.303 of this chapter on a Unit for Unit basis, and gives the displaced tenants of the previously existing affordable housing a leasing preference.

(ii) Existing Housing. The proposed Development is comprised of existing affordable housing, whether defined by an existing land use and rent restriction agreement or if the subject rents are at or below 50% AMGI rents, which is at least 50% occupied and gives displaced existing tenants a leasing preference as stated in a relocation plan.

(2) Deferred Developer Fee. Applicants requesting an allocation of tax credits where the estimated Deferred Developer Fee, based on the underwritten capitalization structure, is not repayable from Cash Flow within the first 15 years of the long term pro forma as described in subsection (d)(5) of this section.

(3) Initial Feasibility.

(A) Except when underwritten at cost certification, the first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68% for Rural Developments 36 Units or less, and 65% for all other Developments.

(B) The first year DCR is below 1.15 (1.00 for USDA Developments).

(4) Long Term Feasibility. The Long Term Pro forma at any time during years two through fifteen, as defined in subsection (d)(5) of this section, reflects:

(A) A Debt Coverage Ratio below 1.15; or,

(B) Negative Cash Flow (throughout the term of a Direct Loan).

(5) Exceptions. The infeasibility conclusions will not apply if:

(A) The Executive Director of the Department finds that documentation submitted by the Applicant at the request of the Underwriter will support unique circumstances that will provide mitigation.

(B) Developments not meeting the requirements of one or more of paragraphs (3)(A) or (4) of this subsection will be re-characterized as feasible if one or more of clauses (i) - (v) of this subparagraph apply. A Development financed with a Direct Loan will not be re-characterized as feasible with respect to (4)(B).

(i) the Development will receive Project-based Section 8 Rental Assistance or the HUD Rental Assistance Demonstration Program for at least 50% of the Units and a firm commitment, with terms including Contract Rent and number of Units, is submitted at

Application,

(ii) the Development will receive rental assistance for at least 50% of the Units in association with USDA financing.

(iii) the Development will be characterized as public housing as defined by HUD for at least 50% of the Units.

(iv) the Development meets the requirements under §11.1(122)(E)(i) as Supportive Housing and there is an irrevocable commitment, as evidenced by resolution from the sponsor's governing board, to fund operating deficits over the entire Affordability Period; or

(v) the Development has other long term project based restrictions on rents for at least 50% of the Units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10% lower than both the Net Program Rent and Market Rent.

§11.303 Market Analysis Rules and Guidelines

(a) General Provision. A Market Analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The analysis must determine the feasibility of the subject Development rental rates or sales price, and state conclusions as to the impact of the Development with respect to the determined housing needs. The Market Analysis must include a statement that the report preparer has read and understood the requirements of this section. The Market Analysis must also include a statement that the person or company preparing the Market Analysis is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the Market Analysis, and that the fee is in no way contingent upon the outcome of the Market Analysis. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(b) Self-Contained. A Market Analysis prepared for the Department must allow the reader to understand the market data presented, the analysis of the data, and the conclusions derived from such data. All data presented should reflect the most current information available and the report must provide a parenthetical (in-text) citation or footnote describing the data source. The analysis must clearly lead the reader to the same or similar conclusions reached by the Market Analyst. All steps leading to a calculated figure must be presented in the body of the report.

(c) Market Analyst Qualifications. A Market Analysis submitted to the Department must be prepared and certified by an approved Qualified Market Analyst. (§2306.67055) The Department will maintain an approved Market Analyst list based on the guidelines set forth in paragraphs (1) - (2) of this subsection.

(1) The approved Qualified Market Analyst list will be updated and published annually on or about November 1st. If not listed as an approved Qualified Market Analyst by the

Department, a Market Analyst may request approval by submitting items in subparagraphs (A) - (F) of this paragraph at least 30 calendar days prior to the first day of the competitive tax credit Application Acceptance Period or 30 calendar days prior to submission of any other application for funding for which the Market Analyst must be approved. An already approved Qualified Market Analyst will remain on the list so long as at least one (1) Market Analysis has been submitted to the Department in the previous 12 months or items (A), (B), (C) and (E) are submitted prior to October 1st. Otherwise, the Market Analyst will automatically be removed from the list.

(A) Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships);

(B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis. A firm with multiple offices or locations must indicate all members expected to be providing Market Analysis;

(C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis;

(D) General information regarding the firm's experience including references, the number of previous similar assignments and timeframes in which previous assignments were completed;

(E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the Application Round in which each Market Analysis is submitted; and

(F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted.

(2) During the underwriting process each Market Analysis will be reviewed and any discrepancies with the rules and guidelines set forth in this section may be identified and require timely correction. Subsequent to the completion of the Application Round and as time permits, staff or a review appraiser will re-review a sample set of submitted market analyses to ensure that the Department's Market Analysis Rules and Guidelines are met. If it is found that a Market Analyst has not conformed to the Department's Market Analysis Rules and Guidelines, as certified to, the Market Analyst will be notified of the discrepancies in the Market Analysis and will be removed from the approved Qualified Market Analyst list.

(A) In and of itself, removal from the list of approved Market Analysts will not invalidate a Market Analysis commissioned prior to the removal date and at least 90 days prior to the first day of the applicable Application Acceptance Period.

(B) To be reinstated as an approved Qualified Market Analyst, the Market Analyst must amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the updated or new sample Market Analysis is submitted.

(d) Market Analysis Contents. A Market Analysis for a rental Development prepared for the Department must be organized in a format that follows a logical progression and must include, at minimum, items addressed in paragraphs (1) - (13) of this subsection.

(1) Title Page. Include Development address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of MarketAnalyst.

(2) Letter of Transmittal. The date of the letter must be the date the report was completed. Include Development's address or location, description of Development, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject Property, and signatures of all Market Analysts authorized to work on the assignment. Include a statement that the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

(4) Market Analysis Summary. Include the Department's Market Analysis Summary exhibit.

(5) Assumptions and Limiting Conditions. Include a description of all assumptions, both general and specific, made by the Market Analyst concerning theProperty.

(6) Identification of the Real Estate. Provide a statement to acquaint the reader with the Development. Such information includes street address, tax assessor's parcel number(s), and Development characteristics.

(7) Statement of Ownership. Disclose the current owners of record and provide a three year history of ownership for the subject Development.

(8) Primary Market Area. A limited geographic area from which the Development is expected to draw most of its demand. The size and shape of the PMA should be reflective of proximity to employment centers, services and amenities and contain the most significant areas from which to draw demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one PMA definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)

(A) The PMA will be defined by the Market Analyst as:

- (i) geographic size based on a base year population no larger than necessary to provide sufficient demand but no more than 100,000 people;
- (ii) boundaries based on U.S. census tracts; and

(iii) the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract.

(B) The Market Analyst's definition of the PMA must include:

(i) a detailed narrative specific to the PMA explaining:

(I) How the boundaries of the PMA were determined with respect to census tracts chosen and factors for including or excluding certain census tracts in proximity to the Development;

(II) Whether a more logical market area within the PMA exists but is not definable by census tracts and how this subsection of the PMA supports the rationale for the defined PMA;

(III) What are the specific attributes of the Development's location within the PMA that would draw prospective tenants from other areas of the PMA to relocate to the Development;

(IV) What are the specific attributes, if known, of the Development itself that would draw prospective tenants currently residing in other areas of the PMA to relocate to the Development;

(V) If the PMA crosses county lines, discuss the different income and rent limits in each county and how these differing amounts would affect the demand for the Development;

(VI) For rural Developments, discuss the relative draw (services, jobs, medical facilities, recreation, schools, etc.) of the Development's immediate local area (city or populous area if no city) in comparison to its neighboring local areas (cities, or populous areas if no cities), in and around the PMA. A rural PMA should not include significantly larger more populous areas unless the analyst can provide substantiation and rationale that the tenants would migrate to the Development's location from the larger cities;

(VII) Discuss and quantify current and planned single-family and non-residential construction (include permit data if available); and

(VIII) Other housing issues in general, if pertinent;

(ii) a complete demographic report for the defined PMA;

(iii) a scaled distance map indicating the PMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order with labels as well as the location of the subject Development and all comparable Developments. The map must indicate the total square miles of PMA; and,

(iv) a proximity table indicating distance from the Development to employment centers, medical facilities, schools, entertainment and any other amenities relevant to the potential residents and include drive time estimates.

(C) Comparable Units. Identify developments in the PMA with Comparable Units. In PMAs

lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable and qualitative location adjustments. Provide a data sheet for each comparable development consisting of:

- (i) development name;
- (ii) address;
- (iii) year of construction and year of Rehabilitation, if applicable;
- (iv) property condition;
- (v) Target Population;
- (vi) unit mix specifying number of Bedrooms, number of baths, Net Rentable Area; and
 - (I) monthly rent and Utility Allowance; or
 - (II) sales price with terms, marketing period and date of sale;
- (vii) description of concessions;
- (viii) list of unit amenities;
- (ix) utility structure;
- (x) list of common amenities;
- (xi) narrative comparison of its proximity to employment centers and services relative to targeted tenant population of the subject property; and
- (xii) for rental developments only, the occupancy and turnover.

(9) Market Information.

(A) Identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph, if applicable:

- (i) total housing;
- (ii) all multi-family rental developments, including unrestricted and market-rate developments, whether existing, under construction or proposed;
- (iii) Affordable housing;
- (iv) Comparable Units;
- (v) Unstabilized Comparable Units; and
- (vi) proposed Comparable Units.

(B) Occupancy. The occupancy rate indicated in the Market Analysis may be used to support both the overall demand conclusion for the proposed Development and the vacancy rate assumption used in underwriting the Development described in §11.302(d)(1)(C) of this chapter (relating to Vacancy and Collection Loss). State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:

- (i) number of Bedrooms;
- (ii) quality of construction (class);
- (iii) Target Population; and
- (iv) Comparable Units.

(C) Absorption. State the absorption trends by quality of construction (class) and

absorption rates for Comparable Units.

(D) Demographic Reports.

- (i) All demographic reports must include population and household data for a five year period with the year of Application submission as the base year;
- (ii) All demographic reports must provide sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations;
- (iii) For Elderly Developments, all demographic reports must provide a detailed breakdown of households by age and by income; and
- (iv) A complete copy of all demographic reports relied upon for the demand analysis, including the reference index that indicates the census tracts on which the report is based.

(E) Demand. Provide a comprehensive evaluation of the need for the proposed housing for the Development as a whole and each Unit Type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available. A complete demand and capture rate analysis is required in every Market Study, regardless of the current occupancy level of an existing Development.

(i) Demographics. The Market Analyst should use demographic data specific to the characteristics of the households that will be living in the proposed Development. For example, the Market Analyst should use demographic data specific to the elderly populations (and any other qualifying residents for Elderly Developments) to be served by an Elderly Development, if available, and should avoid making adjustments from more general demographic data. If adjustment rates are used based on more general data for any of the criteria described in subclauses (I) - (V) of this clause, they should be clearly identified and documented as to their source in the report.

(I) Population. Provide population and household figures, supported by actual demographics, for a five year period with the year of Application submission as the base year.

(II) Target. If applicable, adjust the household projections for the qualifying demographic characteristics such as the minimum age of the population to be served by the proposed Development.

(III) Household Size-Appropriate. Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit Type by number of Bedrooms proposed and rent restriction category based on 2 persons per Bedroom or one person for Efficiency Units.

(IV) Income Eligible. Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit Type by number of Bedrooms proposed and rent restriction category with:

- (-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 40% for the general population and 50% for elderly households; and

(-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size based on 2 persons per Bedroom (round up) or one person for Efficiency Units.

(V) Tenure-Appropriate. Adjust the income-eligible household projections for tenure (renter or owner). If tenure appropriate income eligible target household data is available, a tenure appropriate adjustment is not necessary.

(ii) Gross Demand. Gross Demand is defined as the sum of Potential Demand from the PMA, Demand from Other Sources, and External Demand.

(iii) Potential Demand. Potential Demand is defined as the number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placed in service date.

(I) Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size.

(II) For Developments targeting the general population:

(-a-) minimum eligible income is based on a 40% rent to income ratio;

(-b-) appropriate household size is defined as two persons per Bedroom (rounded up); and

(-c-) the tenure-appropriate population for a rental Development is limited to the population of renter households.

(III) For Developments consisting solely of single family residences on separate lots with all Units having three or more Bedrooms:

(-a-) minimum eligible income is based on a 40% rent to income ratio;

(-b-) appropriate household size is defined as two persons per Bedroom (rounded up); and

(-c-) Gross Demand includes both renter and owner households.

(IV) Elderly Developments:

(-a-) minimum eligible income is based on a 50% rent to income ratio; and

(-b-) Gross Demand includes all household sizes and both renter and owner households within the age range (and any other qualifying characteristics) to be served by the Elderly Development.

(V) Supportive Housing:

(-a-) minimum eligible income is \$1; and

(-b-) households meeting the occupancy qualifications of the Development (data to quantify this demand may be based on statistics beyond the defined PMA but not outside the historical service area of the Applicant).

(VI) For Developments with rent assisted units (Project Based Vouchers, Project-Based Rental Assistance, Public Housing Units):

(-a-) minimum eligible income for the assisted units is \$1; and

(-b-) maximum eligible income for the assisted units is the minimum eligible income of the corresponding affordable unit.

(iv) External Demand: Assume an additional 10% of Potential Demand from the PMA

to represent demand coming from outside the PMA.

(v) Demand from Other Sources:

(I) the source of additional demand and the methodology used to calculate the additional demand must be clearly stated;

(II) consideration of Demand from Other Sources is at the discretion of the Underwriter;

(III) Demand from Other Sources must be limited to households that are not included in Potential Demand; and

(IV) if households with Section 8 vouchers are identified as a source of demand, the Market Study must include:

(-a-) documentation of the number of vouchers administered by the local Housing Authority; and

(-b-) a complete demographic report for the area in which the vouchers are distributed.

(F) Employment. Provide a comprehensive analysis of employment trends and forecasts in the Primary Market Area. Analysis must discuss existing or planned employment opportunities with qualifying income ranges.

(10) Conclusions. Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served by the Development in terms of items in subparagraphs (A) - (J) of this paragraph. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.

(A) Unit Mix. Provide a best possible unit mix conclusion based on the occupancy rates by Bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate household demand by Unit Type and income type within the PMA.

(B) Rents. Provide a separate Market Rent conclusion for each proposed Unit Type by number of Bedrooms and rent restriction category. Conclusions of Market Rent below the maximum Net Program Rent limit must be well documented as the conclusions may impact the feasibility of the Development under §11.302(i) of this chapter (relating to Feasibility Conclusion). In support of the Market Rent conclusions, provide a separate attribute adjustment matrix for each proposed Unit Type by number of Bedrooms and rental restriction category.

(i) The Department recommends use of HUD Form 92273.

(ii) A minimum of three developments must be represented on each attribute adjustment matrix.

(iii) Adjustments for concessions must be included, if applicable.

(iv) Adjustments for proximity and drive times to employment centers and services narrated in the Comparable Unit description, and the rationale for the amount of the adjustments must be included.

(v) Total adjustments in excess of 15% must be supported with additional narrative.

(vi) Total adjustments in excess of 25% indicate the Units are not comparable for the purposes of determining Market Rent conclusions.

(C) Effective Gross Income. Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.

(D) Demand:

(i) state the Gross Demand for each Unit Type by number of Bedrooms proposed and rent restriction category (e.g. one-Bedroom Units restricted at 50% of AMGI; two-Bedroom Units restricted at 60% of AMGI); and

(ii) state the Gross Demand for the proposed Development as a whole. If some households are eligible for more than one Unit Type due to overlapping eligible ranges for income or household size, Gross Demand should be adjusted to avoid including households more than once.

(iii) state the Gross Demand generated from each AMGI band. If some household incomes are included in more than one AMGI band, Gross Demand should be adjusted to avoid including households more than once.

(E) Relevant Supply. The Relevant Supply of proposed and Unstabilized Comparable Units includes:

(i) the proposed subject Units to be absorbed;

(ii) Comparable Units in an Application with priority over the subject pursuant to §11.201(6) of this chapter; (iii) Comparable Units in previously approved Developments in the PMA that have not achieved 90% occupancy for a minimum of 90 days; and

(iv) proposed and Unstabilized Comparable Units that are located in close proximity to the subject PMA if they are likely to share eligible demand or if the PMAs have overlapping census tracts. Underwriter may require Market Analyst to run a combined PMA including eligible demand and Relevant Supply from the combined census tracts; the Gross Capture Rate generated from the combined PMA must meet the feasibility criteria as defined in §11.302(i).

(F) Gross Capture Rate. The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand. Refer to §11.302(i) of this chapter for feasibility criteria.

(G) Individual Unit Capture Rate. For each Unit Type by number of Bedrooms and rent restriction categories, the individual unit capture rate is defined as the Relevant Supply of proposed and Unstabilized Comparable Units divided by the eligible demand for that Unit. Some households are eligible for multiple Unit Types. In order to calculate individual unit capture rates, each household is included in the capture rate for only one Unit Type.

(H) Capture Rate by AMGI Band. For each AMGI band (30%, 40%, 50%, 60%, and also 20%, 70%, and 80% if the Applicant will make the Income Average election), the capture rate by AMGI band is defined as Relevant Supply of proposed and Unstabilized Comparable

Units divided by the eligible demand from that AMGI band. Some households are qualified for multiple income bands. In order to calculate AMGI band rates, each household is included in the capture rate for only one AMGI band.

(I) Absorption. Project an absorption period for the subject Development to achieve Breakeven Occupancy. State the absorption rate.

(J) Market Impact. Provide an assessment of the impact the subject Development, as completed, will have on existing Developments supported by Housing Tax Credits in the Primary Market. (§2306.67055)

(11) Photographs. Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. An aerial photograph is desirable but not mandatory.

(12) Appendices. Any Third Party reports including demographics relied upon by the Market Analyst must be provided in appendix form. A list of works cited including personal communications also must be provided, and the Modern Language Association (MLA) format is suggested.

(13) Qualifications. Current Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships) and any changes to items listed in §11.303(c)(1)(B) and (C) of this chapter (relating to Market Analyst Qualifications).

(e) The Department reserves the right to require the Market Analyst to address such other issues as may be relevant to the Department's evaluation of the need for the subject Development and the provisions of the particular program guidelines.

(f) In the event that the PMA for a subject Development overlaps the PMA's of other proposed or Unstabilized comparable Developments, the Underwriter may perform an extended Sub-Market Analysis considering the combined PMA's and all proposed and Unstabilized Units in the extended Sub-Market Area; the Gross Capture Rate from such an extended Sub-Market Area analysis may be used by the Underwriter as the basis for a feasibility conclusion.

(g) All Applicants shall acknowledge, by virtue of filing an Application, that the Department shall not be bound by any such opinion or Market Analysis, and may substitute its own analysis and underwriting conclusions for those submitted by the Market Analyst.

§11.304 Appraisal Rules and Guidelines

(a) General Provision.

(1) An appraisal prepared for the Department must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation. The appraisal must be prepared by a general certified appraiser by the

Texas Appraisal Licensing and Certification Board. The appraisal must include a statement that the report preparer has read and understood the requirements of this section. The appraisal must include a statement that the person or company preparing the appraisal, or reviewing the appraisal, is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the appraisal and that the fee is in no way contingent upon the outcome of the appraisal.

(2) Appraisals received by the Department for Applications to be underwritten will be reviewed in accordance with USPAP Standard 3 and Standard 4. The reviewing appraiser will be selected by the Department from an approved list of review appraisers. If the reviewing appraiser disagrees with the conclusions or value(s) determined by the appraiser, the Underwriter will reconcile the appraisal and appraisal review and determine the appropriate value conclusions to be used in the underwriting analysis.

(b) Self-Contained. An appraisal prepared for the Department must describe sufficient and adequate data and analyses to support the final opinion of value. The final value(s) must be reasonable, based on the information included. Any Third Party reports relied upon by the appraiser must be verified by the appraiser as to the validity of the data and the conclusions.

(c) Appraiser Qualifications. The appraiser and reviewing appraiser must be appropriately certified or licensed by the Texas Appraiser Licensing and Certification Board.

(d) Appraisal Contents. An appraisal prepared for the Department must be organized in a format that follows a logical progression. In addition to the contents described in USPAP Standards Rule 2, the appraisal must include items addressed in paragraphs (1) - (12) of this subsection.

(1) Title Page. Include a statement identifying the Department as the client, acknowledging that the Department is granted full authority to rely on the findings of the report, and name and address of person authorizing report. The title page must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(2) Letter of Transmittal. Include reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, effective date of appraisal, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, and signatures of all appraisers authorized to work on the assignment including the appraiser who inspected the property. Include a statement indicating the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

(4) Disclosure of Competency. Include appraiser's qualifications, detailing education and

experience.

(5) Statement of Ownership of the Subject Property. Discuss all prior sales of the subject Property which occurred within the past three years. Any pending agreements of sale, options to buy, or listing of the subject Property must be disclosed in the appraisal report.

(6) Property Rights Appraised. Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered. The appropriate interest must be defined in terms of current appraisal terminology with the source cited.

(7) Site/Improvement Description. Discuss the site characteristics including subparagraphs (A) - (E) of this paragraph.

(A) Physical Site Characteristics. Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the Development Site. Include a plat map or survey.

(B) Floodplain. Discuss floodplain (including flood map panel number) and include a floodplain map with the subject Property clearly identified.

(C) Zoning. Report the current zoning and description of the zoning restrictions and any deed restrictions, where applicable, and type of Development permitted. Any probability of change in zoning should be discussed. A statement as to whether or not the improvements conform to the current zoning should be included. A statement addressing whether or not the improvements could be rebuilt if damaged or destroyed, should be included. If current zoning is not consistent with the highest and best use, and zoning changes are reasonable to expect, time and expense associated with the proposed zoning change should be considered and documented. A zoning map should be included.

(D) Description of Improvements. Provide a thorough description and analysis of the improvements including size (Net Rentable Area, gross building area, etc.), use (whether vacant, occupied by owner, or being rented), number of residents, number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc. All applicable forms of depreciation should be addressed along with the remaining economic life.

(E) Environmental Hazards. It is recognized appraisers are not experts in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential environmental hazards (such as discolored vegetation, oil residue, asbestos-containing materials, lead-based paint etc.) noted during the inspection.

(8) Highest and Best Use. Market Analysis and feasibility study is required as part of the highest and best use. The highest and best use analysis should consider paragraph (7)(A) - (E)

of this subsection as well as a supply and demand analysis.

(A) The appraisal must inform the reader of any positive or negative market trends which could influence the value of the appraised Property. Detailed data must be included to support the appraiser's estimate of stabilized income, absorption, and occupancy.

(B) The highest and best use section must contain a separate analysis "as if vacant" and "as improved" (or "as proposed to be improved/renovated"). All four elements (legally permissible, physically possible, feasible, and maximally productive) must be considered.

(9) Appraisal Process. It is mandatory that all three approaches, Cost Approach, Sales Comparison Approach and Income Approach, are considered in valuing the Property. If an approach is not applicable to a particular property an adequate explanation must be provided. A land value estimate must be provided if the Cost Approach is not applicable.

(A) Cost Approach. This approach should give a clear and concise estimate of the cost to construct the subject improvements. The source(s) of the cost data should be reported.

(i) Cost comparables are desirable; however, alternative cost information may be obtained from Marshall & Swift Valuation Service or similar publications. The section, class, page, etc. should be referenced. All soft costs and entrepreneurial profit must be addressed and documented.

(ii) All applicable forms of depreciation must be discussed and analyzed. Such discussion must be consistent with the description of the improvements.

(iii) The land value estimate should include a sufficient number of sales which are current, comparable, and similar to the subject in terms of highest and best use. Comparable sales information should include address, legal description, tax assessor's parcel number(s), sales price, date of sale, grantor, grantee, three year sales history, and adequate description of property transferred. The final value estimate should fall within the adjusted and unadjusted value ranges. Consideration and appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) of this clause should be made when applicable.

(I) Property rights conveyed;

(II) Financing terms;

(III) Conditions of sale;

(IV) Location;

(V) Highest and best use;

(VI) Physical characteristics (e.g., topography, size, shape, etc.); and

(VII) Other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).

(B) Sales Comparison Approach. This section should contain an adequate number of sales to provide the Underwriter with a description of the current market conditions concerning this property type. Sales data should be recent and specific for the property type being appraised. The sales must be confirmed with buyer, seller, or an individual

knowledgeable of the transaction.

(i) Sales information should include address, legal description, tax assessor's parcel number(s), sales price, financing considerations and adjustment for cash equivalency, date of sale, recordation of the instrument, parties to the transaction, three year sale history, complete description of the Property and property rights conveyed, and discussion of marketing time. A scaled distance map clearly identifying the subject and the comparable sales must be included.

(ii) The method(s) used in the Sales Comparison Approach must be reflective of actual market activity and market participants.

(I) Sale Price/Unit of Comparison. The analysis of the sale comparables must identify, relate, and evaluate the individual adjustments applicable for property rights, terms of sale, conditions of sale, market conditions, and physical features. Sufficient narrative must be included to permit the reader to understand the direction and magnitude of the individual adjustments, as well as a unit of comparison value indicator for each comparable.

(II) Net Operating Income/Unit of Comparison. The Net Operating Income statistics for the comparables must be calculated in the same manner. It should be disclosed if reserves for replacement have been included in this method of analysis. At least one other method should accompany this method of analysis.

(C) Income Approach. This section must contain an analysis of both the actual historical and projected income and expense aspects of the subject Property.

(i) Market Rent Estimate/Comparable Rental Analysis. This section of the report should include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental Units. The comparables must indicate current research for this specific property type. The comparables must be confirmed with the landlord, tenant or agent and individual data sheets must be included. The individual data sheets should include property address, lease terms, description of the property (e.g., Unit Type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics of the property, and location of the comparables. Analysis of the Market Rents should be sufficiently detailed to permit the reader to understand the appraiser's logic and rationale. Adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc. must be considered.

(ii) Comparison of Market Rent to Contract Rent. Actual income for the subject along with the owner's current budget projections must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. The Contract Rents should be compared to the market-derived rents. A determination should be made as to whether the Contract Rents are below, equal to, or in excess of market rates. If there is a difference, its impact on value must be qualified.

(iii) Vacancy/Collection Loss. Historical occupancy data and current occupancy level for the subject should be reported and compared to occupancy data from the rental comparables and overall occupancy data for the subject's Primary Market.

(iv) Expense Analysis. Actual expenses for the subject, along with the owner's projected budget, must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. Historical expenses should be compared to comparables expenses of similar property types or published survey data (such as IREM, BOMA, etc.). Any expense differences should be reconciled. Include historical data regarding the subject's assessment and tax rates and a statement as to whether or not any delinquent taxes exist.

(v) Capitalization. The appraiser should present the capitalization method(s) reflective of the subject market and explain the omission of any method not considered in the report.

(I) Direct Capitalization. The primary method of deriving an overall rate is through market extraction. If a band of investment or mortgage equity technique is utilized, the assumptions must be fully disclosed and discussed.

(II) Yield Capitalization (Discounted Cash Flow Analysis). This method of analysis should include a detailed and supportive discussion of the projected holding/investment period, income and income growth projections, occupancy projections, expense and expense growth projections, reversionary value and support for the discount rate.

(10) Value Estimates. Reconciliation of final value estimates is required. The Underwriter may request additional valuation information based on unique existing circumstances that are relevant for deriving the market value of the Property.

(A) All appraisals shall contain a separate estimate of the "as vacant" market value of the underlying land, based upon current sales comparables. The "as vacant" value assumes that there are no improvements on the property and therefore demolition costs should not be considered. The appraiser should consider the fee simple or leased fee interest as appropriate.

(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value at current contract rents." For public housing converting to project-based rental assistance, the appraiser must provide a value based on the future restricted rents. The value used in the analysis may be based on the unrestricted market rents if supported by the appraisal. Regardless of the rents used in the valuation, the appraiser must consider any other on-going restrictions that will remain in place even if not affecting rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates or occupancy rates

on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.

(C) For existing Developments with rent restrictions, the appraisal must include the "as-is as- restricted" value. In particular, the value must be based on the proposed restricted rents when deriving the value based on the income approach.

(D) For all other existing Developments, the appraisal must include the "as-is" value.

(E) For any Development with favorable financing (generally below market debt) that will remain in place and transfer to the new owner, the appraisal must include a separate value for the existing favorable financing with supporting information.

(F) If required the appraiser must include a separate assessment of personal property, furniture, fixtures, and equipment (FF&E) or intangible items. If personal property, FF&E, or intangible items are not part of the transaction or value estimate, a statement to such effect should be included.

(11) Marketing Time. Given property characteristics and current market conditions, the appraiser(s) should employ a reasonable marketing period. The report should detail existing market conditions and assumptions considered relevant.

(12) Photographs. Provide good quality color photographs of the subject Property (front, rear, and side elevations, on-site amenities, interior of typical Units if available). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included. An aerial photograph is desirable but not mandatory.

(e) Additional Appraisal Concerns. The appraiser(s) must be aware of the Department program rules and guidelines and the appraisal must include analysis of any impact to the subject's value.

§11.305 Environmental Site Assessment Rules and Guidelines

(a) General Provisions. The Environmental Site Assessments (ESA) prepared for the Department must be conducted and reported in conformity with the standards of the American Society for Testing and Materials (ASTM). The initial report must conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527-13 or any subsequent standards as published). Any subsequent reports should also conform to ASTM standards and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The ESA shall be conducted by a Third Party environmental professional at the expense of the Applicant, and addressed to the Department as a User of the report (as defined by ASTM standards). Copies of reports provided to the Department which were commissioned by other financial institutions must either address Texas Department of Housing and Community Affairs as a co-recipient of the report or letters from both the provider and the recipient of the report

may be submitted extending reliance on the report to the Department. The ESA report must also include a statement that the person or company preparing the ESA report will not materially benefit from the Development in any other way than receiving a fee for performing the ESA, and that the fee is in no way contingent upon the outcome of the assessment. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law." The ESA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(b) In addition to ASTM requirements, the report must:

(1) State if a noise study is recommended for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise;

(2) Provide a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the ESA or identified during the physical inspection;

(3) Provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map;

(4) If the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for Lead Based Paint or asbestos containing materials would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;

(5) State if testing for lead in the drinking water would be required pursuant to local, state, and federal laws, or recommended due to any other consideration such as the age of pipes and solder in existing improvements. For all Rehabilitation Developments, the ESA provider must state whether the on-site plumbing is a potential source of lead in drinking water;

(6) Assess the potential for the presence of Radon on the Development Site, and recommend specific testing if necessary;

(7) Identify and assess the presence of oil, gas or chemical pipelines, processing facilities, storage facilities or other potentially hazardous explosive activities on-site or in the general area of the site that could potentially adversely impact the Development. Location of these items must be shown on a drawing or map in relation to the Development Site and all existing or future improvements. The drawing must depict any blast zones (in accordance with HUD guidelines) and include HUD blast zone calculations; and

(8) Include a vapor encroachment screening in accordance with the ASTM "Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions" (E2600-10).

(c) If the report recommends further studies or establishes that environmental hazards currently exist on the Property, or are originating off-site, but would nonetheless affect the Property, the Development Owner must act on such a recommendation, or provide a plan for either the abatement or elimination of the hazard. Evidence of action or a plan for the abatement or elimination of the hazard must be presented upon Application submittal.

(d) For Developments in programs that allow a waiver of the Phase I ESA such as an existing USDA funded Development, the Development Owners are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(e) Those Developments which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms to the requirements of this section.

§11.306 Scope and Cost Review Guidelines

(a) General Provisions. The objective of the Scope and Cost Review Report (SCR) required for Rehabilitation Developments (excluding Reconstruction) and Adaptive Reuse Developments is to provide a self-contained report that provides a comprehensive description and evaluation of the current conditions of the Development and identifies a scope of work for the proposed repairs, replacements and improvements to an existing multifamily property or identifies a scope of work for the conversion of a non-multifamily property to multifamily use. The SCR author must evaluate the sufficiency of the Applicant's scope of work and provide an independent review of the Applicant's proposed costs. The report must be in sufficient detail for the Underwriter to fully understand all current conditions, scope of work and cost estimates. It is the responsibility of the Applicant to ensure that the scope of work and cost estimates submitted in the Application is provided to the author. The SCR must include a copy of the Development Cost Schedule submitted in the Application. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(b) For Rehabilitation Developments, the SCR must include analysis in conformity with the ASTM "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018)" except as provided for in subsections (f) and (g) of this section.

(c) The SCR must include good quality color photographs of the subject Real Estate (front, rear, and side elevations, on-site amenities, interior of the structure). Photographs should be properly

labeled.

(d) The SCR must also include discussion and analysis of:

(1) Description of Current Conditions. For both Rehabilitation and Adaptive Reuse, the SCR must contain a detailed description with good quality photographs of the current conditions of all major systems and components of the Development regardless of whether the system or component will be removed, repaired or replaced. For historic structures, the SCR must contain a description with photographs of each aspect of the building(s) that qualifies it as historic and must include a narrative explaining how the scope of work relates to maintaining the historic designation of the Development. Replacement or relocation of systems and components must be described;

(2) Description of Scope of Work. The SCR must provide a narrative of the consolidated scope of work either as a stand-alone section of the report or included with the description of the current conditions for each major system and components. Any New Construction must be described. Plans or drawings (that are in addition to any plans or drawings otherwise required by rule) and that relate to any part of the scope of work should be included, if available;

(3) Useful Life Estimates. For each system and component of the property the SCR must estimate its remaining useful life, citing the basis or the source from which such estimate is derived;

(4) Code Compliance. The SCR must document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Applicant to ensure that the SCR adequately considers any and all applicable federal, state, and local laws and regulations which are applicable and govern any work and potentially impact costs. For Applications requesting Direct Loan funding from the Department, the SCR author must include a comparison between the local building code and the International Existing Building Code of the International Code Council.;

(5) Program Rules. The SCR must assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, the Department's Uniform Physical Condition Standards, and any scoring criteria including amenities for which the Applicant may claim points. It is the responsibility of the Applicant to inform the report author of those requirements in the scope of work; for Direct Loan Developments this includes, but is not limited to the requirements in the Lead-Based Paint Poisoning Prevention Act (42 USC §§4821-4846), the Residential Lead- Based Paint Hazard Reduction Act of 1992 (42 USC §§4851-4856), and implementing regulations, Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35 (including subparts A, B, J, K, and R), and the Lead: Renovation, Repair, and Painting Program Final Rule and Response to Children with Environmental Intervention Blood Lead Levels (40 CFR Part 745);

(6) Accessibility Requirements. The SCR report must include an analysis of compliance with the Department's accessibility requirements pursuant to Chapter 1, Subchapter B and §11.101(b)(8) of this title (relating to Site and Development Requirements and Restrictions) and identify the specific items in the scope of work and costs needed to ensure that the Development will meet these requirements upon Rehabilitation (including conversion and Adaptive Reuse);

(7) Reconciliation of Scope of Work and Costs. The SCR report must include the Department's Scope and Cost Review Supplement (SCR Supplement) with the signature of the SCR author. The SCR Supplement must reconcile the scope of work and costs of the immediate physical needs identified by the SCR author with the Applicant's scope of work and costs. The costs presented on the SCR Supplement must be consistent with both the scope of work and immediate costs identified in the body of the SCR report and the Applicant's scope of work and costs as presented in the Application. Variations between the costs listed on the SCR Supplement and the costs listed in the body of the SCR report or on the Applicant's Development Cost Schedule must be reconciled in a narrative analysis from the SCR provider. The consolidated scope of work and costs shown on the SCR Supplement will be used by the Underwriter in the analysis to the extent adequately supported in the report; and

(8) Cost Estimates. The Development Cost Schedule and SCR Supplement must include all costs identified below:

(A) Immediately Necessary Repairs and Replacement. For all Rehabilitation developments, and Adaptive Reuse developments if applicable, immediately necessary repair and replacement should be identified for systems or components which are expected to have a remaining useful life of less than one year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards. The SCR must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.

(B) Proposed Repair, Replacement, or New Construction. If the development plan calls for additional scope of work above and beyond the immediate repair and replacement items described in subparagraph (A) of this paragraph, the additional scope of work must be evaluated and either the nature or source of obsolescence to be cured or improvement to the operations of the Property discussed. The SCR must provide a separate estimate of the costs associated with the additional scope of work, citing the basis or the source from which such cost estimate is derived.

(C) Reconciliation of Costs. The combined costs described in subparagraphs (A) and (B) of this paragraph should be consistent with the costs presented on the Applicant's Development Cost Schedule and the SCR Supplement.

(D) Expected Repair and Replacement Over Time. The term during which the SCR should estimate the cost of expected repair and replacement over time must equal the lesser of 30 years or the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the Property. The SCR must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The SCR must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred for a period and no less than 30 years. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5% per annum.

(e) Any costs not identified and discussed in sufficient detail in the SCR as part of subsection (d)(6), (d)(8)(A) and (d)(8)(B) of this section will not be included in the underwritten Total Development Cost in the Report.

(f) If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

- (1) Fannie Mae's criteria for Physical Needs Assessments;
- (2) Federal Housing Administration's criteria for Project Capital Needs Assessments;
- (3) Freddie Mac's guidelines for Engineering and Property Condition Reports;
- (4) USDA guidelines for Capital Needs Assessment.

(g) The Department may consider for acceptance reports prepared according to other standards which are not specifically named in subsection (g) of this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied.

(h) The SCR shall be conducted by a Third Party at the expense of the Applicant, and addressed to Texas Department of Housing and Community Affairs as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address Texas Department of Housing and Community Affairs as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to Texas Department of Housing and Community Affairs.

(i) The SCR report must include a statement that the individual or company preparing the SCR report will not materially benefit from the Development in any other way than receiving a fee for

performing the SCR. Because of the Department's heavy reliance on the independent cost information, the provider must not be a Related Party to or an Affiliate of any other Development Team member. The SCR report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(j) The SCR report must include the Department's SCR Compliance checklist containing the signatures of both the Applicant and SCR author.

SUBCHAPTER E FEE SCHEDULE, APPEALS, AND OTHER PROVISIONS

§11.901 Fee Schedule

Any fees, as stated in this section, not paid will cause an Applicant to be ineligible to apply for Department funding, ineligible to receive additional Department funding associated with a Commitment, Determination Notice or Contract, and ineligible to submit extension requests, ownership transfers, and Application amendments until such time the Department receives payment. Payments of the fees shall be in the form of a check and to the extent there are insufficient funds available, it may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. Other forms of payment may be considered on a case-by-case basis. The Executive Director may extend the deadline for specific extenuating and extraordinary circumstances, provided the Applicant submits a written request for an extension to a fee deadline no later than five business days prior to the deadline associated with the particular fee.

(1) Competitive Housing Tax Credit Pre-Application Fee. A pre-application fee, in the amount of \$10 per Unit, based on the total number of Units reflected in the pre-application, must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Pre- applications in which a Community Housing Development Corporation (CHDO) or a private Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, may be eligible to receive a discount of 10% off the calculated pre-application fee provided such documentation is submitted with the fee. (§2306.6716(d))

(2) Refunds of Pre-application Fees. (§2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of the pre-application fee for a pre-application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Initial processing will constitute 50% of the review, threshold review prior to a deficiency being issued will constitute 30% of the review, and review after deficiencies are submitted and reviewed will constitute 20% of the review. In no instance will a refund of the pre-application fee be made after the Full Application Delivery Date.

(3) Application Fee. Each Application must be accompanied by an Application fee.

(A) Housing Tax Credit Applications. For Applicants having submitted a Competitive Housing Tax Credit pre-application which met the pre-application threshold requirements, and for which a pre- application fee was paid, the Application fee will be \$20 per Unit based on the total number of Units in the full Application. Otherwise, the Application fee will be \$30 per Unit based on the total number of Units in the full Application. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the

Managing General Partner of the Development Owner, may be eligible to receive a discount of 10% off the calculated Application fee, provided such documentation is submitted with the fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be \$1,000 per Application except for those Applications that are layered with Housing Tax Credits and submitted simultaneously with the Housing Tax Credit Application. Pursuant to Tex. Gov't Code §2306.147(b), the Department is required to waive Application fees for private nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services and if HOME funds are awarded. In lieu of the Application fee, these organizations must include proof of their exempt status and a description of their supportive services as part of the Application. The Application fee is not a reimbursable cost under the HOME Program.

(4) Refunds of Application Fees. Upon written request from the Applicant, the Department shall refund the balance of the Application fee for an Application that is withdrawn by the Applicant and that is not fully processed by the Department. The withdrawal must occur prior to any Board action regarding eligibility or appeal. The amount of refund will be commensurate with the level of review completed. Initial processing will constitute 10% of the review, the site visit will constitute 10% of the review, program evaluation review will constitute 40% of the review, and the underwriting review will constitute 40% of the review. In no instance will a refund of the Application fee be made after final awards are made in July.

(5) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation in whole or in part of a Development by an independent external underwriter if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the Commitment or Determination Notice Fee, as applicable, established in paragraphs (8) and (9) of this section, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.

(6) Housing Tax Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4% of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and returns the credits by November 1 of the current Application Round, then a refund of 50% of the Commitment Fee may be issued upon request.

(7) Tax Exempt Bond Development Determination Notice Fee. No later than the expiration date in the Determination Notice, a fee equal to 4% of the annual Housing Credit Allocation amount, unless otherwise modified by a specific program NOFA, must be submitted. If the Development Owner has paid the fee and is not able close on the bonds, then a refund of 50% of the Determination Notice Fee may be issued upon request. The refund must be requested no later than 60 days after the bond closing date described in the Board action

approving the Determination Notice.

(8) Tax-Exempt Bond Credit Increase Request Fee. Requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to 4% of the amount of the credit increase for one year.

(9) Extension Fees. All extension requests for deadlines relating to the Carryover, 10% Test (submission and expenditure), Construction Status Reports, or Cost Certification requirements submitted at least 30 calendar days in advance of the applicable original deadline will not be required to submit an extension fee. Any extension request submitted fewer than 30 days in advance or after the original deadline must be accompanied by an extension fee of \$2,500. Fees for each subsequent extension request on the same activity will increase by increments of \$500, regardless of whether the first request was submitted thirty (30) calendar days in advance of the applicable deadline. An extension fee will not be required for extensions requested on Developments that involve Rehabilitation when the Department or U.S. Department of Agriculture (USDA) is the primary lender, if USDA or the Department is the cause for the Applicant not meeting the deadline. For each Construction Status Report received after the applicable deadline, extension fees will be automatically due (regardless of whether an extension request is submitted). Unpaid extension fees related to Construction Status Reports will be accrued and must be paid prior to issuance of IRS Forms 8609. For purposes of Construction Status Reports, each report will be considered a separate activity.

(10) Amendment Fees. An amendment request for a non-material change that has not been implemented will not be required to pay an amendment fee. Material amendment requests (whether implemented or not), or non-material amendment requests that have already been implemented will be required to submit an amendment fee of \$2,500 in order for the request to be processed. Fees for each subsequent amendment request related to the same Application will increase by increments of \$500. A subsequent request, related to the same Application, regardless of whether the first request was non-material and did not require a fee, must include a fee of \$3,000. Amendment fees and fee increases are not required for the Direct Loan programs.

(11) Right of First Refusal Fee. Requests for approval of the satisfaction of the Right of First Refusal provision of the Land Use Restriction Agreement (LURA) must be accompanied by a non-refundable fee of \$2,500.

(12) Qualified Contract Pre-Request Fee. A Development Owner must file a preliminary Qualified Contract Request to confirm eligibility to submit a Qualified Contract request. The Pre-Request must be accompanied by a non-refundable processing fee of \$250.

(13) Qualified Contract Fee. Upon eligibility approval of the Qualified Contract Pre-Request, the Development Owner may file a Qualified Contract Request. Such request must be accompanied by a non-refundable processing fee of \$3,000.

(14) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of \$1,000.

(15) Unused Credit or Penalty Fee. Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of IRS Form 8609. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10% of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of IRS Form 8609 if the tax credits are not returned, and 8609's issued, within 180 days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with Code, §42. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director may recommend to the Board the imposition of a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate for any Application in an Application Round occurring concurrent to the return of credits as further provided for in §11.9(f) of this chapter (relating to Factors Affecting Scoring and Eligibility in current and future Application Rounds), or if no Application Round is pending, the Application Round immediately following the return of credits. If any such point penalty is recommended to be assessed and presented for final determination by the Board, it must include notice from the Department to the affected party not less than 14 calendar days prior to the scheduled Board meeting. The Executive Director may, but is not required to, issue a formal notice after disclosure if it is determined that the matter does not warrant point penalties.

(16) Compliance Monitoring Fee. Upon receipt of the cost certification for HTC Developments or HTC Developments that are layered with Direct Loan funds, or upon the completion of the 24-month development period and the beginning of the repayment period for Direct Loan only Developments, the Department will invoice the Development Owner for compliance monitoring fees. For HTC only the amount due will equal \$40 per low-income unit. For Direct Loan Only Developments the fee will be \$34 per Direct Loan Designated Units. Developments with both HTCs and Direct Loan will only pay one fee equal to \$40 per low income unit. Existing HTC developments with a Land Use Restriction Agreement that require payment of a compliance monitoring fee that receive a second allocation of credit will pay only one fee; the fee required by the original Land Use Restriction Agreement will be disregarded. For HTC Developments, the fee will be collected, retroactively if applicable, beginning with the first year of the credit period. For Direct Loan only Developments, the fee will be collected beginning with the first year of the repayment period. The invoice must be paid prior to the issuance of IRS Form 8609 for HTC properties. For Direct Loan only developments, the fee must be paid prior to the release of final retainage. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. Compliance fees may be adjusted from time to time by the Department.

(17) Public Information Request Fee. Public information requests are processed by the

Department in accordance with the provisions of Tex. Gov't Code, Chapter 552. The Department uses the guidelines promulgated by the Office of the Attorney General to determine the cost of copying and other costs of production.

(18) Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b)) All fees charged by the Department in the administration of the tax credit and Direct Loan programs may be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

(19) Determination Notice Reinstatement Fee. Applications that receive an affirmative Board Determination, but for which closing on the bonds does not occur prior to the Certificate of Reservation expiration date, and which subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. Prior to the re-issuance of the Determination Notice, the Applicant must submit a \$1,000 fee for staff review and processing of the Certification of Tax Exempt Bond Applications with New Docket Numbers in accordance with §11.201(2)(E) of this chapter.

(20) Appraisal Review Fee. Applicants required to submit an Appraisal must submit an Appraisal Review Fee for priority Applications on or before the Market Analysis Delivery Date in an amount to be provided to the Applicant by the Department no later than seven days prior to the date the fee is due, and not to exceed \$6,000. If an Application becomes a priority Application after the Market Analysis Delivery Date, the Appraisal Review Fee is due within 7 calendar days of publication of the updated Application Log.

§11.902 Appeals Process

(a) For Competitive HTC Applications, an Applicant or Development Owner may appeal decisions made by the Department pursuant to Tex. Gov't Code §2306.0321 and §2306.6715 using the process identified in this section. For Tax-Exempt Bond Developments and Direct Loan Developments (not contemporaneously submitted with a Competitive HTC Application), an Applicant or Development Owner may appeal decisions made by the Department pursuant to §1.7 of this title (relating to Appeals). Matters that can be appealed include:

- (1) A determination regarding the Application's satisfaction of applicable requirements, Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications), pre-application threshold criteria, and underwriting criteria;
- (2) The scoring of the Application under the applicable selection criteria;
- (3) A recommendation as to the amount of Department funding to be allocated to the Application;
- (4) Misplacement of an Application or parts of an Application, mathematical errors in scoring

an Application, or procedural errors resulting in unequal consideration of the Applicant's proposal;

(5) Denial of a requested change to a Commitment or Determination Notice;

(6) Denial of a requested change to a loan agreement;

(7) Denial of a requested change to a LURA;

(8) Any Department decision that results in the termination or change in set-aside of an Application; and

(9) Any other matter for which an appeal is permitted under this chapter.

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or Development Owner.

(c) An Applicant or Development Owner must file its appeal in writing with the Department not later than the seventh calendar day after the date the Department publishes the results of any stage of the Application evaluation or otherwise notifies the Applicant or Development Owner of a decision subject to appeal. The appeal must be made by a Person designated to act on behalf of the Applicant or an attorney that represents the Applicant. For Application related appeals, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application as supplemented in accordance with the limitations and requirements of this chapter.

(d) The Executive Director may respond in writing not later than 14 calendar days after the date of actual receipt of the appeal by the Department. If the Applicant is not satisfied with the Executive Director's response to the appeal or the Executive Director does not respond, the Applicant may appeal directly in writing to the Board. While information can be provided in accordance with any rules related to public comment before the Board, full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal must be disclosed in the appeal documentation filed with the Executive Director.

(e) An appeal filed with the Board must be received in accordance with Tex. Gov't Code §2306.6715 (d).

(f) Board review of an Application related appeal will be based on the original Application. A witness in an appeal may not present or refer to any document, instrument, or writing not already contained within the Application as reflected in the Department's records.

(g) The decision of the Board regarding an appeal is the final decision of the Department.

(h) The Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of an Application related appeal. (§2306.6717(a)(5))

§11.903 Adherence to Obligations. (§2306.6720)

Any Applicant, Development Owner, or other Person that fails to adhere to its obligations with regard to the programs of the Department, whether contractual or otherwise, made false or misleading representations to the Department with regard to an Application, request for funding, or compliance requirements, or otherwise violated a provision of Tex. Gov't Code, Chapter 2306 or a rule adopted under that chapter, may be subject to:

(1) Assessment of administrative penalties in accordance with Chapter 2, Subchapter C of this title (relating to Administrative Penalties) the Department's rules regarding the assessment of such penalties. Each day the violation continues or occurs is a separate violation for purposes of imposing a penalty; or

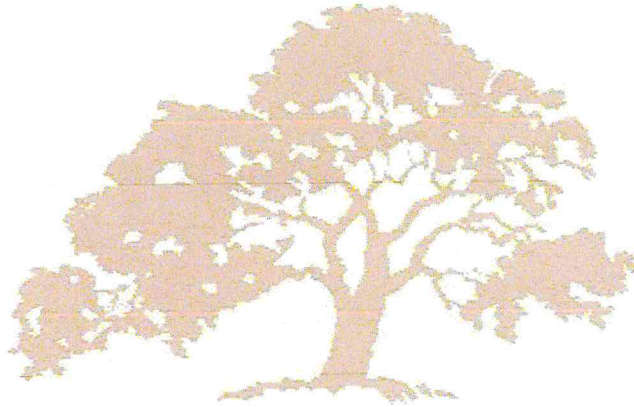
(2) In the case of the competitive Low Income Housing Tax Credit Program, a point reduction for any Application involving that Applicant over the next two Application Rounds succeeding the date on which the Department first gives written notice of any such failure to adhere to obligations or false or misleading representations. Point reductions under this section may be appealed to the Board.

§11.904 Alternative Dispute Resolution (ADR) Policy

In accordance with Tex. Gov't Code, §2306.082, it is the Department's policy to encourage the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Tex. Gov't Code, Chapter 2010, to assist in resolving disputes under the Department's jurisdiction, as provided for in §1.17 of this title (relating to Alternative Dispute Resolution).

2021 QAP
Public Comment

(1) Southwest Sendero



September 8, 2020

**Texas Department of Housing and Community Affairs
Matthew Griego
Policy Research Specialist
QAP Public Comment
P.O. Box 13941
Austin, Tx. 78711-3941**

Re: 2021 QAP Public Comment

Dear Sir,

Last year I submitted a 9% Pre App for the January 2020 competitive LIHTC round. This application maxed out the available points except for “Proximity to Jobs and Proximity to Urban Core”. The site was Region 3 in an Urban location. It was not Rural. I was forced to withdraw the application because of non-competitive scoring. The Mayor has contacted me and is requesting that I resubmit for 2021. The land is still available and demand for a Senior tax credit development still exist but the Draft QAP scoring criteria promoting “Proximity to Jobs and Proximity to Urban Core” forces developments only to the most highly populated neighborhoods of Region 3 and the State of Texas.

Is there a mechanism or any option to tweak the Draft QAP that could assist smaller Urban cities of the State for the 2021 tax credit allocation? An Urban city of 25,000 or 30,000 population will never create enough jobs to compete against Arlington, Dallas, Ft Worth or other cities with a population of 1,000,000 plus. The demands and needs for affordable senior housing in the smaller Urban cities are growing and the needs are not being met.

Thank You

**Vaughan Mitchell
Southwest Sendero LLC/ Oak Timbers
801 East Avenue H, Suite 120
Arlington, Tx 76011
avm@oaktimbers.net
(817) 996-9083**

(2) Brinshore Development

From: [Joseph Holmes](#)
To: [HTC Public Comment](#)
Subject: TDHCA Multifamily Policy Research Feedback
Date: Tuesday, September 15, 2020 1:37:50 PM
Attachments: [image001.png](#)

Hello!

In response to the 2021 QAP draft that was posted, I am emailing to provide public commentary on the Multifamily portion.

Please keep the job radius to a 1 mile minimum, and consider expanding it to include the average trip length of bicycle commuting trips for the state of Texas (Census data or league of cyclists data). Keeping the jobs radius to a 1 mile minimum makes sense from an emissions standpoint that it reduces TDHCA's carbon footprint, or encouragement of sprawl.

Expanding beyond a 1 mile minimum to the average bike commute of 5 miles seems to be warranted given that many people have taken to cycling in droves as a result of COVID.

Even a slow cyclist can do 7-10 mph easily regardless of heat.

Thank you for your time and consideration.

Joseph Holmes | Development Associate

Brinshore Development, LLC | www.brinshore.com
1701 W. Northwest Hwy, Suite 100 | Grapevine, TX 76051

Direct: 817-329-8052 | Cell: 302-893-0275
Fax: 847-562-9401 | Email: joeh@brinshore.com



(3) Ryan Hettig

From: [Ryan Hettig](#)
To: [HTC Public Comment](#)
Subject: QAP Comments
Date: Wednesday, September 16, 2020 9:30:29 AM

Please keep as is except for the school ratings – those should be eliminated this year

(4) Caritas of Austin

From: [Jo Kathryn Quinn](#)
To: [HTC Public Comment](#)
Subject: QAP 2021 comments
Date: Monday, September 21, 2020 11:05:39 AM
Attachments: [image001.png](#)
[image002.png](#)

To Whom it May Concern:

Proposed resident screening criteria for Supportive Housing (SH) in the 2021 QAP relative to criminal and incarceration history is too restrictive. SH is often utilized by people who have spent extended periods of time experiencing homelessness. This particular population, simply by virtue of living in places not meant for human habitation, have a disproportionate number of encounters with law enforcement, thus more criminal history relative to other applicants.

Utilizing the screening criteria proposed in the 2021 QAP is unfair, impractical, and will prevent people who need SH the most from accessing it. The aggregate effect of this result will be an increasing presence on the streets of Texas cities of people with criminal history. Public safety is better achieved by ALL people having access to stable housing, especially people with criminal history. Residents who access SH can achieve permanent housing stability, build well-being and general stability; providing them the opportunity to live in their respective communities as law-abiding residents, fully integrated and contributing to the broader community.

Caritas of Austin's ImpACT program is a good example of how SH can make this a reality. This program is operated using a low-barrier admission criteria approach. The 24 residents in this SH program were "screened in" rather than "screened out". The residents have a 99% housing stability rate after 2.5 years of operation. As well, the following data show significant reductions in public costs residents were incurring before they were housed: 36% reduction in indigent inpatient hospitalization, 92% reduction in emergency room admissions, 88% reduction in EMS/911 calls/transport, and 71% reduction in indigent outpatient treatment. SH is a much more cost-effective and humane way to serve very vulnerable residents.

The proposed criminal history criteria for SH in the 2021 QAP would make **the above-referenced program impossible for an LIHTC project**; and essentially removes the ability for LIHTC to fund supportive housing as a tool for communities' homelessness response systems; as it does not allow providers to serve the most vulnerable (and costly) in LIHTC funded housing.

Thank you for the opportunity to comment on the proposed QAP changes for 2021,

Jo Kathryn Quinn | President/Chief Executive Officer

Caritas of Austin

Direct: 512.646.1252 Mobile: 512.466.7080

611 Neches St | PO Box 1947, Austin TX, 78767

www.caritasofaustin.org

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(5) Kyle Shelton

From: [Kyle Shelton](#)
To: [HTC Public Comment](#)
Subject: QAP Comment Attn: Matthew Griego,
Date: Wednesday, September 23, 2020 10:19:07 AM

Hello,

I'm writing to object to the proposed changes in the 2020 QAP found in Chapter 11, Section 122 on Supportive Housing Tenet Selection.

Installing limitations on tenets based on criminal histories and preventing people who most need supportive housing from eligibility will drastically undercut the effort to stability house our neighbors. The goal of supportive housing is to help residents get back on their feet and out of unstable situations. All of the proposed restrictions are harmful and unnecessary. Preventing those with drug-related convictions or listing on the sexual offender registry from ever accessing supportive housing is particularly problematic. The state should allow individual housers and agencies to set their own eligibility requirements and checks. Dictating from the state level who can and cannot be admitted is an overreach, one that will impact the efficacy of housing programs.

I suggest that all the criminal history tenet selection items be removed.

Thanks,
Kyle Shelton

Houston Resident

(6) Wilson Calvert

From: [Wilson Calvert](#)
To: [HTC Public Comment](#)
Subject: Really disappointed in the draft qualified allocation plan
Date: Wednesday, September 23, 2020 10:40:25 AM

This attempted NIMBY-appeasement is so farcical!

I don't think that their POV is outside of logic, but it relies on the predicate that all people are convicted fairly, and that's just not the case in our justice system today.

You have presented no proof that the potential change will make things any safer.

I doubt VERY seriously that the current source of this change, the complaintants, would even be welcoming to additional housing of this type in their neighborhoods after the change.

Again, this punitive filter may have had the attempted effect if the justice system is just, but it isn't, so it only serves to prevent black people, who are the ones primarily affected by the systemic racism of the justice system, from getting supportive housing.

(7) National Church Residences



National Church Residences
EXCELLENCE THAT TRANSFORMS LIVES

September 28, 2020

Ms. Marni Holloway
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Ms. Holloway,

Thank you for the opportunity to present recommendations to the 2021 Qualified Allocation Plan (QAP). Please consider the below recommendations by National Church Residences.

2021 Qualified Allocation Plan

1. Sponsor Characteristics

National and Regional nonprofits play an extremely important role providing service enriched affordable housing, especially in smaller urban areas that do not have nonprofit housing developers or the only ones that exist is the housing authority. Both point selections for Sponsor Characteristics discourages non-local non-profits from competing in the 9% round and prevents local nonprofits from expanding outside their original 90 mile footprint. In my 6 years participating in the program, I have yet to meet another national or regional nonprofit that consistently uses 9% as it is nearly impossible to be competitive without being able to access the Sponsor points. Furthermore, IRS §42 requires that 10% of the competitive award go to Qualified Non Profits per the IRS definition.

The 2020 Sponsor Characteristic B Option was changed to eliminate the point if the development or tenant services are provided by a related party non-profit. Non Profit owners such as National Church Residences provide extensive and high quality development and tenant services and should be allowed to take this point. Regional and national nonprofits are not at risk of abusing this election AND are encouraged and even allocated 10% of awards per IRS guidelines. **I request a minor change to Sponsorship:**

B) The HUB or ~~Nonprofit~~ nonprofit Organization must be involved with the Development Services or in the provision of on-site tenant services during the ~~Development's~~ Development's Affordability Period. A Principal of the HUB ~~or Nonprofit nonprofit Organization~~ cannot be a Related Party to or Affiliate, including the spouse of, any other Principal of the Applicant or, Developer or Guarantor (excluding another Principal of said HUB ~~or Nonprofit Organization~~). Selecting this item because of the involvement of a ~~Nonprofit nonprofit~~ Organization does not make an Application eligible for the Nonprofit Set-Aside. (1 point)

2. Readiness to Proceed

In 2020, our At-Risk HUD property was a poster child for how damaging Readiness to Proceed points are. Despite being in the money the entire time, 2 days before awards, last minute changes in USDA underwriting allowed a lower scoring application to get funded instead of ours. HUD properties require extensively more time to close than a non-federally funded property in order to coordinate with a federal entity. This last round we lost over \$20,000 in 3rd party reports and architecture fees to prep for HUD submission and closing. Furthermore, HUD requires resident meetings to be done prior to submitting conversion packages (which can take 120+ days for approval) so we had no choice to proceed with Resident meetings regarding a renovation that will now not happen. Despite saying funding was not finalized, our elderly residents, most in their 80s and 90s, did not understand this.

The original reasoning for Readiness was to get units on the ground quicker. In At-Risk, these units are already on the ground and occupied. Furthermore At-Risk is a State-wide pool putting huge areas of the state at a significant disadvantage to preserving their existing affordable housing as they do not have access to these 5 points and thus preservation opportunities in 9%.

At the minimum, we ask TDHCA to NOT apply Readiness points to Applications under the At-Risk or USDA Set-Aside.

3. Feasibility Reports

Feasibility reports should not be required for Rehab applications as the information contained in the reports are either not applicable to rehabs or they are covered in the PCNA/Scope and Cost Review.

Feasibility reports are conducted for new construction developments and, as stated in the Rules, is concentrated on site design, zoning, subdivision requirements, ordinances, ingress/egress, off-site costs, and site work cost. The rehabilitation development is already in existence. This rehabilitation Application is not redesigning the Development Site or having to plat a new subdivision or decide the ingress/egress or engage off-site costs.

We request that applications proposing only rehabilitation be exempt from Feasibility Reports in their entirety.

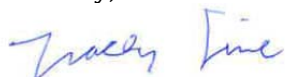
4. Appraisal Review Fee

This is burdensome fee on top of the other reports required by TDHCA. Appraisers are certified by the Texas Appraisal Licensing and Certification Board and use the Uniform Standards of Professional Appraisal Practice (USPAP). Developers should be able to rely on this trained professional to give an accurate appraised value and not have to pay \$6,000 of ineligible basis for the sole purpose of TDHCA review.

We ask the Appraisal Review Fee be deleted. Alternatively, In lieu of an appraisal fee, we ask that TDHCA publish a list of approved appraisers to choose from.

We appreciate the opportunity to provide comments, and would be happy to provide any additional information.

Sincerely,

A handwritten signature in blue ink that reads "Tracey Fine". The signature is written in a cursive, flowing style.

Tracey Fine

Director of Housing

National Church Residences

Austin, Texas

Cell: 773.860.5747

tfine@nationalchurchresidences.org

(8) Helen Eisert

From: [Helen Eisert](#)
To: [HTC Public Comment](#)
Date: Tuesday, September 29, 2020 10:11:57 AM

Hello,

I have concerns about the below statement and am requesting TDHCA strike this entire section from the QAP:

Supportive Housing--A residential rental Development and Target Population meeting the requirements of subparagraphs (A) through- (E) of this paragraph.....

(v) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident.

(I) The criminal screening criteria must not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(-a-) Permanent denial based on criminal history at application or recertification of any conviction for murder related offense, sexual assault, kidnapping, or arson;

(-b-) Temporary denial for a minimum of three years based on criminal history at application or recertification of any felony conviction for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;

(-c-) Temporary denial for a minimum of two years for non-violent felonies; and (-d-) Temporary denial for a minimum of one year for Class A misdemeanors

(II) The criminal screening criteria may include provisions for mitigation of temporary denials including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

(IV)

As the biggest funder of affordable housing in Texas, we need to ensure there are affordable options for people that have served their time and need housing. This has potential unintended consequences of relegating individuals with criminal histories to unregulated and unlicensed board and care homes. For individuals with criminal histories and additional vulnerability factors such as mental health conditions or substance use disorders this leaves them open to exploitation in these types of board and care homes.

It also ignores recidivism rates for things like sex offenses and murder, which is extremely low (under 3-5%). It prescribes a blanket denial which the mitigation statements do not do enough to protect people with criminal histories seeking housing.

Thank you,
Helen Eisert

(9) Volunteers of America



Volunteers
of America®

September 29, 2020

Matthew Griego
QAP Public Comments
Texas Department of Housing and Community Affairs
P. O. Box 13941
Austin, Texas 78711-3941

Dear Mr. Griego:

Thank you for the opportunity to present recommendations to the 2021 Qualified Allocation Plan (QAP). Volunteers of America would appreciate your consideration of the recommendations below.

2021 Qualified Allocation Plan

1. Sponsor Characteristics

National and Regional non-profits play a valuable role in providing service enriched affordable housing, especially in smaller urban areas that do not have non-profit housing developers, or where only the housing authority is active. Both point selections for Sponsor Characteristics discourage non-local, non-profits from competing in the 9% round and prevent local non-profits from expanding outside their original 90-mile footprint. As a national/regional non-profit, we are precluded from being competitive without the ability to access the Sponsor points. Furthermore, IRS Section 42 requires that 10% of the competitive award go to Qualified Non-Profits. Please accept these recommended changes to both point categories:

(A) *The ownership structure contains either a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date or it contains a Qualified Nonprofit Organization per IRS Section 42. provided the Application is under the Nonprofit Set Aside. Please add the language in red and strike the last part of the sentence.*

(B) The 2020 Sponsor Characteristic Option B was changed to eliminate the point if the development or tenant services are provided by a related party non-profit. Non-profit owners such as Volunteers of America provide extensive and high-quality development and tenant services and should be allowed to take this point. National and regional non-profits do not typically abuse this election AND are encouraged and allocated 10% of the annual award per IRS guidelines. We request you add the language in yellow below back into the QAP:

The HUB or nonprofit Organization must be involved with the Development Services or in the provision of on-site tenant services during the Development's Affordability Period. 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 or Guarantor (excluding another Principal of said HUB [or

National Office

1660 Duke Street, Alexandria, VA 22314-3427 • 703.341.5000 • voa.org

Helping America's most vulnerable®

Nonprofit Organization]. Selecting this item because of the involvement of a nonprofit Organization does not make an Application eligible for the Nonprofit Set Aside. (1 point)

2. Appraisal Review Fee

Appraisers are certified by the Texas Appraisal Licensing and Certification Board and use the Uniform Standards of Professional Appraisal Practice (USPAP). Developers should be able to rely on this trained professional to give an accurate appraised value. A fee of up to \$6,000 for a third-party review of a report created by a licensed professional seems egregious. We request that this fee be deleted, however if TDHCA is unable to do that, please publish a list of approved appraisers.

We appreciate the opportunity to provide comments. Please let me know if you would like any additional information.

Sincerely,



Deborah Welchel
Volunteers of America
Senior Development Director - Texas
dwelchel@voa.org
512-671-0000

(10) Orlean Pierce

From: [Marni Holloway](#)
To: [HTC Public Comment](#)
Subject: FW: "Disastrous" rules eyed for supportive housing
Date: Thursday, October 01, 2020 9:09:33 AM

Marni Holloway

Multifamily Finance Director
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
(512) 475-1676

Reminder for Direct Loan Borrowers: TDHCA will not close earlier than 30 days after receipt of complete due diligence documents. We will not honor closings scheduled without our confirmation.

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats.

About TDHCA

The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in need. For more information, including current funding opportunities and information on local providers, please visit www.tdhca.state.tx.us

From: info <info@mail.tdhca.state.tx.us>
Sent: Thursday, October 01, 2020 8:46 AM
To: Marni Holloway <marni.holloway@tdhca.state.tx.us>
Subject: FW: 'Disastrous' rules eyed for supportive housing

Hi Marni,

I am sure you've likely already received this note, but its addressed to you so I figured I would send it on over.

Best,
- Alex

From: orleanpierce@yahoo.com <orleanpierce@yahoo.com>
Sent: Wednesday, September 30, 2020 5:25 PM
To: info <info@mail.tdhca.state.tx.us>
Subject: 'Disastrous' rules eyed for supportive housing

Attn.: Marni Holloway, Director of Multifamily Finance

Hello Marni Holloway;

I read an article in the Houston Chronicle with the above title concerning supportive housing dated September 20, 2020.

I would like to share my experiences with you. My name is Mrs. Orlean Pierce (widow-no children). I am 66 yrs. old; I live at 6311 gulf frwy., #5203 in Houston, Texas 77023 at Brays Crossing, a New Hope Housing, Inc. property (FDI HOUSTON SRO, LTD. I have lived here over 8 yrs.

Let me state for the record I do not begrudge anyone a roof over their head. However, I absolutely believe in personal responsibility and personal accountability. Working with people in the criminal justice system was my desire to help; I chose to become licensed to volunteer in Prison Ministry.

Drug trafficking is a crime. People who are involved in drug trafficking have friends who are involved in drug trafficking. After complaining for years!! I was informed by two employees of NHH that they know!! there are drugs on their properties (plural). Tax credit properties-financial incentive? Many! of the residents involved in crime are on housing. I was informed repeatedly that NHH had "no authority" over housing residents. In addition, I was informed that NHH is not obligated to do background checks on residents. Residents are allowed 3 overnight guests per week, as long as a \$5.00 fee was paid. (that was recently changed). Friends and friends partying all night long. I was cursed, threatened and bullied from a neighbor for reporting the many!! disturbances for months. I actually slept in my vehicle 3 nights in a row to avoid the "activities" next door. I contacted Joy Horak-Brown in 2016 and 2017 AFTER I slept in my vehicle. No response Finally, this resident was charged with making terrorist threats against me. And NHH personnel knew about it all along. The sounds of gunfire common here at Brays, mostly during the holidays. New Year's Eve, Easter, 4th of July, and Christmas Eve. Bullets have no names on them and they must come down.

No security for years. The back door is propped open to allow others on to the property, who knows who is actually on the property? S.E.A.R.C.H. and Harmony House clients,- most are on housing are here at Brays.

I have not felt safe here for years. Drug trafficking, guns, assaults (both physical and verbal). Housing first may not be the best approach to homeless persons. MANY! have long term drug/ alcohol addictions, many are violent, many have mental health issues. Many are a threat to the residents here at Brays, older people are exposed to these issues when they haven't done anything criminally. Records obtained from calls for service from both police and fire department should give you some insight into the regularity of their presence here at Brays Crossing.

Should innocent people be afraid of the criminal activities? YES! I lived for months barracaded in my apt. Danger so close to me. Crime is real.

Mrs. Orlean Pierce
6311 gulf frwy., #5203
Houston, Texas 77023
832-892-9800
Orleanpierce@yahoo.com.

[Sent from Yahoo Mail on Android](#)

(11) Maureen O' Connell

September 22, 2020

Governing Board

Texas Department of Housing and Community Affairs

P.O. BOX 13941, Austin, TX 78711-3941

RE: 2021-Chapter 11 QAP

Tenant Selection Criteria

Dear Governing Board Members:

This letter is a response to an article in the Houston Chronicle this past week (9/19/2020) announcing the draft set of rules regarding formerly incarcerated persons seeking supportive housing. For the past twenty years, I have been involved in a ministry serving formerly incarcerated women here in Houston/Harris County. One of the many obstacles facing women who successfully completed our program was finding safe, affordable housing as they moved to the next step of their recovery and returned to the community. It is my understanding that supportive housing is our community's effort to provide for vulnerable persons who have, in many cases, had some involvement with the criminal justice system. Although I believe there should be a consequence to one's behavior, in my experience, our community's failure to provide quality education, health care and nutrition for our youth from disadvantaged backgrounds, often results in incarceration. For many, release from incarceration often puts them back in the same, disadvantaged environment that led to incarceration because of, among other things, the lack of safe, affordable housing.

If the draft regarding the exclusion of persons with criminal justice involvement in their background from supportive housing is included in the proposed rules, how can we ever expect people to recover from past mistakes? Additionally, including tenant selection criteria in the application process creates a burden for persons seeking to provide supportive housing for those returning from incarceration. While I recognize the need to ensure public safety, I also feel that we, as a community, must accept responsibility for the racial and educational inequities that frequently lead to involvement in the criminal justice system.

I fear, that a blanket rule that excludes all included in the categories sited, leaves no room for individual situations. I would suggest a separate category for persons listed on the sex offender registry.

The permanent banning of persons convicted of the manufacture and distribution of drugs will not provide the protection people are seeking. I have known more than one person who pled guilty to such a charge just to avoid the interminable wait that is often

involved in going to trial. Often, without benefit of counsel, individuals make these decisions without understanding the ramifications.

I recognize the desire we all have to protect our home and property. I also believe that a commitment on the part of those agencies who are charged with the responsibility of providing the programs to serve the vulnerable among us, must include a commitment to ameliorate the stereotypes regarding supportive housing in any community.

I would strongly encourage the committee to consider NOT including broad exclusionary language without data, to support the assumptions made regarding persons with criminal history in their background. I believe this just one example of the stereotypes surrounding persons requiring supportive housing.

Thank you for all you do in the service of vulnerable populations but please consider the serious ramifications of a decision to include tenant background for all parties involved.

Sincerely,

Maureen O'Connell, OP

Maureen O'Connell, OP

5050 Woodway Dr.

6G

Houston, TX 77056-1709

Cc via email:

Michael Lyttle

Marni Holloway

Kristina Tirloni

From: [Marni Holloway](#)
To: [HTC Public Comment](#)
Subject: FW: Crime victim's program
Date: Thursday, October 01, 2020 5:10:52 PM

Marni Holloway

Multifamily Finance Director
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
(512) 475-1676

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Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats.

About TDHCA

The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in need. For more information, including current funding opportunities and information on local providers, please visit www.tdhca.state.tx.us

From: Helen Barrera <helen.barrera@tdhca.state.tx.us> **On Behalf Of** info
Sent: Thursday, October 01, 2020 4:45 PM
To: Marni Holloway <marni.holloway@tdhca.state.tx.us>
Subject: FW: Crime victim's program

Hello:

The message below came through TDHCA's general email box and I am forwarding to your division to handle. If you are not the appropriate person/division to respond, please let me know.

Thanks!

Helen Barrera

Information Specialist
Texas Department of Housing and Community Affairs
211 E. 11th Street | Austin, TX 78701
Office: (512) 936-7808
Fax (512) 475-0070

About TDHCA

The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities

(12) Orlean Pierce

through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in need. For more information, including current funding opportunities and information on local providers, please visit www.tdhca.state.tx.us.

From: orleanpierce@yahoo.com <orleanpierce@yahoo.com>

Sent: Thursday, October 01, 2020 4:13 PM

To: info <info@mail.tdhca.state.tx.us>

Subject: Crime victim's program

Attn.: Marni Holloway, Director of Multi-family Finance

HOUSING FIRST??

Hello,

More comments on supportive housing projects.

Did you know that here at Brays Crossing, a New Hope Housing, Inc. property in Houston, Tx. 77023, that apts. here are "selected to be inspected?" How is it possible to obtain a true and accurate representation of the condition of the apts. here at Brays Crossing? I wonder is this practice of selection of apts. inspections is property-wide? New Hope Housing, Inc. has MANY! properties throughout the Houston, Tx. area. I wonder if roach infestation is present on other properties? I have pictures of roaches inside the refrigerator, on the toilet stool, in the refrigerator, in my bed, in the bathtub, etc. Have you ever been awakened to the feel of a roach crawling on your face? I have.

As a result of the terroristic threats against me I am now a member of the Crime Victims Program. Have you ever been afraid for your life because you spoke out against the rampant drug trafficking where you live? I have. Toxic environment.

New Hope Housing, Inc. began CA meetings here in early 2020. CA stands for 'cocaine anonymous.'. Crack cocaine seems to be the drug of choice here at Brays Crossing, Kush is not as widespread. I understand marijuana is now legal; however, I really would rather NOT! be exposed to the fumes (respiratory issues).

It seems ludicrous to me to place folks who have known drug addictions in an environment where there is known drug trafficking. Housing first?! Who pays their rent? Financial incentive?

And the innocent victims suffer. No peace. No safety. Would you like to trade places with me?

Mrs. Orlean Pierce

6311 gulf frwy.,#5203

Houston, Texas 77023

832-892-9800

Orleanpierce@yahoo.com

Sent from Yahoo Mail on Android

(13) Marilyn Hartman

From: [Marilyn Hartman](#)
To: [HTC Public Comment](#)
Subject: QAP Draft
Date: Friday, October 02, 2020 3:58:58 PM

To the TDHCA re: QAP Draft Language:

While I don't like to see people turned down for housing, the most problematic of the suggested changes are with the Class A Misdemeanors. I went onto a website to see what kinds of crime constitute these, and thus why they might cause denial of housing, and frankly I'm conflicted. Class A is the most severe and does include assault. At the same time, it's good that there are provisions for mitigation in temporary denials, but the possibility of essentially a 20-year look-back period seems excessive. I would like to see 20 years shortened greatly, and I do think that more consideration needs to be given to the kind of Class A misdemeanor, with more mitigation possibilities for non-violent crimes.

We are doing people a disservice if they can't get housing, which is essential to their moving along on a better path in life. Denial of housing is a great barrier to their ability to make positive progress.

Respectfully submitted,

Marilyn Hartman, Member of NAMI Central Texas and Advocate for people with serious mental illness
8807 Smoketree Cove
Austin, TX 78735
512-470-7840

(14) CitySquare

From: [Larry James](#)
To: [HTC Public Comment](#)
Cc: [Metro Dallas Homeless Alliance](#); [Edd Eason](#); [John Siburt](#)
Subject: Change in QAP re ex-offenders
Date: Monday, October 05, 2020 9:44:23 AM

Texas Department of Housing and Community Affairs
Attn: Patrick Russell
P.O. Box 13941
Austin, Texas 78711-3941
Fax: (512) 475-1895
Email: htc.public-comment@tdhca.state.tx.us

As a provider of housing for low-income individuals and families, including chronically homeless persons, I want to register my opposition to the recent changes made to the QAP that prohibit our providing housing for persons who are ex-offenders. The loss of housing will drive increases in homelessness, while doing nothing for improvements in public safety. This change is short-sighted and will be counterproductive in our neighborhoods.

Please reconsider this change in the QAP for the benefit and good of our community.

Best regards,

Larry James
CEO
CitySquare
Dallas, TX
214-418-2799

From: [Helmke, Mrs. Michelle \(ACF\)](#)
To: [HTC Public Comment](#)
Subject: homeless public comment
Date: Monday, October 05, 2020 9:45:02 AM

I oppose the change to the QAP would severely and adversely hurt the ability of homeless people across the state to secure housing and in turn would lead to increased recidivism and increased homelessness. This would be concerning at any time but is especially concerning now during a pandemic. Please Stop re-punishing folks who have done their time & paid their dues, everyone needs & deserves a home.

- Michelle Helmke, citizen

(16) Bill Howard

From: [Bill Howard](#)
To: [HTC Public Comment](#)
Subject: Proposed Change to Qualified Allocation Plan
Date: Monday, October 05, 2020 9:59:37 AM

I strongly oppose the changes to Section 122 regarding refusal to house individuals with criminal backgrounds both temporarily and permanently.

This would severely restrict community goals for reducing homelessness and amounts to kicking some when they are down.

Strongly oppose these changes.

Bill Howard
6425 Brandon Court
Plano, Texas 75093

(17) Eulain Hall

From: [EULAINÉ HALL](#)
To: [HTC Public Comment](#)
Subject: Public comment re QAP
Date: Monday, October 05, 2020 10:10:28 AM

If I have understood TDHCA's Draft 2021, Chapter 11, Qualified Allocation Plan, correctly, I am alarmed at the prospect of eliminating from housing any person with a criminal record, period. This is exactly the wrong thing to do when we are trying to rehabilitate such citizens, returning them to good and useful lives in our communities, thus saving lives as well as money. To deny housing forever, on the basis of a criminal record - no further considerations - seems heartless and impractical to me. Mark me in opposition to this plan.

Eulaine Hall
eulainehall@aol.com
972-484-1115
Forest Dale Senior Apartments
11851 High Dale Dr Apt. 109B
Dallas TX 75234-7958

From: [Christian Garcia](#)
To: [Matthew Griego](#)
Subject: Public Comment 2021 QAP
Date: Monday, October 05, 2020 10:23:21 AM

Hi Matt:

Thanks for taking my call last week. As discussed, I think the QAP should be changed to help smaller metros compete with larger metros. Consider lowering the urban core threshold from 190,000 to 90,000 (perhaps even 50,000). Also consider decreasing the underserved (5) five point threshold from 100,000 to match any movement downward in urban core threshold. So if the urban core threshold moves down to 50,000 allow the underserved threshold to move down to 50,000. This should open up new areas of the state and allow small urban areas to overcome their disadvantages.

Have a great day,

Christian Garcia
The Nurock Companies
675 Town Square Blvd.
Building 1A, Suite 200
Garland, TX 75040
678-862-5941

(19) Lydia Reynolds

From: [Lydia Reynolds](#)
To: [HTC Public Comment](#)
Subject: QAP change
Date: Monday, October 05, 2020 11:30:10 AM

To Whom It May Concern:

I totally agree that making the proposed change would severely and adversely impact the ability of homeless response systems to secure housing for their clients which would impact those persons needing this service. Please reconsider your decision to make this change so that we can continue to help those in need.

Unfortunately I was unable to open the website link to get the mark up information on this proposed change, but I hope you will be able to address my concern without having whatever information I would have needed from that site.

Thanks in advance for your consideration.

Sincerely yours,
Lydia Reynolds

(20) Ashley Owen Brundage

From: [Ashley Brundage](#)
To: [HTC Public Comment](#)
Subject: QAP proposed changes - comment
Date: Monday, October 05, 2020 12:05:59 PM

Recently, the Texas Department of Housing and Community Affairs (TDHCA) proposed a change to the Qualified Allocation Plan (QAP) that would require supportive housing tax credit properties to refuse to house individuals with criminal backgrounds (temporarily or permanently, depending on the severity of the crime). Starting on page 14 and look at the definition of Supportive Housing at the bottom of the page. The changes I oppose are on page 15 of the document.

This proposal is racist and will disproportionately impact our African American community who are overrepresented in the incarcerated population as well as in our homeless population. This change to the QAP would severely and adversely impact the ability of homeless response systems across the state to secure supportive housing for their clients, which in turn would lead to increased recidivism and increased homelessness. This would be concerning at any time but is especially concerning during a global pandemic.

Ashley Owen Brundage, MSSW (She/Her) | Senior Vice President, Community Impact
[United Way of Metropolitan Dallas](#)
Office: 214.978.0023 | Cell: 972.523.0157
abrundage@unitedwaydallas.org
Twitter: [@mommabrundage](#)
UnitedWayDallas.org

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(21) Edd Eason

From: [Edd Eason](#)
To: [HTC Public Comment](#)
Subject: Change in QAP re ex-offenders
Date: Monday, October 05, 2020 12:13:04 PM

Texas Department of Housing and Community Affairs
Attn: Patrick Russell
P.O. Box 13941
Austin, Texas 78711-3941
Fax: (512) 475-1895
Email: htc.public-comment@tdhca.state.tx.us

As a provider of housing for low-income individuals and families, including chronically homeless persons, I want to register my opposition to the recent changes made to the QAP that prohibit our providing housing for persons who are ex-offenders. This will make the job of housing individuals with low-grade felonies and less-than-severe misdemeanors more difficult than it already is. Local data shows that individuals from the homeless community with low-grade felonies and misdemeanors are no more likely to be perpetrators of violent crime in multi-family housing than any other renters. This change is short-sighted and will be counterproductive in our neighborhoods.

Please don't make my job any harder than it already is. Please reconsider this change in the QAP for the benefit and good of our community.

Edd Eason, MMFT
Assistant Vice-President of Health & Housing
Office: 469-904-7065
Cell: 214-534-5821
CitySquare
www.CitySquare.org

Please note our change in mailing address!

Mailing:
PO Box 140024
Dallas, TX 75214

Physical:
1610 S Malcolm X Blvd
Dallas, TX 75226

(22) DCT LiveWell

From: [Thea Walker](#)
To: [HTC Public Comment](#)
Subject: Proposed changes to QAP
Date: Monday, October 05, 2020 12:59:09 PM

Dear Sir/Madam:

After reviewing the proposed QAP, I would like to oppose the changes proposed on page 15 of the document. The proposed change would make it much more difficult for formerly incarcerated persons to find suitable housing, and likely increase the rates of homelessness among ex-felons and others deserving a second chance. Considering that many prisoners in the U.S. are wrongfully convicted, sentenced and serve jail time because the use of DNA testing that would release these prisoners is not accelerated, it would seem unjust to further penalize these persons by making subsidized housing more difficult to obtain.

In summary, I have extracted the language that needs to be removed or changed:

(v) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident.

(I) The criminal screening criteria must not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(-a-) Permanent denial based on criminal history at application or recertification of any conviction for murder related offense, sexual assault, kidnapping, or arson;

(-b-) Temporary denial for a minimum of three years based on criminal history at application or recertification of any felony conviction for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;

(-c-) Temporary denial for a minimum of two years for non-violent felonies; and

(-d-) Temporary denial for a minimum of one year for Class A misdemeanors

(II) The criminal screening criteria may include provisions for mitigation of temporary denials including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

Sincerely,

--

Thea G. Walker
Executive Director

DCT LiveWell
P.O. Box 398509
Dallas, TX 75339



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(23) Sunny Bundy

From: [Sunny Bundy](#)
To: [HTC Public Comment](#)
Subject: Public Comment - TDHCA QAP
Date: Monday, October 05, 2020 1:27:12 PM

Writing in to oppose the change to the [Qualified Allocation Plan \(QAP\)](#) that would require supportive housing tax credit properties to refuse house individuals with criminal backgrounds (temporarily or permanently, depending on the severity of the crime).

(24) Davidyne Dove

From: [Davidyne Dove](#)
To: [HTC Public Comment](#)
Subject: Opposition
Date: Monday, October 05, 2020 1:32:08 PM

Why on Earth would you propose a change, to the QAP, that would require supportive housing tax credit properties to refuse to house individuals with criminal backgrounds (temporarily or permanently, depending on the severity of the crime), when a huge, vast majority of the homeless population are ex-offenders? Ex-offenders have enough barriers, as do homeless individuals. Please do not make it even harder for broken individuals to recover.

Davidyne Dove

Men's Shelter-Case Aide Shift Coordinator
The Salvation Army • Carr P. Collins Social Service Center
[5302 Harry Hines Blvd., Dallas, TX 75235](#)
Direct: (214) 424-7085

(25) Lee R. Stark

From: [Lee R. Stark, Jr., MA, LBSW](#)
To: [HTC Public Comment](#)
Subject: Opposition to the proposed change to the Qualified Allocation Plan (QAP) re: criminal backgrounds
Date: Monday, October 05, 2020 4:26:32 PM
Attachments: [image001.png](#)
[image002.png](#)

Texas Department of Housing and Community Affairs
Attn: Patrick Russell

Mr. Russell,

As a geriatric social worker and homeless street outreach caseworker, I have some grave concerns about the proposed changes in the Draft 2021 QAP, Chapter 11, §11.1 (d) (122). Specifically, I am concerned about the proposal to permanently deny affordable housing to those with felony convictions, especially violent convictions. Let me be clear, I am well aware of the concern about allowing those with previous violent felonies back into society, and how those felons can regain the public trust. *However, past studies have demonstrated that homelessness leads to recidivism among ex-convicts* ([Lutze, Rosky & Hamilton, 2013](#); [Clark, 2014](#)). Additionally, these provisions would unduly affect the immediate family members of ex-felons, including spouses and children.

I am pleased to read the provision for mitigation of temporary denials, but I believe those mitigation provisions should be extended to ALL with previous convictions. It may be that additional provisions such as requiring clients with violent convictions to be in compliance with parole should be added. However, if an individual with a past violent conviction has met and completed all parole requirements, then I believe that they should be allowed housing WITHOUT the 20 year provision.

Thank you for your consideration of my input.

Lee R. Stark, Jr., MA, LBSW
Social Worker/ Benefits Counselor
[Wellness Center for Older Adults](#)
401 W. 16th, Ste. 600, Plano, TX 75075
972-953-7669 (phone) 469-212-0863 (fax)
lee.stark@wellctr.org

-
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(26) Madeline Reedy

From: [Madeline Reedy](#)
To: [HTC Public Comment](#)
Subject: Texas Department of Housing and Community Affairs (TDHCA) proposed a change to the Qualified Allocation Plan (QAP)
Date: Monday, October 05, 2020 5:41:19 PM

Texas Department of Housing and Community Affairs

Attn: Patrick Russell

P.O. Box 13941

Austin, Texas 78711-3941

Fax: (512) 475-1895

Email: htc.public-comment@tdhca.state.tx.us

As a provider of housing for low-income individuals and families, specializing in youth transitioning out of the foster care system, I want to register my opposition to the recent changes made to the QAP that prohibit our providing housing for persons who are ex-offenders. This will make the job of housing young adults with low-grade felonies and less-than-severe misdemeanors more difficult than it already is. Local data shows that individuals from the homeless community with low-grade felonies and misdemeanors are no more likely to be perpetrators of violent crime in multi-family housing than any other renters.

I believe this change is short-sighted and will be counterproductive in our neighborhoods. Our youth have enough to mitigate as they find housing outside of a system of care.

Please reconsider this change in the QAP for the benefit and good of our community.

Madeline Reedy

(27) Houston Volunteer Lawyers

From: [Veronica Jacobf](#)
To: [HTC Public Comment](#)
Subject: Proposed changes to the QAP.
Date: Monday, October 05, 2020 5:54:35 PM

This change to the QAP would severely, adversely impact the ability of homeless response systems across the state to secure supportive housing for their clients, which in turn would lead to increased recidivism and increased homelessness. This would be concerning at any time, but is especially concerning during a global pandemic.

-
Sincerely,

Veronica F. Jacobs

Veronica F. Jacobs, *Director of Advocacy & Community Services*
Houston Volunteer Lawyers | 1111 Bagby, Suite FLB 300 | Houston, Texas 77002 |
(346) 388-4769 or (713) 275-0120

www.MakeJusticeHappen.org

(28) Linda Siemers

From: [Linda Siemers](#)
To: [HTC Public Comment](#)
Subject: Keep housing available
Date: Monday, October 05, 2020 9:14:23 PM

Please keep housing available for those with criminal pasts. We must give people a chance to survive and succeed.

Thank you,
Linda Siemers
323E 15th Street

(29) Houston Volunteer Lawyers

From: [Veronica F. Jacobs](#)
To: [HTC Public Comment](#)
Cc: [Barr, Melody - HCD](#); [Moret, Niquita - HCD](#)
Subject: Opposition to Proposed changes to Qualified Application Plan
Date: Monday, October 05, 2020 9:23:29 PM

The proposed change to the Qualified Application Plan goes against the very basics of housing those most in need. Many of us have made mistakes. Some mistakes have larger consequences than others. When a person has paid his or her debt to society by being incarcerated, they have been duly punished. Additional punishment should not be inflicted by programs that have been put in place to help persons in need.

These persons should be able to enter society and get a fresh start. Denying them housing because of past mistakes would be punishing them again for mistakes made in the past.

The very basis for housing programs is to help those most in need. Formerly incarcerated persons are very much in need. After imprisonment, one should not be denied shelter based on his/her history. One should not be continuously judged and punished. Having a home is a basic need. To get a job, receive assistance, or even to get a simple letter, a person needs an address. Denying basic shelter goes against the grain of housing assistance.

Veronica F. Jacobs

Veronica F. Jacobs, *Director of Advocacy & Community Services*
Houston Volunteer Lawyers | 1111 Bagby, Suite FLB 300 | Houston, Texas
77002 |
(346) 388-4769 or (713) 275-0120

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(30) Kevin Trahan

From: [Kevin Trahan](#)
To: [HTC Public Comment](#)
Subject: Public Comment on Proposed Increased Criminal Screening for Supportive Housing
Date: Monday, October 05, 2020 10:06:39 PM

Hello,

I am writing to comment on TDHCA's proposed increased criminal screening for supportive housing. This is yet another Texas program that seems designed to hurt the most vulnerable Texans. Requiring categorical denials for certain offenses and lookback periods for other offenses in supportive housing goes against the evidence-based Housing First model and will keep out the most vulnerable Texans, who are exactly those in need of supportive housing.

Please do not pass cruel restrictions with no evidentiary backing.

Kevin Trahan

--

Kevin Trahan
kevintrahan93@gmail.com | 563-340-8459

(31) Daniel & Beshara, representing ICP

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

Laura B. Beshara

October 5, 2020

email delivery

Mr. Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street, Austin, TX 78701

Re: comment opposing proposed 2021 QAP provision 11.1(d)(122)(B)(v)(I)-(III)¹

This comment opposing the proposed 2021 QAP provision 11.1(d)(122)(B)(v)(I)-(III) is filed on behalf the Inclusive Communities Project, Inc (ICP). ICP is a Texas-based nonprofit corporation that assists low-income families in obtaining affordable housing. *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 526 (2015).

The TDHCA proposal in the Staff QAP Draft subjecting supportive housing projects to the discriminatory tenant selection criteria based on criminal records violates:

- the HUD guidelines interpreting and implementing the disparate impact liability standard of 42 U.S.C. § 3604(a) and (f) and 24 C.F.R. § 100.500 in the context of tenant selection based on criminal records (HUD Guidelines);²
- the 42 U.S.C. § 3604(a) and (f) prohibitions against denying housing based on both disparate impact and discriminatory intent;
- The public use provision as interpreted and applied at 26 C.F.R. § 1.42-9(a); and
- the Equal Protection clause of the Fourteenth Amendment to the United States Constitution.

The HUD Guidelines interpret and implement the Fair Housing Act and the HUD Fair Housing Act regulations. The guidance addresses how the discriminatory effects and disparate treatment methods of proof apply in Fair Housing Act cases in which a housing provider justifies an adverse housing action – such as a refusal to rent or renew a lease – based on an individual's criminal history. HUD Guidelines, page 1. HUD specifically states that a housing provider must show that its policy accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not. A policy

¹ As set out in the 2021 QAP Staff Draft.

² HUD Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions, 2016.

or practice that fails to take into account the nature and severity of an individual's conviction is unlikely to satisfy this standard. Similarly, a policy or practice that does not consider the amount of time that has passed since the criminal conduct occurred is unlikely to satisfy this standard. HUD Guidelines pages 6-7. The proposed QAP provision fails this standard.

TDHCA's adoption of the proposed regulation would put all low income housing tax credit housing supportive housing projects subject to the tenant selection criteria in violation of the public use requirement and thereby making all such projects ineligible for tax credits.

(a) General rule. If a residential rental unit in a building is not for use by the general public, the unit is not eligible for a section 42 credit. A residential rental unit is for use by the general public if the unit is rented in a manner consistent with housing policy governing non-discrimination, as evidenced by rules or regulations of the Department of Housing and Urban Development (HUD) (24 CFR subtitle A and chapters I through XX). 26 C.F.R. § 1.42-9(a).

If the policy is adopted, TDHCA's tenant selection requirement will overtly reject more supportive housing project applicants that would otherwise be excluded under the general TDHCA tenant selection criteria regulation. 10 TAC 802(b). This will have an undisputed disparate impact on an applicant group that is protected by 42 U.S.C. § 3604(f). TDHCA cannot justify this discriminatory effect. The singling out of the protected group with any possible acceptable justification is intentional discrimination in violation of the Fair Housing Act and the Equal Protection clause of the Fourteenth Amendment to the United States Constitution. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985); HUD Guidelines, pages 8-10. TDHCA cannot justify the proposed discriminatory conditions based on unsubstantiated stereotypes. *Corey v. Sec'y, U.S. Dep't of Hous. & Urban Dev. ex rel. Walker*, 719 F.3d 322, 328 (4th Cir. 2013).

The proposed policy will also have a racially discriminatory effect on Black persons if it is adopted. The policy violates 42 U.S.C. § 3604(a), (b), and the Equal Protection clause of the Fourteenth Amendment. Black persons are disproportionately in need of low income housing as well as are disproportionately likely to have had encounters with the criminal justice system. Black persons are also overrepresented in the group in need of homeless services and the supportive housing at issue with the proposed rule. There is no legitimate justification for the proposed rule.

TDHCA's tenant screening proposal for supportive housing is particularly cruel during this COVID19 pandemic with thousands of low income tenants facing dire need for housing. The most vulnerable of the low income tenant population and the ones most in need of affordable housing and services will be excluded by TDHCA's arbitrary and discriminatory screening criteria.

Respectfully Submitted,

s/Laura B. Beshara

Laura B. Beshara

Michael M. Daniel

Daniel & Beshara, P.C.

Attorneys for ICP

cc: Demetria McCain, President ICP

(32) Lisa Stone

From: [Lisa Stone](#)
To: [HTC Public Comment](#)
Subject: proposed change to the Qualified Allocation Plan (QAP)
Date: Tuesday, October 06, 2020 10:13:12 AM

I'm sure you already know the following information, but it bears repeating given the proposed change to the QAP--which would move us backward if enacted.

The Way Home Continuum of Care (the local homeless response system, made up of 100+ agencies) has made great progress in solving homelessness in Harris, Fort Bend and Montgomery counties.

Since 2011, WHCC agencies have placed more than 19,000 people in permanent supportive housing, which represents a 53% decrease in overall homelessness since 2011.

It also makes the Houston area a national model.

This progress would not have been possible had rules such as the one proposed in the draft QAP been in place: Texas Department of Housing and Community Affairs (TDHCA)'s proposed change to the QAP would require supportive housing tax credit properties refuse to house individuals with criminal backgrounds (temporarily or permanently, depending on the severity of the crime).

It's a given that people who need supportive housing are our most vulnerable, e.g., people experiencing or at-risk of homelessness, and people with physical, intellectual, or developmental disabilities, which means this change affects the most vulnerable Texans.

A disproportionate number of people experiencing homelessness have criminal backgrounds. This is not a coincidence since many people fall into homelessness *because* they are released from the criminal justice system with nowhere to go.

More than 50,000 people enter shelters directly from correctional facilities each year. People who have been incarcerated are 13x more likely to experience homelessness when compared to the general public.

The proposed change would disproportionately affect Black / African American people experiencing homelessness and their ability to be housed at tax credit properties. As we know, Black/African Americans are disproportionately represented in both the homeless and criminal justice systems due to systemic and structural racism. So this proposal would exacerbate systemic racism.

It would take longer to house clients with criminal backgrounds because we wouldn't be able to find them units for which they would be eligible. People would remain on the streets longer while we tried to find private landlords who could accommodate them.

During COVID, it's especially important to get people into housing where they can "stay home, stay safe." Any policy that creates delays could adversely affect public health.

Providing permanent housing is cheaper than sending someone back to prison, and it's also cheaper than allowing someone to remain on the streets.

For all these reasons and all the other reasons you already know, please do not enact the proposed rule.

Sincerely, LEStone

(33) Carreen Carson

From: [Carreen CARSON](#)
To: [HTC Public Comment](#)
Subject: Proposed QAP by TDHCA
Date: Tuesday, October 06, 2020 10:19:46 AM

I am greatly concerned with the following proposed criteria for supportive services of the proposed QAP. Having worked with low income communities for the last 30 years and with those reentering society after incarceration for 10 plus years, availability of affordable, stable housing is the cornerstone to anyone being able to improve their lives, the lives their children, their communities, and their cities. To deny housing to someone recently released from prison or having a misdemeanor on their record ensures that individual will have not alternative than recidivism. In 2000, Dallas Leadership Foundation's neighborhood partners were struggling to support men and women who were released back into their communities from prison. With no job, no money, and **no place to live**, those recently released often found themselves facing the same temptations and reoffending. DLF responded by starting a reentry program in 2001. Assisting former inmates in finding and keeping employment, identifying transitional housing then moving them into permanent housing, and providing mentoring are three critical elements of DLF's reentry program that helps the previously incarcerated successfully reenter our communities. DLF's Reentry Program has had a 4% recidivism rate for the past 3 years. This success is not possible without an affordable option for these men and women to live.

Housing is a significant component of a formerly incarcerated person's reintegration back into society, it also has a direct correlation to recidivism. A criminal background makes it difficult for the individual to find housing and more importantly a job. Unemployment is a significant barrier to housing for homeless men with a criminal history. Without stabilizing housing and employment many individuals continually cycle between incarceration and homelessness. According to Deputy Director Richard Cho of the United State Interagency Council on Homeless "Some people are caught in a revolving door between the streets or shelters and jails, not to mention other institutional settings. In fact, national data shows that the number of Americans caught on this cycle may number in the tens of thousands. Furthermore, out of the 11 million people detained or incarcerated in jails every year; as many as 15 percent report having been homeless. Roughly 48,000 people entering shelters every year are coming directly from prisons or jails." (Cho, 2018). Keeping these individuals from being eligible for supportive housing just compounds these issues.

I ask that you revised this section of the QAP and allow supportive housing to provide services to those with criminal backgrounds in an effort to support their reintegration back into society and become successful community members. I hate to see the success DLF has worked for for 20 years be derailed by this section of the QAP.

(v) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident. (I) The criminal screening criteria must not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have

been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and (-a-) **Permanent denial based on criminal history at application or recertification of any conviction for murder related offense, sexual assault, kidnapping, or arson; (-b-) Temporary denial for a minimum of three years based on criminal history at application or recertification of any felony conviction for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others; (-c-) Temporary denial for a minimum of two years for non-violent felonies; and (-d-) Temporary denial for a minimum of one year for Class A misdemeanors**

Thank you for consideration of these issues,

Carreen Carson
Grant Writer and Advancement Consultant
Dallas Leadership Foundation

(34) Santiago Torres

From: [Santiago Torres](#)
To: [HTC Public Comment](#)
Subject: Public comment: Proposed change to the Qualified Allocation Plan (QAP)
Date: Tuesday, October 06, 2020 10:20:29 AM

Good morning,

I am writing to express my disappointment with the new proposed changes to QAP. I work for one of the biggest homeless Non-Profits in the state of Texas and I believe this will only hurt the system that is in place, while also increasing the number of homeless individuals. When a person goes to jail and they get out, they have paid their dues to society and should not be punished after the fact for things they did years ago. If you don't believe they have suffered enough and have been punished enough, even after getting out jail (i.e. not able to get a job, not able to get housing, etc.), then you are letting your privilege get in your way and obstruct your vision. Temporary and permanent housing options are these people's last chance at having a roof over their heads and allows them to have a case manager to help them get their life together and helps them integrate back into society after years of being put away. We are trying to help those who society, and apparently the TDHCA, have given up on. Please don't do this to them.

Respectfully,
Santiago Torres

(35) Sharon Karam

From: [Karam, Sharon](#)
To: [Marni Holloway](#)
Cc: [HTC Public Comment](#)
Subject: proposed changes to TDHCA QAP
Date: Tuesday, October 06, 2020 10:26:58 AM
Attachments: [image003.png](#)
Importance: High

Dear Ms. Holloway and colleagues,

I write, as a member of a religious congregation concerned about homelessness and as a member of the board of Angela House, a wonderful ministry for women seeking to reenter life after incarceration, to plead for your reconsideration of the current rule change under consideration at TDHCA, that would make it harder for those formerly incarcerated to find housing.

The cogent reasons for pausing these changes are these:

- They too broadly conflate all types of reasons for “safety” and lack any data supporting the rule change against those with a criminal background, whereas the multiyear data from Houston’s Coalition for the Homeless, which shows a decade-long 53% decrease in homelessness, which includes the formerly incarcerated, is a clear measure of success. I acknowledge the fear of some for wanting protection of former sex offenders being too close to schools, but those laws are already on the books, and therefore don’t need double protection from TDHCA. Bottom line: the formerly incarcerated who have been through very good programs, such as Angela House and other similar programs, can live on their own in housing often provided by faith-based entities, which are clean, supervised, and community-oriented. They (both the housing and the inhabitants) become models of community improvement;
- The changes will dramatically and negatively roll back the progress we have made on reducing the homeless population in Houston, especially among the formerly incarcerated, particularly women, many of whom are formerly victims of trafficking;
- The changes are especially severe during a pandemic, and will further our health crisis, which our more responsible public officials have attempted so well to mitigate --- this really flies in the face of common sense, public health, and Texas spirit;

As with much else in our state, it is the moment to look at those who have few to advocate for them, and those formerly incarcerated, especially women, are in that population. What we have learned at Angela House, time and time again, is that among the most important factors in their success upon leaving the program is finding appropriate safe housing, in order to continue their new life, and not only can they reunite with family, continue with their new-found job or studies, and feel safe in an apartment or home of their own, but immediately they begin to talk about “giving back to the community.” Who would want to take this dream away from them --- because it involves families, and the health of whole communities.

Not only do I find the proposed changes inappropriate, ill-timed, and unnecessary, but there is something mean-spirited about it, which isn’t what I love about what we celebrate in Texas, and I’m a transplant, proud of what we call Texas spirit! Let’s keep that alive, and make it available to those

who can't always claim it for themselves.

Sharon Karam RSCJ

713-467-5312 White House Community, Religious of the Sacred Heart

713-419-4365 Cell

 Duchesne Academy of the Sacred Heart

10202 Memorial Drive
Houston, Texas 77024

duchesne.org

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(36) Colbey Walker

From: [Colbey Walker](#)
To: [HTC Public Comment](#)
Subject: Qualified Action Plan (QAP) - Remove Requirement Excluding Those With Criminal History
Date: Tuesday, October 06, 2020 10:28:58 AM

Mr. Russell,

My name is Colbey Walker and I am the Administrator of the Department of Emergency Medicine at UT Southwestern Medical Center. I am lucky to help oversee and support the amazing group of providers who deliver care in the UT Southwestern Clements University Hospital Emergency Department and the Parkland Hospital Emergency Department. Being that these two hospital EDs serve populations at the extremes - Clements serves the sickest patient population in the US and Parkland is the busiest and largest ED in the country - we care for patients each and every day who are experiencing homelessness. My experiences in this work has led me to write you today, to request the removal of the language in the proposed update to the 'Supportive Housing' definition (section 122) of the Qualified Action Plan (QAP) relating to exclusion of those with a criminal background.

Requiring supportive housing to refuse housing to individuals with criminal backgrounds will lead to unnecessary stress put upon individuals and homeless response systems across the state; efforts to find alternative housing for a number of folks currently or imminently housed would need to grow substantially to assist those displaced under this new expectation. And while there are many who will do what they can to do this work, I fear that this change would still lead to an increase in homelessness - a concern in any moment, but especially so as we navigate this pandemic and are dealing with the resulting wave of folks who have lost their homes.

Homelessness is clearly an issue that directly poses a number of challenges to an individual, but not having stable, safe housing indirectly affects many other aspects of a person's life. We see these impacts every day in the amplification of health issues - what should be relatively minor ailments that grow into larger, more expensive issues because of the instability of the patient's life situation. People experiencing homelessness generally present sicker than necessary - than they would have been had they addressed the issue at the outset or avoided it altogether through preventative means - and the expense associated with the care delivered in those critical moments is not uncommonly thousands of times greater and almost always covered by taxpayers.

To that end, for the sake of the health of all Texans and to be as responsible a steward of taxpayer funds as possible, I humbly ask that you please lead efforts to remove the elements of the updated 'Supportive Housing' definition relating to criminal history exclusions and work specifically to expand housing access to as many of our neighbors who need it. Thank you much.

Sincerely,

Colbey Walker

--

N. Colbey Walker
colbeywalker@gmail.com

410-868-9103

(37) Kris Donaldson

From: [Kris Donaldson](#)
To: [HTC Public Comment](#)
Subject: QAP comment
Date: Tuesday, October 06, 2020 10:33:31 AM
Attachments: [image001.png](#)
[image004.png](#)
[image005.png](#)

Hello Matthew Griego and associates,

My name is Kris Donaldson and I work in Houston as a case manager helping homeless individuals move into permanent supportive housing. I love my work and I find it incredibly inspiring to watch people at low points in their lives find themselves in a place in their life where they are safe, stable, hopeful, and proud of themselves. Many of my clients have histories that that they are attempting to distance themselves from but it is more difficult on the streets. Clients are often desperate to survive and have difficulty avoiding petty crimes like trespassing or fair evasion. In this this way, allowing tax credit properties to accept people with criminal backgrounds will reduce crime in the long run. It is well known that crimes are often committed out of desperation, and people have an easier time turning over a new leaf when they are in a safe stable home they can call their own. Additionally, tax credit properties deserve the freedom to choose how best to run their business in their city. Please allow them to make their own decision about how to vet their applicants.

All the best,

Kris



Kris Donaldson, MS (they/them)

Housing Navigator
SEARCH Homeless Services
2015 Congress Avenue | Houston, TX 77002
Direct: 713.374.3283



(38) John Basel

From: [John B](#)
To: [HTC Public Comment](#)
Subject: Proposed change to the Qualified Allocation Plan
Date: Tuesday, October 06, 2020 10:39:29 AM

As a volunteer on the front lines of homelessness in the Houston area I see first hand how people end up homeless for a myriad of reasons.

One way people end up on the streets is that upon being released from prison, a homeless shelter is their only option.

Cities across the nation have seen how providing "Housing First" is the best way to begin treating an individual's myriad of issues so that they might become independent again. It's impossible to focus on anything when you don't know where you are going to sleep at night. When they are homeless they can't focus on going to a counselor for addiction or mental health treatment.

Taking away access to shelters for those with a criminal record would be a giant step backwards in our progress that has been made in reducing the number of homeless in the Houston area where we have seen a fifty percent reduction since 2011.

Please reconsider this new policy.

Sincerely,

John Basel

Volunteer at the Hope Center and Hope Haven

President, Ponderosa Forest Civic Association

Board Member, Cypress Creek Christian Community Center

Sent from [Outlook](#)

(39) Eli Mensing

From: [Eli Mensing](#)
To: [HTC Public Comment](#)
Subject: QAP Public Comment
Date: Tuesday, October 06, 2020 11:03:24 AM

Hello,

I'm writing to oppose the proposed change to the QAP that would force supportive housing tax credit properties to refuse to house individuals with criminal backgrounds.

This proposed policy is cruel and counterproductive. The truth is that many homeless people are homeless because they have criminal records. That record makes it far more difficult for them to get a good paying job to get off the streets and into a place they can call home. Because of the way QAP currently is, homeless support organizations have been able to house thousands of homeless individuals and help them get back on their feet. Housing is the first step to self-sufficiency, providing the foundation for individuals to become productive members of their community.

Without the tax subsidized housing, the Texas Department of Housing and Community Affairs is keeping more people out on the streets. This leads to more crime, more spread of the coronavirus, and a larger homeless population with less resources to serve them. This policy does not help anyone. It only hurts the communities that will face an influx of houseless people on their streets and puts the houseless people themselves more at risk of committing another crime. Additionally, permanent housing is cheaper than throwing someone back in jail or housing someone in a shelter.

This policy change makes no sense logically, financially, or morally. Please do not implement it.

Eli Mensing

(40) duplicate

From: [Marni Holloway](#)
To: [HTC Public Comment](#)
Subject: FW: proposed changes to TDHCA QAP
Date: Tuesday, October 06, 2020 11:04:41 AM
Attachments: [image003.png](#)
Importance: High

Marni Holloway

Multifamily Finance Director
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
(512) 475-1676

Reminder for Direct Loan Borrowers: TDHCA will not close earlier than 30 days after receipt of complete due diligence documents. We will not honor closings scheduled without our confirmation.

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats.

About TDHCA

The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in need. For more information, including current funding opportunities and information on local providers, please visit www.tdhca.state.tx.us

From: Karam, Sharon <Sharon.Karam@duchesne.org>
Sent: Tuesday, October 06, 2020 10:27 AM
To: Marni Holloway <marni.holloway@tdhca.state.tx.us>
Cc: HTC Public Comment <HTCPC@tdhca.state.tx.us>
Subject: proposed changes to TDHCA QAP
Importance: High

Dear Ms. Holloway and colleagues,

I write, as a member of a religious congregation concerned about homelessness and as a member of the board of Angela House, a wonderful ministry for women seeking to reenter life after incarceration, to plead for your reconsideration of the current rule change under consideration at TDHCA, that would make it harder for those formerly incarcerated to find housing.

The cogent reasons for pausing these changes are these:

- They too broadly conflate all types of reasons for “safety” and lack any data supporting the rule change against those with a criminal background, whereas the multiyear data from Houston’s Coalition for the Homeless, which shows a decade-long 53% decrease in homelessness, which includes the formerly incarcerated, is a clear measure of success. I

acknowledge the fear of some for wanting protection of former sex offenders being too close to schools, but those laws are already on the books, and therefore don't need double protection from TDHCA. Bottom line: the formerly incarcerated who have been through very good programs, such as Angela House and other similar programs, can live on their own in housing often provided by faith-based entities, which are clean, supervised, and community-oriented. They (both the housing and the inhabitants) become models of community improvement;

- The changes will dramatically and negatively roll back the progress we have made on reducing the homeless population in Houston, especially among the formerly incarcerated, particularly women, many of whom are formerly victims of trafficking;
- The changes are especially severe during a pandemic, and will further our health crisis, which our more responsible public officials have attempted so well to mitigate --- this really flies in the face of common sense, public health, and Texas spirit;

As with much else in our state, it is the moment to look at those who have few to advocate for them, and those formerly incarcerated, especially women, are in that population. What we have learned at Angela House, time and time again, is that among the most important factors in their success upon leaving the program is finding appropriate safe housing, in order to continue their new life, and not only can they reunite with family, continue with their new-found job or studies, and feel safe in an apartment or home of their own, but immediately they begin to talk about "giving back to the community." Who would want to take this dream away from them --- because it involves families, and the health of whole communities.

Not only do I find the proposed changes inappropriate, ill-timed, and unnecessary, but there is something mean-spirited about it, which isn't what I love about what we celebrate in Texas, and I'm a transplant, proud of what we call Texas spirit! Let's keep that alive, and make it available to those who can't always claim it for themselves.

Sharon Karam RSCJ
713-467-5312 White House Community, Religious of the Sacred Heart
713-419-4365 Cell

 Duchesne Academy of the Sacred Heart

10202 Memorial Drive
Houston, Texas 77024

duchesne.org

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(41) Teri Peterson

From: [Marni Holloway](#)
To: [HTC Public Comment](#)
Subject: FW: Public comments to changes to the Qualified Allocation Plan - AGAINST
Date: Tuesday, October 06, 2020 11:10:20 AM

Marni Holloway

Multifamily Finance Director
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
(512) 475-1676

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Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats.

About TDHCA

The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in need. For more information, including current funding opportunities and information on local providers, please visit www.tdhca.state.tx.us

From: Teri Peterson <terileepeterson@yahoo.com>
Sent: Tuesday, October 06, 2020 10:17 AM
To: Marni Holloway <marni.holloway@tdhca.state.tx.us>
Subject: Public comments to changes to the Qualified Allocation Plan - AGAINST

Ms. Holloway -

I'd like to officially submit my comments to the proposed changes to the Qualified Allocation Plan. Specifically, the proposal to change the definition of supportive housing to exclude people with criminal backgrounds.

I am firmly AGAINST this change to supportive housing.

People who need supportive housing are clearly our most vulnerable population and very often have criminal histories. Additionally, these vulnerable individuals have often taken a "plea agreement" to either expedite their judicial process or to limit their risk for a long term sentence - and never exercised their opportunity to be judged by a jury of the peers. Making this proposed change and limiting their ability to find housing when they leave incarceration will only exasperate this injustice and it will most definitely increase their likelihood of recidivism.

Again, I strongly oppose this change.

Please let me know you have received my comments and that they have been added to the official public comments.

Sincerely,

Teri Peterson

(42) McDowell Housing Partners



October 6, 2020

VIA EMAIL

Ms. Marni Holloway, Multifamily Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: 2021 Qualified Allocation Plan – Public Comments

Dear Ms. Holloway,

McDowell Housing Partners appreciates the opportunity of providing comments on the draft 2021 Qualified Allocation Plan (QAP) and the Multifamily Housing Revenue Bond Rule (Bond Rule), that have been posted to the Texas Department of Housing and Community Affairs' (TDHCA) website.

Upon reviewing the latest draft QAP, we would like to kindly ask you to keep the 1-mile radius along with the quantity of jobs for each tier as is.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ana Padilla", with a horizontal line underneath.

Ana Padilla
apadilla@mcdhousing.com
216-310-8500

(43) McDowell Housing Partners



October 6, 2020

VIA EMAIL

Ms. Marni Holloway, Multifamily Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: 2021 Qualified Allocation Plan – Public Comments

Dear Ms. Holloway,

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Sincerely,

A handwritten signature in blue ink, appearing to read "William Zunamon", with a long, sweeping underline.

William Zunamon
Development Associate

(44) McDowell Housing Partners



October 6, 2020

VIA EMAIL

Ms. Marni Holloway, Multifamily Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: 2021 Qualified Allocation Plan – Public Comments

Dear Ms. Holloway,

McDowell Housing Partners appreciates the opportunity of providing comments on the draft 2021 Qualified Allocation Plan (QAP) and the Multifamily Housing Revenue Bond Rule (Bond Rule), that have been posted to the Texas Department of Housing and Community Affairs' (TDHCA) website.

Upon reviewing the latest draft QAP, we would like to kindly ask you to keep the 1-mile radius along with the quantity of jobs for each tier as is.

Sincerely,

A handwritten signature in black ink, appearing to be "Chuck Hollis", with a stylized flourish at the end.

Chuck Hollis, CCIM
Vice President of Development

McDowell Housing Partners
601 Brickell Key Drive, Suite 700, Miami, FL 33131
Office:786.257.2778 | **Mobile:**309.303.4466
chollis@mcdhousing.com
www.mcdprop.com

(45) Brad Fahnert

From: [Brad Fahnert](#)
To: [HTC Public Comment](#)
Subject: Proposed bill change
Date: Tuesday, October 06, 2020 12:54:48 PM

I don't support the proposed change to the Qualified Allocation Plan (QAP). The proposed changes are not fair. The unfortunate issue with the homeless (and I am speaking as someone who works an organization that works with the homeless) is that often times that steal/hustle just to be able to put food in their mouths. A lot of the times, it is even difficult to get food from the food banks or local organizations. They often times have to fight for everything. If the goal is help decrease the amount of homeless in the area, then you need to keep the requirements less strict then what being proposed. The fact of the matter is that the majority of the homeless that are house are successful in curbing negative behaviors that they might have involved themselves with when they were homeless and on the streets. The system for housing for the homeless is not perfect but I believe that we are making strides. This proposed change would cause a major digression.

Brad Fahnert
Case Manager with Harmony House Inc.

--

Brad Fahnert
Case Manager
Harmony House
Brad_Fahnert@harmonyhouse.org
281-827-6533

(46) SEARCH Homeless Services

From: [Thao Costis](#)
To: [HTC Public Comment](#)
Cc: [Michael Nichols](#); [Alexis Loving](#); [Cathy Crouch](#)
Subject: Public Comment -- Support ending homelessness -- Do NOT make proposed changes to Qualified Allocation Plan, Chapter 11, section 06, pg. 14-15
Date: Tuesday, October 06, 2020 1:04:47 PM
Attachments: [image003.png](#)
[image004.png](#)

Attn: Matthew Griego, QAP Public Comment

Recently, the Texas Department of Housing and Community Affairs (TDHCA) proposed a change to the Qualified Allocation Plan (QAP) that would require that supportive housing tax credit properties refuse to house individuals with criminal backgrounds (temporarily or permanently, depending on the severity of the crime).

I am writing as the CEO of [SEARCH Homeless Services](#), a faith-based leading agency in Houston, Texas, that has for more than 30 years helped people who are homeless move from the streets into jobs and safe, stable housing. Our goal is to help individuals and families who've been homeless build their economic and physical and behavioral health in order to contribute and participate more productively towards our greater society. At its most fundamental effect, this change to the QAP would severely hamper the ability of Texas communities to have clean, clear streets and doorways because people who are relegated to living on the streets will continue to languish without the opportunity to obtain a lease even if they had the financial resources to pay the rent. People who are without a place to live and therefore, are continually exposed to businesses, public properties and elements will receive fines and be arrested for multiple incursions simply because they live on the streets. In addition, their impoverished conditions and lack of food or other necessities of life prevent people from making decisions that meet societal expectations as they try to survive. Substance use and mental illness become more prevalent as living in fear and hunger take its tolls. Providing people with the opportunity to be in a safe, stable home stops and prevents crimes and other costly detrimental consequences that will affect their lives and the lives of everyone else in our communities.

Last year, SEARCH served 3,119 clients across our four core programs that Engage, Stabilize, House, and Educate children of families who'd been homeless.

- In addition to being a lifeline for thousands on the streets, our Outreach teams assisted 596 unsheltered individuals obtain IDs and meet other qualifiers to move into housing.
- We helped 340 individuals and families successfully move into homes of their own. The average speed from approval of rent financing to move in is still a long 87 days due in large part to their criminal histories limiting their housing options.
- Our House of Tiny Treasures preschool provided quality early childhood development for 88 children and support for their families so that they can stop the cycle of homelessness. This change would prevent parents with criminal histories from ensuring

their children, our next generation's labor force from having a stable home, a necessity to their productivity and function as adults.

- Our case managers work with over 700 of our community's most vulnerable individuals who'd been homeless and now in permanent supportive housing to build their skills and abilities to manage life with an 88% retention rate. Ensuring people with criminal histories, health needs, and/or substance use disorders have their own home changes their lives and everyone else around them.

One of our community's greatest barriers to ending homelessness is the disqualification of people with criminal histories from obtaining a lease. They remain stuck living under freeway overpasses and in businesses' entryways. Their languishing on the streets costs the community extraordinary policing and medical expenses. These costs average \$91,000/year for someone living on the streets of Harris County. On the other hand, to subsidize and support them in a home costs only \$17,000/year.

Your proposed changes to QAP will keep most people who are homeless on the street because of their criminal history even though they've done their time. Your proposed changes to the QAP will cause business leaders to raise alarms and abandon city centers where people remain on their doorsteps, hungry and unhealthy. Major Texas cities already face extraordinary challenges with the number of people who are homeless and living on the streets. With Covid-19 and significant number of people who've lost jobs, we face a tsunami of thousands more who will lose their homes. Many of these individuals have criminal histories that will again be exposed for scrutiny and keep them from being housed.

Having a home is a fundamental need for our community health. Please do not make these changes to the QAP that will push Texas toward a dystopian society that our citizens do not deserve. Choose to end homelessness. Choose to support healthy cities and good quality of life for all. It's the right choice for our businesses, for our communities, and for our citizens.

Thao Costis

Thao Costis (she/her)
President & CEO
SEARCH Homeless Services
2015 Congress Avenue | Houston, TX 77002
Direct: 713.276.3042
SEARCHHomeless.org



(47) Jen Beardsley

From: [Jen Beardsley](#)
To: [HTC Public Comment](#)
Subject: Oppose changes to QAP
Date: Tuesday, October 06, 2020 1:04:57 PM

Mr. Griego,

I oppose changes to TDHCA's proposed changes to the Qualified Action Plan that would require that supportive housing tax credit properties refuse to house individuals with criminal backgrounds (temporarily or permanently, depending on the severity of the crime).

Folks with criminal backgrounds have the most difficulty finding housing and are some of the most in need of supportive housing. Taking away this option could increase their risk of homelessness, making it more difficult for them to obtain employment and improve their lives, putting them at risk of recidivism.

There is this idea that once a person pays their "debt" to society, they can move on with their lives and move in a more positive direction. The reality is that criminal backgrounds make this next to impossible, and taking away a much-needed housing option for those with so few options is a disservice to entire communities. I urge you not to implement the proposed changes.

Thank you,
Jen Beardsley

--



Jen Beardsley | *She/Her/Hers*
Local Homeless Coalition (LHC)
Specialist
Texas Homeless Network
Office: 512-861-2154

www.thn.org

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(48) McDowell Housing Partners



October 6, 2020

VIA EMAIL

Ms. Marni Holloway, Multifamily Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: 2021 Qualified Allocation Plan – Public Comments

Dear Ms. Holloway,

McDowell Housing Partners appreciates the opportunity of providing comments on the draft 2021 Qualified Allocation Plan (QAP) and the Multifamily Housing Revenue Bond Rule (Bond Rule), that have been posted to the Texas Department of Housing and Community Affairs' (TDHCA) website.

Upon reviewing the latest draft QAP, we would like to kindly ask you to keep the 1-mile radius along with the quantity of jobs for each tier as is.

Sincerely,

A handwritten signature in blue ink, appearing to be "J. [unclear]", written in a cursive style.

(49) McDowell Housing Partners



October 6, 2020

VIA EMAIL

Ms. Marni Holloway, Multifamily Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

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Sincerely,

A handwritten signature in black ink that reads "Cheryl Chalas". The signature is fluid and cursive.

Cheryl Chalas
Financial Associate

McDowell Housing Partners
601 Brickell Key Drive, Suite 700, Miami, FL 33131
(786) 257-2778 Direct | (786) 257-2779 Fax | www.mcdprop.com

(50) Flora Alexandra Baker

From: [Flora Brewer](#)
To: [HTC Public Comment](#)
Subject: Oppose QAP ban on housing persons with criminal backgrounds
Date: Tuesday, October 06, 2020 1:14:05 PM

I work with others in the community to develop supportive housing for persons emerging from chronic homelessness. I have just learned that the new QAP will prohibit housing for persons with criminal backgrounds. Many of the people we serve have criminal backgrounds, like 30% of the US population. These people have paid their debts but continue to be prevented from working, getting public benefits, and renting homes because of their backgrounds, placing a greater burden on public services. For example, a resident in one of my projects was incarcerated for 10 years for stealing a VCR. He was a master tradesman and lost his license as a result. He also became homeless. His daughter had been homeless all her life when they came to live at our property. This family has been among our most solid residents. Affordable housing is for people who have had problems in their lives, including incarceration. We must end this discrimination and allow people's current behavior instead of past transgressions to speak for them. I oppose this change in the QAP to prohibit leasing to persons with criminal backgrounds. We do not have any evidence indicating that communities with tax credit properties have higher rates of crime than other neighborhoods. When in the course of my work studying affordable housing I have investigated properties where subsidies are in use, I do not find that the worst properties have any or more subsidized units. Properties vary based on how they are managed and whether landlords address problem tenants and keep up with maintenance, not based on the presence of subsidized units.

Thank you very much for your attention and support.

Flora Alexandra Brewer
Paulos Properties/Paulos Foundation/PF Residential
PhD Candidate, University of Texas at Arlington
6708 Ashbrook Dr.
Fort Worth, TX 76132
817.946.4939

Sent from [Mail](#) for Windows 10

(51) McDowell Housing Partners



October 6, 2020

VIA EMAIL

Ms. Marni Holloway, Multifamily Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: 2021 Qualified Allocation Plan – Public Comments

Dear Ms. Holloway,

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Upon reviewing the latest draft QAP, we would like to kindly ask you to keep the 1-mile radius along with the quantity of jobs for each tier as is.

Sincerely,

A handwritten signature in blue ink that reads "C Shear".

Christopher Shear
Chief Operating Officer

McDowell Housing Partners
601 Brickell Key Drive, Suite 700, Miami, FL 33131
(786) 257-2767 Direct | (773) 981-1817 Cell | (786) 257-2779 Fax | www.mcdprop.com

(52) McDowell Housing Partners



October 6, 2020

VIA EMAIL

Ms. Marni Holloway, Multifamily Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: 2021 Qualified Allocation Plan – Public Comments

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Upon reviewing the latest draft QAP, we would like to kindly ask you to keep the 1-mile radius along with the quantity of jobs for each tier as is.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mario Sariol", is written over a faint blue line.

Mario Sariol
Chief Financial Officer

McDowell Housing Partners
601 Brickell Key Drive, Suite 700, Miami, FL 33131
(786) 257-2769 Direct | (786) 338-3420 Cell | (786) 257-2779 Fax | www.mcdprop.com

(53) Stephanie Truong

From: [Stephanie Truong](#)
To: [HTC Public Comment](#)
Subject: Comment on QAP
Date: Tuesday, October 06, 2020 1:21:50 PM

Dear Mr. Griego,

I am writing to you in my personal capacity, but I have devoted my professional career to providing civil legal services to individuals who are homeless or at risk of homelessness in Houston and surrounding areas.

Through my work, I have helped countless individuals seal/expunge their criminal history that is eligible through Texas law, only to hear back from them that they continue to struggle to find a place to live due to their remaining criminal history. A prime example is clients who have prostitution convictions - many were victims of human trafficking and only recently have Texas nondisclosure laws been expanded to make it easier to have these types of cases sealed. Still, not all cases related to human trafficking under this new provision are eligible to be sealed, and that leaves property managers to make a judgment call based on criminal history. Although it is true that apartments cannot have an explicit policy banning anyone with criminal history, the reality is that this happens under the radar every day.

Knowing that criminal history already serves a significant barrier to housing, I cannot in good conscience stand idly by at proposed changes to the QAP that would create even more restrictions and barriers to housing that will in no doubt, ensure that our homeless population increases, which will have a devastating impact and ripple effect on our entire community.

Conversely, we have assisted clients with other legal issues who have been successfully housed through PSH and other housing programs, and, had it not been for the fact that this person was housed, we would not have been able to address their legal issue that allowed them to continue on the road to restabilization, recovery, and rehabilitation. Clients, who could have easily been discounted because of their past, could now have the chance to leave productive lives and contribute positively to their community.

From a legal aid provider standpoint, the deeper a client is in homelessness, substance abuse, mental illness etc., the less likely we are able to assist to provide the necessary legal intervention in order to make a person whole again. In other words, our legal aid dollars go much further and are more effective, when clients are stably housed.

The more expansive and inclusive supportive housing is, the more positive of an impact it will have on the entire community.

Thank you for your time and consideration.

Stephanie Truong
Program Director/Managing Attorney
Beacon Law, a program of The Beacon



713.220.9785 (direct); 281.764.7070 (facsimile)
P.O. Box 53958, Houston TX 77052 (mailing)
1212 Prairie, Houston TX 77002 (physical)

beaconhomeless.org

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**We do not disclaim anything about this email. We're quite proud of it, really. But if you need a little more - If you're a client, the attorney-client privilege protects this email. If you're a lawyer working with us under a joint-representation arrangement, this email is privileged under that arrangement. If you've received this email by mistake, we'd appreciate it if you would reply to let us know, and then delete the email. We don't waive any client's privilege by erroneously delivered email. Also, we never give tax advice.

(54) Marcie Henry

From: [Marcie Henry](#)
To: [HTC Public Comment](#)
Subject: Against Proposed Changes
Date: Tuesday, October 06, 2020 2:27:33 PM

TO Texas Department of Housing and Community Affairs, Attn: Matthew Griego, QAP Public Comment, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895, Attn: Matthew Griego, QAP Public Comment, htc_public-comment@tdhca.state.tx.us.

RE: Proposed changes to the Qualified Action Plan / required bar for criminal background applicants for tax credit housing locations

Dear Messieurs/Mesdames:

As this proposed change could greatly affect the work we do within our clients and the lives of many individuals within our community in which we serve, we are asking you to scrap the proposed change to the QAP.

Proposed changes to the Qualified Action Plan would make it much harder to secure housing for people with criminal backgrounds, is overbroad, arbitrary, usurps the power of the legislative branch of the state to punish and manage criminals according to long-established processes for the protection of citizens, and violates due process and numerous other Constitutional rights. If the citizens of Texas wanted to punish every person who commits a crime with permanent homelessness, they would have codified it into their laws. Once an individual has served their time, they should be restored to the extent allowable in the law. A blanket plan change like this fails to identify each crime in the state and federal criminal laws and address them individually and be argued among elected legislators and licensed state attorneys as they should be addressed instead of arbitrarily disarmed by a state agency with no authority in legislation of the criminal laws of the State without due process of law.

Those individuals that have served their legally required time are often convinced crime is wrong, they want to change and it cannot be said they are absolutely going to continue committing crimes until they die. It would discourage any attempts to change one's life because it reinforces the idea that they are assured to be treated like criminals forever and would have no incentive to change. They then may give themselves even more fully to the criminal identity and graduate to committing harsher, more injurious crimes against the public, which would put the public at even greater risk and an even greater burden upon police and first responders. It would be more financially efficient and police-effective to give them housing and simply watch their houses.

Moreover, this should wait until the pandemic is fully under control. Those that provide housing are already hard pressed for the payments that cannot be made by tenants due to job loss. To REQUIRE that supportive housing tax credit properties refuse to house individuals with criminal backgrounds (temporarily or permanently, depending on the severity of the crime) at this time is a very bad idea and takes away the power of the housing owners in deciding for themselves to whom they will provide housing. In areas where the majority of individuals desirous of living in that location tend to have criminal backgrounds, it would be punitive toward property owners of the area who would like to take advantage of the tax credit for their properties and may fall in a discriminatory zone of argument. If your reasoning is that you would like to house those without criminal history first, then prioritize, instead of implementing a, "bar all."

Also consider that it is undeniable that individuals with criminal backgrounds falsely accused and felt they had to plead out to avoid a harsher punishment because either they had no funds for representation, were mentally unable to represent themselves or did not have

sufficient evidence to prove their innocence. Imagine to then force them into homelessness with this type of requirement for housing. It would crush their will to go on. That is why our Forefathers wanted a man to be innocent until proven guilty and were against cruel and unusual punishment.

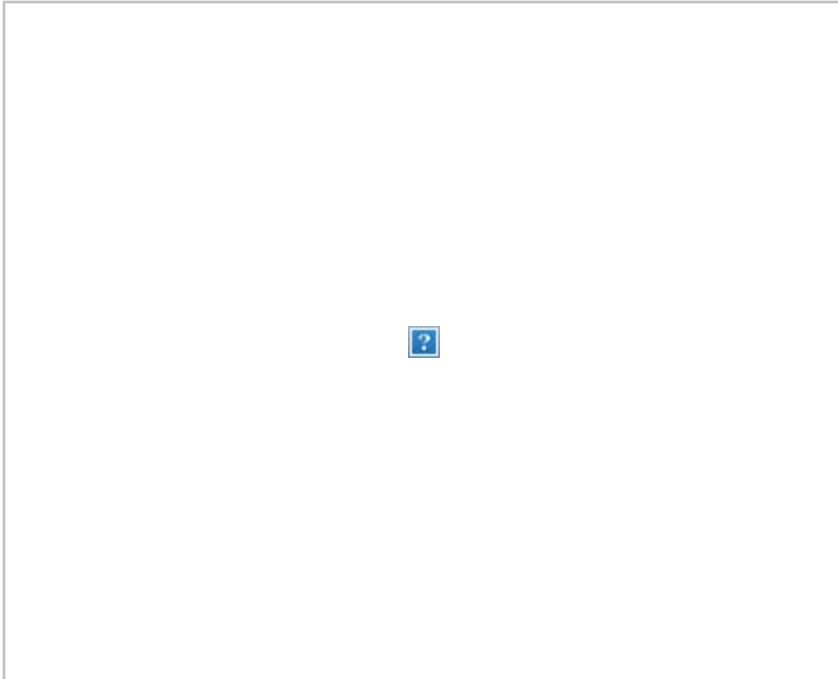
There is so much more. Thank you for your valuable time and consideration.

Marcie Henry [her/she]

Beacon Law

832.677.2059

PO BOX 53958 Houston, Texas 77052-3958



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From: [Steve Poppoon](#)
To: [HTC Public Comment](#)
Subject: Public Comment TDHCA 2021 QAP Section 11.204 (6) Experience Certificate
Date: Tuesday, October 06, 2020 3:34:17 PM

Attention: Matthew Griego

Section 11.204 (6)

Section 11.204 (6) of the QAP requires a developer to qualify for an Experience Certificate. However, the current provision **does not require any previous tax credit background**, and does not specify the type of project completed, only that a person has “experience that has included the development and placement in service of 150 units or more”. In doing this, it excludes an individual or company which has extensive tax credit experience such as a consultant, architect, general contractor, civil engineer, etc., and been directly involved with the development of tax credit communities but has never been in “control”.

The QAPs of states such as Missouri, Florida, Indiana, Ohio, Kansas, Washington, Oklahoma, Minnesota, Wisconsin, Virginia, and North Carolina, evaluate prior experience based upon the team concept.

Having an experienced tax credit development team would be much more beneficial and expeditious to the TDHCA staff and the application process.

This proposed language does not change the existing provision, but adds an alternative method to qualify for an Experience Certificate whereby the entire development team is evaluated based on tax credit program experience.

We request that 11.204 (6) be expanded to read as follows:

11.204.

(6) Experience Requirement. Evidence that meets the criteria as stated in subparagraph (A) or (B) of this paragraph must be provided in the Application, unless an experience certificate was issued by the Department in the years 2014 through ~~2019~~ 2020, which may be submitted as acceptable evidence of this requirement. Experience of multiple parties may ~~not~~ be aggregated to meet this requirement.

(A) A natural Person, with control of the Development who intends and has the ability to remain in control through placement in service, who is also a Principal of the Developer, Development Owner, or General Partner must establish that they have experience that has included the development and placement in service of 150 units or more. Applicants requesting Multifamily Direct Loan funds only may meet the alternative requirement at §13.25 5(h)(1) of this title (relating to Experience). Serving only as the HUB for a Development does not meet this requirement. Acceptable documentation to meet this requirement shall include any of the items in clauses (i) - (ix) of this subparagraph:

(i) American Institute of Architects (AIA) Document (A102) or (A103) 2007 - Standard Form of Agreement between Owner and Contractor;

(ii) AIA Document G704--Certificate of Substantial Completion;

(iii) AIA Document G702--Application and Certificate for Payment;

(iv) Certificate of Occupancy;

(v) IRS Form 8609 (only one per development is required);

(vi) HUD Form 9822;

(vii) Development agreements;

(viii) partnership agreements; or

(ix) other documentation satisfactory to the Department verifying that a Principal of the Development Owner, General Partner, or Developer has the required experience.

The names on the forms and agreements in subparagraph (A)(i) - (ix) of this paragraph must

reflect that the individual seeking to provide experience is a Principal of the Development Owner, General Partner, or Developer as listed in the Application. For purposes of this requirement any individual attempting to use the experience of another individual or entity must demonstrate they had the authority to act on their behalf that substantiates the minimum 150 unit requirement.

~~(B)~~ (x) For competitive HTC Applications, if a Principal is determined by the Department to not have the required experience, a replacement Principal will not be allowed.

~~(D)~~ (xi) Notwithstanding the foregoing, no person may be used to establish such required experience if that Person or an Affiliate of that Person would not be eligible to be an Applicant themselves.;

Or (B) As an alternative a development team's experience with affordable housing, TDHCA, and the type of development being proposed may be evaluated including Developer(s), General Partner(s), Management Agent, Guarantor(s), Syndicator(s) Lender(s), General Contractor, Architect, and Consultant(s).

Evaluations will assess the experience, performance, financial strength and capacity to complete the proposed development in a timely and efficient manner. An application submitted by a developer with no prior experience with TDHCA, but which includes other Development Team members that do have prior experience with TDHCA will be evaluated based on the prior performance of the entire Development Team.

Items considered will include, but are not limited to:

- i. Number of affordable developments completed;
- ii. Occupancy of developments owned and/or managed;
- iii. Number of developments in the planning and development stages;
- iv. Performance, quality, and condition of previously completed developments;
- v. Previous and outstanding compliance issues; and
- vi. Performance regarding TDHCA deadlines for previous funding awards.

Outstanding financial obligations: All financial obligations to TDHCA and to the State of Texas must be current.

Stephen J. Poppoon
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"Make every day your masterpiece."

"You can't live a perfect day without doing something for someone who will never be able to repay you."

John Wooden

Stephen Poppoon is an attorney licensed to practice law in the State of Texas. However, in all instances, unless specified otherwise in writing, Mr. Poppoon does not represent any party as an attorney.

All information contained herein was obtained from sources deemed reliable. However, such information is not warranted. Numerical analyses and financial projections are provided for general reference purposes only. The recipient is advised to do its own due diligence.

(56) Susan King

From: [Susan King](#)
To: [HTC Public Comment](#)
Subject: Changes in the QAP
Date: Tuesday, October 06, 2020 4:27:42 PM

I am at a loss as to the reasoning behind these proposed changes within the QAP. Are we going to continue to punish those that have already paid their debt to society and are attempting to make a new start?

The recidivism rate would sky rocket! If a former inmate has no family or friends to turn to, you are forcing a situation, short of a guarantee of them returning to prison, at the very least the streets.

Obviously, a short sighted plan, with little to no research.

Susan L. King, Employment Specialist

The Salvation Army Center of Hope

713-223-8889

(57) Texas Housers



**TEXAS
HOUSERS**
TEXAS LOW INCOME HOUSING
INFORMATION SERVICE

1800 W. 6th Street
Austin, TX 78702

October 6, 2020

Texas Department of Housing and Community Affairs
Attn: Matthew Griego
QAP Public Comment
P.O. Box 13941
Austin, Texas 78711-3941
Submitted Via Email: htc.public-comment@tdhca.state.tx.us

**Re: Comments of Texas Housers on the Staff Draft of 10 TAC, Chapter 11, 2021
Qualified Allocation Plan (QAP)**

Dear Mr. Griego:

For over 30 years, Texas Housers has been a committed advocate for the rights of low-income Texans to access safe, affordable housing in high quality neighborhoods. We thank the Texas Department of Housing and Community Affairs (TDHCA) Staff and Board for the opportunity to participate in the public rule making process affecting the 2021 Qualified Allocation Plan (QAP).

Because the Low-Income Housing Tax Credit (LIHTC) program is the most significant source of affordable housing in Texas, it is essential that the program is implemented in a manner that best serves tenants with the greatest need and strives to reverse past practices of racial residential segregation and discrimination affecting our neighborhoods and schools. Thus, TDHCA should evaluate the QAP content according to the following guiding principles:

- Using the QAP to incentivize LIHTC development in high opportunity areas is necessary to ensure that low-income Texans have the option to live in housing they can afford near high performing schools and amenities.
- Without strong incentives to build in high opportunity, high-income areas, LIHTC development will naturally gravitate toward low opportunity and low-income areas for financial reasons.
- LIHTC housing should be created where people would *choose* to live. It should not be created in areas of extreme poverty.
- Proximity to high performing schools is a central aspect of high opportunity areas for families. Education is a cornerstone of economic independence, and depriving low-income families of affordable housing opportunities near excellent schools prevents young Texans from achieving their potential.

These guiding principles inform the recommendations below regarding the 2021 State of Texas QAP Staff Draft.

SUBCHAPTER A: PRE-APPLICATION, DEFINITIONS, THRESHOLD REQUIREMENTS AND COMPETITIVE SCORING

§11.1(d)(122)(B)(v) Supportive Housing definition - criminal screening

We strongly oppose inclusion of the new proposed criminal screening Tenant Selection Criteria and encourage the Staff and Board to strike it entirely from the final QAP. The Supportive Housing definition exists to bolster a certain type of Applicant development, one that targets households in need of specialized services to maintain housing or transition to independent living. Over the past several years, TDHCA's rules in the QAP have succeeded in funding high quality, responsible, exceedingly competent Supportive Housing providers with awards under this definition. The existing Supportive Housing definition, without the proposed criminal screening additions in clause (v), has proven sufficient to screen out providers who would not be up to the task of housing clients with special needs, and the existing LIHTC Supportive Housing providers utilize their own criteria based on experience and other funding sources to ensure the safety and security of their tenants and neighbors.

Texans with criminal records already experience difficulty finding housing, a problem that is exacerbated for those with the special assistance needs contemplated by the Supportive Housing definition. For example, a detailed Urban Institute study of men exiting prison to Houston, TX states that most of the men experienced challenges finding and maintaining housing throughout the first year after release. Though most were able to find some type of housing, with 3% experiencing homelessness in that first year, few of those housed considered their housing situations stable or permanent.¹ By eight to ten months out from prison release, 39% of the Houston men in the study had moved at least once. Finding stability can be nearly impossible in a rental market that frequently requires passing a criminal screening or providing recent landlord references. Over 65,000 people were released from the Texas prison system in 2018,² and an estimated 505,000 individuals go to jail in Texas every year.³ Successful reentry for these individuals relies on access to stable housing, and recently incarcerated people face an increased risk of housing insecurity and homelessness for reasons that range from individual challenges (such as employability or behavioral health challenges) to systemic barriers (such as criminal background restrictions or landlord discrimination).⁴ The lack of affordable housing, coupled with legal and informal restrictions on housing for people with criminal records, can make finding stable housing incredibly difficult for people even years after exiting from jail or prison.⁵

¹ Nancy G. La Vigne et al., *One Year Out: Tracking the Experiences of Male Prisoners Returning to Houston, Texas*, Urban Institute Justice Policy Center (2009). Available at <https://www.urban.org/sites/default/files/publication/30436/411911-One-Year-Out-The-Experiences-of-Male-Returning-Prisoners-in-Houston-Texas.PDF>.

² Texas Department of Criminal Justice, *FY 2018 Statistical Report* (2019). Available at https://www.tdcj.texas.gov/documents/Statistical_Report_FY2018.pdf.

³ Wanda Bertram & Alexi Jones, *How Many People in Your State Go to Local Jails Every Year?*, Prison Policy Initiative (2019). Available at <https://www.prisonpolicy.org/blog/2019/09/18/state-jail-bookings/>.

⁴ La Vigne et al., *supra* note 1.

⁵ Root & Rebound, *Fair Chance Housing Toolkit*. Available at <https://www.rootandrebound.org/wp-content/uploads/2020/02/RR-National-Fair-Chance-Housing-Toolkit.pdf>.

The proposed criminal screening criteria hinder the ability of Supportive Housing providers using LIHTC to work in alignment with local priorities to end homelessness, reduce recidivism, and facilitate housing at reentry. Permanent Supportive Housing is a well-established, proven strategy for stably housing people with chronic homelessness, mental health challenges, and criminal records.⁶ Federal agencies such as HUD⁷ and SAMHSA⁸ support reducing barriers to housing entry in programs for people vulnerable to homelessness, putting current federal policy at odds with the proposed QAP criminal screening language. HUD policy filters down to the community level through the federal Continuum of Care program, which results in local county and regional priorities reflecting this low barrier ideology. Local and regional plans to end homelessness depend upon multi-sector cooperation. Extraneous limitations such as this proposed criminal screening requirement hamper collaboration by increasing complexity and decreasing flexibility in how communities can use local affordable housing options toward housing all individuals. In Texas, formerly incarcerated individuals are nearly 10 times more likely to experience homelessness compared to the general population.⁹ By shutting much of this population out of LIHTC housing, TDHCA would do a major disservice to statewide efforts to end homelessness. Without the proposed criminal screening mandate, LIHTC properties will continue to maintain required Tenant Selection Criteria, while also leveraging LIHTC to provide stable housing solutions to vulnerable populations with past criminal justice involvement.

The proposed criminal screening addresses a non-existent problem while providing no clear benefit. Blocking the path to safe, stable, affordable housing for otherwise qualified people cannot be allowed to hinge on discriminatory stereotypes about people with criminal records. Granted, stigma and fear of people with criminal records can cause strife in neighborhoods where affordable housing is proposed to be built. However, the ethical and proper response to that must be to educate and lead by example, showing through past successes and new developments that Supportive Housing that serves some people with criminal records does not in fact result in reduction to neighbors' safety. TDHCA has for years provided support for awarding LIHTC funds to high quality projects that were not subject to this prescriptive and punishing rule, without ill effects on safety of residents or neighbors. TDHCA Staff has stated that they do not track information on crime in or around LIHTC properties, thus there is no factual basis for a reduction in crime that this criminal screening might aim to achieve. TDHCA must stand firm to ensure all Texans are housed, not only those who have escaped the snares of the criminal legal system, but also people have been convicted of crimes and need to be supported to go on to live productive and fulfilling lives.

⁶ E.g., M. Lori Thomas et al., *Moore Place Permanent Supportive Housing Evaluation Study Final Report*, Charlotte, NC: University of North Carolina at Charlotte, Department of Social Work (2015). Available at https://www.csh.org/wp-content/uploads/2015/05/Moore-Place-Evaluation-Project_Final-Report_4-28-15.pdf.

⁷ E.g., U.S. Department of Housing and Urban Development (HUD), *Housing First in Permanent Supportive Housing Brief* (2014). Available at <https://www.hudexchange.info/resource/3892/housing-first-in-permanent-supportive-housing-brief/>.

⁸ E.g., U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), *Mental and Substance Use Disorders and Homelessness Resources: Housing and Shelter* (2020). Available at <https://www.samhsa.gov/homelessness-programs-resources/hpr-resources/housing-shelter>.

⁹ Texas Criminal Justice Coalition, *New Report Explains the Link Between Homelessness and Justice System Involvement* (2019). Available at <https://www.texascjc.org/sites/default/files/press-releases/TCJC%20Press%20Release%20-%20Return%20to%20Nowhere.pdf>. Full report available at <https://www.texascjc.org/one-size-fails-all>.

The proposed criminal screening creates an unnecessary administrative burden on TDHCA, Supportive Housing providers, and tenants. If approved, TDHCA's Compliance Department will have to track and enforce the rule, when their time would be better spent enforcing meaningful rules that have a positive impact on housing quality and tenants. Supportive Housing providers give their clients extensive supports, and maintain their own reporting for internal and external funding purposes. Following the QAP's proposed criminal screening criteria would add yet another strain on Supportive Housing projects that need to use their resources efficiently in order to support their clients and surrounding communities. Housing providers already have their own rules and controls in place and there is no reason to force them to mesh those with new rules in the QAP, and this could interfere with their ability to adapt to the criteria of local jurisdictions or Housing Authorities when local critical gap funding is needed to make a project viable. With the QAP changing year to year, when these criteria inevitably shift even slightly, providers will have to track different criteria and different properties, adding even more of an administrative headache for providers with multiple LIHTC developments. Tenants with criminal backgrounds inevitably experience challenges in accessing housing and meeting their own needs like employment and financial resources. Adding another paperwork burden on those with some criminal record who wish to enter LIHTC housing, and still denying many from this high quality housing option, is an unnecessary and cruel hindrance on potential tenants.

Regardless of intention, this proposed criminal screening requirement would in practice have a discriminatory effect on the basis of race. The proposed QAP criminal screening language requires (I) denial for presence on National or Texas Sex Offender website, (a) permanent denial based on "murder related offense," sexual assault, kidnapping, or arson conviction, (b) temporary denial for various felonies including display of firearm, obstruction, or violation of protective order conviction, (c) temporary denial for non-violent felony conviction, and (d) temporary denial for Class A misdemeanor conviction. Racial disparities abound in the criminal legal system. An analysis of registered sex offenders using 2012-2013 data showed that the percentage of Texans on the sex offender registry are 76.93% white and 22.59% Black, while 78.7% of Texans overall (according to concurrent Census figures used in the study¹⁰) were white (including Hispanic) and only 12.9% were Black. This amounts to Black people being 8% more likely to be on the sex offender registry.¹¹ Despite similar rates of illicit drug use, in Texas white people are incarcerated for drug crimes at a rate of 20 per 100,000, while Black people are incarcerated for drug crimes at a rate of 230 per 100,000. This means Black people are 11.7 times more likely to be incarcerated on drug charges than white people, and Black men almost 14 times more likely than white men.¹² Looking at felonies, which are covered in the QAP criminal screening in (b) and (c) combined, the Sentencing Project finds that while 2.5% of the Texas population is disenfranchised due to past felony convictions, a full 7.4% of the state's

¹⁰ U.S. Census Bureau, QuickFacts Texas. Available at <https://www.census.gov/quickfacts/fact/table/TX#>.

¹¹ Alissa R. Ackerman & Meghan Sacks, *Disproportionate Minority Presence on U.S. Sex Offender Registries*, 16 Justice Policy J. 1, 8 (2018). Available at

http://www.cjcr.org/uploads/cjcr/documents/disproportionate_minority_presence_on_u.s._sex_offender_registries_ackerman_sacks.pdf.

¹² Human Rights Watch, *Targeting Blacks: Drug Law Enforcement and Race in the United States* (2008). Available at <https://www.hrw.org/report/2008/05/04/targeting-blacks/drug-law-enforcement-and-race-united-states>.

African American population is disenfranchised by past felony convictions.¹³ Black people compose only 13% of the general U.S. population but represent 38% of persons convicted of a felony in state courts and in state prisons.¹⁴ Based on these disparities in a number of areas affected by the proposed screening language, Black people in Texas are more likely to be excluded from renting in affected LIHTC properties based on criminal records than people of other races. The effect of the QAP change will fall unfairly and disproportionately on African Americans, a protected class under federal fair housing laws. Even a legitimate, nondiscriminatory interest by TDHCA in safety and neighborhood approval of projects would not allow this broad language that could clearly be achieved with less discriminatory effect by tailored requirements at Supportive Housing projects such as security guards, cameras, or the like, that do not disproportionately block Black tenants from renting at the properties. Even if disparate impact analysis did not render this criminal screening illegal in Texas under the Fair Housing Act, TDHCA has the ethical burden of avoiding racist impacts and should not push forward this clearly discriminatory language into Texas regulations.

Reviewing the specific proposed language in the Staff Draft at §11.1(d)(122)(B)(v), we note the following troubling problems:

- (I): By calling attention to a list of specific crimes that might offend or frighten potential neighbors of new LIHTC development, this new section could backfire if its purpose is to assuage the fears of local communities and convince them to accept new development.
- (I)(a) and (b), “or recertification”: Allowing denial at recertification can only result in evictions of people who are already residing in LIHTC properties, making them vulnerable to homelessness and the type of instability that can lead to recidivism, mental health crises, or other detrimental outcomes of loss of housing. These tenants benefit from extensive Supportive Housing services and are vulnerable to instability that this type of review can create. Further, this indicates that the criminal assessment could take place at every recertification, potentially increasing the administrative burden on property managers and tenants (particularly in situations where tenants have successfully provided mitigation to overcome the listed denials in past reviews or had complications with incorrect records) and on TDHCA Compliance staff.
- (I)(a): Permanent denial from LIHTC is unnecessarily harsh. In effect TDHCA is imposing a longer sentence than the justice system has imposed, for a person who has been released and in the eyes of the law should be able to live freely; and yet this rule would give them a lifetime punishment for their past infraction. Consider a young man who commits a drug crime at the age of 20; should he be denied LIHTC housing after maturing for decades, even as an elderly man?
- (I)(a): Vague language for these listed offenses will inevitably cause a headache for property owners and tenants trying to untangle what Texas or out-of-state statutes qualify for each listed conviction. The administrative burden could be untenable, requiring legal interpretation on a case by case basis. Without clarification on the severity required of

¹³ Sentencing Project, *State-by-State Data* (2016 data, accessed in 2020). Available at <https://www.sentencingproject.org/the-facts/#detail?state1Option=U.S.%20Total&state2Option=0>.

¹⁴ American Civil Liberties Union, *Racial Disparities in Sentencing* (2014). Available at https://www.aclu.org/sites/default/files/assets/141027_iachr_racial_disparities_aclu_submission_0.pdf.

each crime to qualify for this level of denial, unintended consequences could arise causing this denial to apply to very low level offenses that were charged as some type of sexual assault or arson.

- (I)(b) and (c): Calling for temporary denial for “a *minimum*” of two or three years gives leeway for much more expansive policies, making the rule overly broad and ripe for abuse of discretion. This language giving a minimum rather than a cap could, for example, be used for to create a temporary denial for 20 years, which may not be the intended effect.
- (I)(c): In looking for narrowly tailored criteria that passes muster under a fair housing analysis, inclusion of the broad category of non-violent felonies is suspect.
- (I)(d): Class A misdemeanors include a vast array of offenses from resisting arrest to domestic violence, a notoriously sticky area particularly for survivors of such violence. Including this class of crimes, particularly with the variation by state in what constitutes such misdemeanor, opens the possibility of denial for too many situations.
- (II), “may” vs. “must”: Any mitigation must be a requirement rather than an option. Extenuating circumstances exist such that the property manager might fully understand and wish to house the tenant based on mitigating evidence, and there is no reason to deny that opportunity for some potential tenants. A mitigation opportunity must be as robust as possible and should require “individualized assessment” in all circumstances *prior* to denial. Those subject to any permanent denials should also benefit from a mitigation opportunity that is afforded to others, including a requisite individualized assessment in all cases.
- No detail is provided to ensure that denials are based on criminal convictions rather than deferred adjudications and community supervision. An interpretation of conviction could be overly broad to affect people whom the court has determined not to formally convict.
- No detail is provided to ensure that the look back period for any temporary denial go from the date of the offense and not the date of the conviction. Convictions can occur months or even years after an offense, and would-be tenants should not be punished for the delay of the courts.

Due to the above concerns, Texas Housers recommends the following changes to the proposed language, in order of preference.

1. Preferred solution: Remove §11.1(d)(122)(B)(v) entirely.
2. Second preference: Replace the proposed addition at §11.1(d)(122)(B)(v) with either:
 - a. The language that is marked out of the Staff Draft at §11.1(E)(ii)(VI): “**The Development’s Tenant Selection Criteria will include a clear description of any credit, criminal conviction, or prior eviction history that may disqualify a potential resident. The disqualification cannot be a total prohibition.**”
 - b. Or with: “**Have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of criminal history screening criteria.**”

The proposed criminal screening criteria affecting Supportive Housing projects, which are meant to serve very vulnerable populations who may well have had contact with the criminal justice system, is a problematic way to address any safety concerns. We strongly oppose addition of criminal screening criteria in any LIHTC projects, particularly in Supportive Housing. If instated as is, it would require housing providers to unnecessarily turn away potential tenants for a wide variety of past convictions, hinder cooperation toward ending homelessness, run all parties involved ragged with administrative requirements in order to enforce it, all while causing discrimination against those with criminal records that would disproportionately impact Black Texans. We strongly urge TDHCA to strike the proposed new language.

§11.1(d)(122)(F) Supportive Housing definition – full development must meet definition

We support this clarification, which further ensures that only projects prepared to fully serve the intended populations take advantage of the Supportive Housing project option.

§11.8(b)(1)(I)(ii) Pre-Application Disclosure of Neighborhood Risk Factors – most recent school ratings

We support the proposed change to the language allowing use of most recent school rating data, and we support keeping this item in the pre-application. By adjusting the language to remove the specific year reference, this change allows applicants to use slightly older data on schools to identify Neighborhood Risk Factors. This is not a major change, and allows for the existing rules to mold to extant circumstances in which coronavirus hindered the availability of newer data. As we discuss more fully below regarding §11.101(a)(3)(C) Neighborhood Risk Factors, retaining the powerful factors around proximity to good schools is essential to allow LIHTC tenants with children to support their families.

§11.9(c)(4)(B) Opportunity Index – increased distance to amenities

We strongly oppose the proposal to increase distances to most amenities in the urban and rural Opportunity Index. We support the unchanged subclauses keeping the distances the same for (I) public park or multiuse trail and (II) public transportation. We recommend that the distances to amenities remain as they were in the 2020 QAP, or changed in accordance with our alternative recommendations below to increase points for this area.

Low-income families in LIHTC developments deserve proximity to life-supporting amenities that will improve their circumstances. Developers will always strive to lower costs and maximize unit profits, but that cannot be allowed to occur at the expense of individuals and families who will live there. The QAP must remain strong in pushing back against the impulse to cater to developers' interests over those of low-income Texans. The QAP should include preference both for higher quality amenities and for more proximate amenities.

First, we would like to emphasize that the proposed changes to the distance requirements are not a trivial adjustment but rather a vast expansion of the area available for full Opportunity

Index points. In urban areas, the changes *double* the point-scoring distances to a grocery store, pharmacy, library, indoor and outdoor recreation centers, and community/civic center; and they increase the point-scoring distances to a health center, child care, and college. In rural areas, the changes increase by a mile the point-scoring distances to a grocery store, pharmacy, health center, child care, library, park, indoor and outdoor recreation centers, and community/civic center. The Opportunity Index is meant to incentivize building in areas that will bring a high level of opportunity for tenants. Therefore, it is essential that the amenities be in close enough proximity that tenants can reach them easily. By changing the distance to many urban amenities in this section from one mile (typically a 20-minute walk) to two miles (a 40-minute walk), the increased distance makes these places much less accessible to the average tenant. For low-income tenants who do not have cars, walking 40 minutes to a library, grocery store, or recreation center is out of reach on an average day. The one-mile radius is more reasonable for most amenities to ensure that residents can walk to them easily without a car. Similarly, for people with physical disabilities, a two-mile trip by wheelchair or with a cane is meaningfully longer than a one-mile trip. The increase in distance would essentially put these important amenities out of reach.

Simply put, these changes would result in more units being built in higher poverty areas of less opportunity. Though the actual areas constituting high opportunity for tenants have not changed, the extension of physical areas via these proposed changes would result in including larger areas that could earn a project the full seven Opportunity Index points. This change is market-driven rather than a result of caring about quality locations for tenants. These sites farther from amenities are no better than a year ago, and no reason has been proffered for the increase in how it reflects where opportunity areas exist.

The increased distances proposed would reduce competition in a section where the QAP would benefit from further distinguishing projects instead. Under the 2020 QAP with the shorter distances, all or almost all projects scored the full seven Opportunity Index points. By increasing distance to amenities in 2021, again all projects would be able to achieve the full seven points without improving location for tenants. Instead, these points should be meaningful and require that applicants build as close as possible to the best amenities for tenants. The QAP is a tool to incentivize development in the best locations, so it makes more sense to move it in the opposite direction, making the competition more targeted, for example by reconfiguring the points to emphasize the most important factors, such as how Low Poverty is pulled out separately in required section (A), or how some subclauses grant more points for a better version of the same amenity like (B)(i)(II)(b) for nearby commuter-hour transit.

The proposed increase in distances is unlikely to satisfy developers' desire for reduced building costs. Some may argue it is warranted because the high level of competition for sites scoring maximum points results in falsely elevated pricing as developers compete amongst themselves to secure LIHTC development sites. However, with this proposal, the developers' incentive to build at the lowest cost will simply move the bidding competition to the cheapest maximum-scoring sites, which would now be farther from amenities. This change in distance will not reduce the bidding competition between developers but rather move that same problem farther out from where low-income tenants could ideally live.

Based on the above, we recommend that Staff at a minimum keep distances at the 2020 QAP levels. If Staff does not take that recommendation and can roll back only some of the proposed increased distances, we recommend keeping 2020 distances in urban areas for: (B)(i)(III) grocery store, (B)(i)(IV) pharmacy, (B)(i)(VI) child care, and (B)(i)(VIII) library; and keeping 2020 distances in rural areas for: (B)(ii)(I) grocery store, (B)(ii)(II) pharmacy, (B)(ii)(IV) child care, and (B)(ii)(VI) library.

Furthermore, we recommend that Staff take action to improve the efficacy of the Opportunity Index. The Opportunity Index would be enhanced by increasing the total available to 10 or 15 points, rather than the current seven points. In order to truly serve low-income Texans, the Opportunity Index's scope should be reduced to a few key factors that are mutually exclusive for points, with the menu of many options available for the remaining few points. In the current scheme, only Low Poverty points in section (A) are mutually exclusive, and an additional 15 options in urban and 14 options in rural compete for developers' attention. Instead, Staff should create mutually exclusive sections of two points each for low poverty, sidewalks and transit, full-service grocery stores, and attendance zone for highly rated public schools. The additional amenities currently in the list could remain in the separate menu section, for additional two to seven points, that would not compete exclusively with these essential Opportunity Index factors.

§11.9(c)(4)(B)(i)(XV) and (ii)(XIV) Opportunity Index – most recent school ratings

We support the change in language in §11.9(c)(4)(B)(i)(XV) (urban) and §11.9(c)(4)(B)(ii)(XIV) (rural) that allows for use of the most recent school ratings available for Opportunity Index points. As we expand on below regarding §11.101(a)(3)(C) Neighborhood Risk Factors, school quality must remain an important factor influencing placement of new LIHTC development that houses families.

§11.9(c)(8) Readiness to Proceed in Disaster Impacted Counties – change to four years

We support the change in this section allowing for points under this item for up to *four* years from December 1, 2020. This change allows areas affected by Hurricane Harvey to continue to be eligible for these points. Where Texas residents still feel the effects of Harvey, this will encourage rapid LIHTC development.

SUBCHAPTER B: SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS

§11.101(a)(2)(D) Undesirable Site Features – allow parking areas near high voltage lines

We oppose the added exception to exempt parking areas from the allowed distance to high voltage lines. Already the distance required of 100 feet is quite close to the residential units, so requiring the same for parking areas is the minimal safety precaution that should be taken to ensure resident safety.

Part of the logic of requiring distance from the property to high voltage lines is to protect the safety of residents should any accident occur with the lines. Parking lots are not fully unoccupied; people use them with frequency to enter and exit their vehicles, and, though not ideal, children do at times play in parking lots. Thus, by allowing high voltage lines to exist within closer proximity to parking lots, the rules would fail to adequately protect the safety of residents.

Moreover, studies have shown potential long-term health hazards from proximity to high voltage lines due to heightened exposure to electromagnetic fields. A 2005 study with control group showed elevated risk of leukemia among children living in homes as far as 600 meters (almost 20 times farther than the 100-foot limit) from high voltage power lines. Children living within 200 meters of the lines had a 69% increased risk for leukemia, and those living 200 to 600 meters from the lines had a 23% increased risk for leukemia.¹⁵ Another study with control group observed the effects of residing near high voltage power lines on female fertility. Women living within 1000 meters of the lines carried a significantly higher risk of confirmed diagnosis of unexplained infertility than those women living more than 1000 meters away from the lines.¹⁶

Based on the demonstrated health risks of living in proximity to the environmental hazard of high voltage lines, the Staff and Board should at a minimum remove the proposed change exempting parking areas from the existing paltry distance requirement. In addition, TDHCA should strongly consider vastly increasing the distance required from high voltage power lines to at least 3,000 feet (about 900 meters) for all LIHTC development.

§11.101(a)(3) Neighborhood Risk Factors – mitigation for low-performing schools

We strongly oppose the change removing the requirement for mitigation for schools as described in subparagraphs (C) and (D). We agree that because of the COVID-19 pandemic and lack of 2020 Texas Education Agency (TEA) school ratings, adjustment from the 2020 QAP requirement is needed. However, a better change to keep in line with the 2020 QAP would be to prohibit building in the attendance zone with the school performance Neighborhood Risk Factor. We urge the Staff and Board to uphold the existing dedication to prioritizing development away from low performing schools, which would be undermined by removing the mitigation requirements for 2021 applications.

We support the change in language in (3)(B)(iv) that allows for using TEA school ratings from the most recent year available, based on the lack of new ratings this year due to the COVID-19 pandemic. We believe that the school rating is still essential information to convey as a Neighborhood Risk Factor, and keeping this factor in with some adjustments is the best way to handle this. We also support the additional clause at the end of (3)(B)(iv) requiring that school rating information and disclosure of the Neighborhood Risk Factor must still be provided for projects that are exempt from mitigation (listing Elderly developments, those encumbered by a

¹⁵ Ray Copes & Prabjit Barn, *Is Living Near Power Lines Bad for Our Health?*, 50(9) Brit. Columbia Medical J. 494 (2008). Available at <https://bcmj.org/bccdc/living-near-power-lines-bad-our-health>.

¹⁶ Sedigheh Esmailzadeh et al., *Exposure to Electromagnetic Fields of High Voltage Overhead Power Lines and Female Infertility*, 10(1) Int'l J. Occup. Envtl. Med. 11 (2019). Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6522214/>.

TDHCA LURA, and Supportive Housing with all efficiency units). This language addition supports the need for TDHCA to understand the area where the project will be built, and is an indicator of desirability of the area even for non-students.

Our reasoning is based on the principle that proximity to high quality schools is of utmost importance on an individual level to low-income LIHTC tenants with children. The QAP effectively makes the choice for LIHTC tenants of where their children will go to school, and therefore Staff should exercise the type of judgement that parents would make if it were in their power to do so. Attending a high performing school is critical in determining students' short-term educational performance and long-term life outcomes. Changing students' environment from low to high performing schools has been shown to boost academic success in as little as a year and particularly impact low-income students.¹⁷ Higher school quality positively affects children's graduation rates, college attendance, and even likelihood of arrest.¹⁸ Researchers find a "persisting connection" between housing location and attendance at a high performing school, even in districts with school choice or "open enrollment" policies meant to provide families with greater options that in practice leave low-income families behind.¹⁹ For instance, low-income students who were randomly assigned to subsidized housing units in a low poverty suburban neighborhood in Montgomery County, Maryland significantly reduced the achievement gap with their higher income peers throughout elementary school, suggesting that helping families relocate to low poverty schools is a much more promising approach than leaving needy students in high poverty schools with increased resources.²⁰ TDHCA must use the QAP to strongly incentivize LIHTC sites in the attendance areas of highly rated schools in order to give LIHTC residents a real opportunity to thrive.

The COVID-19 crisis further highlights the need for high quality schools. Learning loss and falling behind during remote learning are hitting low-income, Black, and Latino students the hardest, with measured problems in math, reading, and other areas only a few months into the pandemic.²¹ While this crisis will pass, it illustrates the need for schools that will help low-income children weather the inevitable storms that will affect their education. Proximity to a high quality school is essential even in the short-term in remote learning environments.

¹⁷ Spencer Allen Shanholtz, *Do Qualified Allocation Plans Influence Developers' LIHTC Siting Decisions: The Case of Access to High-Performing Schools* (2016), 5-8 [Master's thesis, Virginia Polytechnic Institute and State University] Virginia Tech Electronic Theses and Dissertations. https://vtechworks.lib.vt.edu/bitstream/handle/10919/73740/Shanholtz_SA_T_2016.pdf.

¹⁸ *Id.* at 6.

¹⁹ Megan Gallagher et al., *Moving to Educational Opportunity: A Housing Demonstration to Improve School Outcomes* (2013). Available at <https://www.urban.org/sites/default/files/publication/24271/412972-Moving-to-Educational-Opportunity-A-Housing-Demonstration-to-Improve-School-Outcomes.PDF>. Julian Vasquez Heilig and Jennifer Jellison Holme, *Nearly 50 Years Post-Jim Crow: Persisting and Expansive School Segregation for African American, Latina/o and ELL students in Texas*, 20(10) *Educ. & Urban Society* 1 (2013). Available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1001.41&rep=rep1&type=pdf>.

²⁰ Heather Schwartz, *Housing Policy Is School Policy: Economically Integrative Housing Promotes Academic Success in Montgomery County, Maryland*, The Century Foundation (2010). Available at <https://production-tcf.imgix.net/app/uploads/2010/10/16005437/tcf-Schwartz-2.pdf>. Gallagher et al., *supra* note 19, at 4.

²¹ Emma Dorn et al., *COVID-19 and Student Learning in the U.S.: The Hurt Could Last a Lifetime*, McKinsey & Co. (2020). Available at <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/covid-19-and-student-learning-in-the-united-states-the-hurt-could-last-a-lifetime#>; <https://www.edworkingpapers.com/ai20-226>. Dana Goldstein, *Research Shows Students Falling Months Behind During Virus Disruptions*, N.Y. Times (2020). Available at <https://www.nytimes.com/2020/06/05/us/coronavirus-education-lost-learning.html>.

School improvement does not necessarily happen on its own, and we cannot move forward with 2021 LIHTC awards based on the idea that there is *some chance* that campuses will improve, when no mitigation is being offered. The proposal to get rid of mitigation is akin to expecting that mitigation will certainly take place, when in reality mitigation is not widely naturally occurring. In 2019, 26% of campuses improved their letter grade from the prior year, 18% decreased their letter grade from the prior year, and 56% kept the same letter grade.²² A school may earn an overall rating of an F for five years and a D for six before there's mandatory state intervention.²³ The scores leading to Neighborhood Risk Factor status are an F in the most recent year and Met Standard in the preceding year, or a D in the most recent year and Improvement Required in the preceding year.²⁴ The Improvement Required rating sounds benign but actually is a hard low to achieve. In 2018, 96% of school campuses received the TEA Met Standard/Met Alternative Standard rating, while only 4% of campuses received the Improvement Required rating.²⁵ Accountability scores of F and D are also relatively rare in the grand scheme of Texas schools. In 2018 and 2019, fewer than 5% of campuses received an F rating; and in 2019 only 8.5% received a D rating.²⁶ Based on these numbers, one sees that when a school has received a very low rating, the likelihood that they vastly improve in the following year are normally slim. Even more so, in the time of the pandemic, schools are struggling to support all their students through remote and newly in-person learning. This makes it extremely unlikely that a school triggering the Neighborhood Risk Factor would have improved sufficiently in 2020 to justify developing LIHTC housing nearby.

Sometimes schools do improve, even vastly. However, without mitigation plans or a replacement, the QAP process will not identify whether a particular attendance zone is likely to be one of those successes. That argument pushes toward retaining the mitigation requirement rather than simply allowing development in that school's area with the hope that it improves.

Requiring meaningful mitigation is essential if LIHTC housing is to be developed near low performing schools, in line with the purpose of the Neighborhood Risk Factor categories. This is to protect the low-income tenants who deserve good schools for their families. The language in the 2020 and proposed 2021 QAP in this subsection (3)(B) explains Neighborhood Risk Factors as follows:

In order to be considered an eligible Site despite the presence of Neighborhood Risk Factors, an Applicant must demonstrate actions being taken that would lead staff to conclude that *there is a high probability and reasonable expectation the risk factor will*

²² Texas Education Agency, Division of Performance Reporting, *A-F Accountability System Overview* (2019). Available at https://tea.texas.gov/sites/default/files/TXSchools_Districts_4-pager_final_acc_FORWEB_0.pdf.

²³ Tessa Weinberg, *Texas School Districts, Campuses Won't Receive Letter Grades This Year, TA Says*, Fort Worth Star Telegram (2020). Available at <https://www.star-telegram.com/news/politics-government/article241731036.html>.

²⁴ TEA is responsible for the state accountability system. According to a TEA Accountability Manual, for determining multiple-year unacceptable status, they recommend looking to: in 2018, letter grades for districts and Met Standard, Met Alternative Standard, or Improvement Required for campuses; and in 2019, letter grades for districts and campuses. TEA Accountability Manual available at https://tea.texas.gov/sites/default/files/Adopted%202019%20Accountability%20Manual_final.pdf.

²⁵ Texas Education Agency, Division of Communications, *TEA Releases 2018 Campus Accountability Ratings* (2018). Available at <https://tea.texas.gov/about-tea/news-and-multimedia/news-releases/news-2018/tea-releases-2018-campus-accountability-ratings>.

²⁶ Texas Education Agency, *supra* note 22.

be sufficiently mitigated or significantly improved prior to placement in service and that the risk factor demonstrates a positive trend and continued improvement.²⁷

By removing the mitigation requirement, presence in the Neighborhood Risk Factors becomes nearly meaningless, and it makes more sense to entirely prohibit such sites for 2021 applications than to allow developments to move forward without showing a likelihood of improvement. If the Staff and Board determine that meaningful mitigation is not possible for 2021 applications, then developing near these low-performing schools should not be allowed. Instead, developments in the attendance zone with Neighborhood Risk Factors for schools should be added to the ineligible list at §11.101(b)(1)(C) Ineligibility of Developments within Certain School Attendance Zones. In the face of suggestions that preventing LIHTC developments in attendance zones with F-rated schools will make too many projects infeasible, we note that the purpose of the QAP is to promote the state's policy to site affordable rental housing in neighborhoods where people with housing choice would want to live. This includes access to high performing schools. And if a proposed development is infeasible due to location near a very low performing school, then the QAP is succeeding in its purpose.

Incentivizing LIHTC development near high quality schools is hugely important for addressing racial segregation throughout the state. By building LIHTC that will serve low-income people of a varied racial and ethnic groups near high quality schools, TDHCA is able to contribute to school desegregation. HUD's Affirmatively Furthering Fair Housing data shows that areas with higher levels of residential segregation, where Black and Hispanic residents live most apart from white residents, tend to have larger disparities in access to high-performing elementary schools across race and ethnicity.²⁸ Racial residential segregation fuels racial school segregation, to the detriment of students of color. HUD's Affirmatively Furthering Fair Housing data further demonstrates that "White and Asian or Pacific Islander residents have greater access to neighborhoods with ... high performing schools compared with black, Hispanic, and Native American residents. Black residents tend to live in places with ... worse school quality than those of all other races and ethnicities."²⁹ A 2013 analysis of Texas schools examined the association between segregation by race/ethnicity, economic disadvantage, and language proficiency with TEA accountability ratings, and the authors found that segregation by socioeconomic status and race/ethnicity is a highly significant predictor of low school performance.³⁰ Without the QAP incentive to develop affordable housing near good schools, or show mitigation trends toward improvement near mediocre schools, these students will likely attend low performing schools. In 2019 in wealthier areas, 82% of district schools received an A rating, versus in the areas with the most poverty only 9% of district schools received an A.³¹ The status quo for low-income renters is low performing schools. "Supply-side" housing policies

²⁷ 10 T.A.C. §11.101(a)(3)(B) Neighborhood Risk Factors, in current Code and in 2021 Staff Draft.

²⁸ Ruth Gourevitch, *Federal Fair Housing Data Can Tell Us about Access to Quality Schools*, Urban Institute (2018). Available at <https://housingmatters.urban.org/articles/federal-fair-housing-data-can-tell-us-about-access-quality-schools>.

²⁹ Ruth Gourevitch et al., *Place and Opportunity: Using Federal Fair Housing Data to Examine Opportunity across US Regions and Populations*, at 12, Urban Institute (2018). Available at https://www.urban.org/sites/default/files/publication/98674/place_and_opportunity_brief_1.pdf.

³⁰ Heilig and Holme, *supra* note 19.

³¹ Texas Education Agency, *supra* note 22, at 2.

such as placement of LIHTC hold great potential to break the link between economic status and educational opportunity by providing low-income people with the opportunity to live in higher income areas they could not otherwise access, providing entry to better schools.³²

Currently mitigation for schools in subsection (D) includes meaningful evidence and services for students that should not be pushed aside and can still be accomplished during the pandemic. Rather than removing the mitigation requirement for 2021 applicants, the Staff and Board should enforce existing mitigation requirements. Even with the increased burden that schools are under at this time, requiring an Applicant to fulfill mitigation item (I), requiring specific plans and current progress towards Campus Improvement Plan goals and restoring the school(s) to an acceptable rating status, is not too much to ask. Campus Improvement Plans are existing documents, and the additional write up requested by the QAP here does not constitute a substantial burden to create. Mitigation item (II) entails the Applicant entering into an agreement with a school, district, or Head Start provider to provide space on-site for the provision of an early childhood pre-K program at no cost to residents of the proposed Development. This is promise for future activities well after the 2021 Application cycle, and planning for future support to residents is well within the bounds of a reasonable ask of an Applicant in 2021. The final mitigation item (III) requires that until such time the school(s) achieves a rating of A, B, or C, the Applicant will operate an after school learning center at least 15 hours a week of on-site educational services. If the low performing school is truly on track to improvement as item (I) must indicate, then in theory item (III) should not even come into play because the rating will be up to at least a C by the time the development goes in service a year or two after the application. If the school rating has not risen sufficiently as item (III) contemplates, then the Applicant should be able to provide these educational services years in the future. Removing this third mitigation requirement leaves open the possibility that in many years' time, a school that is currently D or F rated will be serving LIHTC tenant children and they will not even have the opportunity to utilize these mitigating services that could help them succeed.

Just because we are in a pandemic now does not mean that children living in LIHTC 5, 10, or 20 years from now should suffer in poor performing schools. Instead, the Staff and Board should continue to support development of affordable housing only near high performing schools, or near low performing schools with full mitigation as written in the QAP.

Lastly, we reiterate our request that instead of allowing mitigation, the QAP should deny applications in areas with the Neighborhood Risk Factor for schools. That would be achieved with the following changes to the Staff Draft: In (C) and (D), in lieu of the proposed final sentence addition, "Due to school closures as a result of COVID-19, mitigation for schools as described in subparagraphs (C) and (D) of this paragraph is not required for Applications submitted in 2021," we urge you instead to state, "Due to school closures as a result of COVID-19, mitigation for schools as described in subparagraphs (C) and (D) of this paragraph is not available for Applications submitted in 2021, and schools with the Neighborhood Risk Factor for school accountability detailed in (B)(iv) of this section shall not be eligible for award in 2021." Developers cannot truly fix the schools; they have neither the power nor the resources. The

³² Gallagher et al., *supra* note 20, at 4.

existing school mitigation is insufficient to meet the needs of low-income students who deserve to attend excellent schools.

§11.101(a)(3)(D)(i) Neighborhood Risk Factors – mitigation for high poverty areas

We continue to oppose last year’s roll back of better mitigation for development in areas with the Neighborhood Risk Factor for a poverty rate exceeding 40%. It is absurd to build new LIHTC in areas with over 40% poverty, and we oppose allowing new LIHTC in these areas at all. The multifarious negative effects on residents cannot be “mitigated.” HUD’s Affirmatively Furthering Fair Housing data shows that people living below the poverty level experience more limited access to high performing schools and labor market engagement opportunities than people living above the poverty level; and renters tend to live in areas where they are exposed to substantially more environmental health toxins than homeowners.³³ High poverty areas are a useful proxy for a variety of indicators that should lead TDHCA to avoid allowing LIHTC development there.

At the very least, we urge the Staff and Board to reinstate previously required mitigation for these areas in this section. The new rule from the 2020 QAP is in substance left unchanged in the 2021 Staff Draft and purports that a resolution from the municipal or county governing body “acknowledging the high poverty rate and authorizing the Development to move forward” constitutes mitigation for the ill effects on LIHTC tenants of living in a high poverty area. Such a letter does nothing to address the impacts on LIHTC residents associated with living in an area of concentrated poverty, such as environmental health, job proximity, and school quality. By maintaining this useless “mitigation” opportunity that essentially gives Applicants a free pass to use LIHTC in areas of extreme poverty, TDHCA does a massive disservice to LIHTC residents.

§11.101(b)(1)(C) Ineligibility of Developments within Certain School Attendance Zones – most recent school ratings

We support the change in language that allows for using TEA school ratings from the most recent year available, based on the lack of new ratings this year due to the COVID-19 pandemic. When schools have received such abysmal ratings, the likelihood that they have vastly improved in the past year are normally slim. Even more so, in the time of the pandemic, schools are struggling to support all their students through remote and newly in-person learning. This makes it extremely unlikely that a school with a TEA Accountability Rating of F and an Improvement Required Rating for the most recent year available would have improved sufficiently to justify building new LIHTC developments nearby if they might house children.

If Staff and the Board are willing to strengthen this section, then we recommend adding that “a development in the attendance zone of a school that has a TEA Accountability Rating of F for the most recent year available prior to Application and a *Met Standard Rating* for the most

³³ Gourevitch et al., *supra* note 30.

recent available year preceding is likewise ineligible with no opportunity for mitigation.” See our arguments in §11.101(a)(3) Neighborhood Risk Factors for reasoning.

SUBCHAPTER D: UNDERWRITING AND LOAN POLICY

§11.304(a) Appraisal Rules and Guidelines, General Provision – appraiser certification

We support the change requiring that all appraisals be prepared by an appraiser certified by the Texas Appraisal Licensing and Certification Board, and we support the change adding a reviewing appraiser with reconciliation as needed. These changes will add trust to the process and demonstrate to the public the integrity of the appraisal conclusions.

Again, we thank the TDHCA Staff and Board for the significant time and energy dedicated to creating this Staff Draft of the 2021 QAP. Please reach out using the contact information below if you have any questions about these comments.

Sincerely,

Elizabeth Roehm

Elizabeth Roehm
Staff Attorney
Texas Housers
elizabeth@texashousing.org
(512) 677-5809

Cc: Bobby Wilkinson, TDHCA
Brooke Boston, TDHCA
Marni Holloway, TDHCA
TDHCA Board

(58) Metro Dallas Homeless Alliance

From: [Carl Falconer](#)
To: [HTC Public Comment](#)
Subject: Opposed to QAP Proposed Changes
Date: Tuesday, October 06, 2020 5:03:36 PM
Attachments: [image001.png](#)

Recently, the Texas Department of Housing and Community Affairs (TDHCA) proposed a change to the Qualified Allocation Plan (QAP) that would require supportive housing tax credit properties to refuse to house individuals with criminal backgrounds (temporarily or permanently, depending on the severity of the crime). Starting on page 14 and look at the definition of Supportive Housing at the bottom of the page.

The changes I oppose are on page 15 of the document.

These changes would make it almost impossible for people experiencing homelessness to take advantage of these affordable units. We understand that there are some issues with insurance companies raising rates for housing providers that take in residents with criminal backgrounds, but that issue is specific to liability and should be addressed as an insurance/property owner issue, not used to discriminate against low income people seeking affordable housing.

There are already enough barriers put in place for people of color and who are low income to get the essentials, including housing. Adding these changes to the list of barriers to affordable housing is just a bad idea.

Thanks,



Carl Falconer | *President & CEO*
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(59) Disability Rights Texas

Texas Department of Housing and Community Affairs
Attn: Matthew Griego, QAP Public Comment
htc.public-comment@tdhca.state.tx.us
P.O. Box 13941
Austin, Texas 78711-3941

Disability Rights Texas is the federally designated legal protection and advocacy agency for people with disabilities in Texas. Our mandate is to ensure people with disabilities understand and exercise their rights under the law, ensuring their full and equal participation in society. We appreciate the opportunity to provide comments on the 2021 QAP Draft - concerning changes in the Supportive Housing definition.

The proposed changes in Chapter 11 of the Texas Department of Housing and Affairs (TDHCA) 2021 Draft of the Qualified Allocation Plan (QAP) adds criminal screening criteria to the requirements for the development of "Supportive Housing". The QAP definition of supportive housing is described as "intended for and targeting occupancy for households in need of specialized and specific non- medical services in order to maintain housing or transition into independent living". Many individuals with disabilities fall into this definition and the restrictive screening requirements being added to the QAP would cause additional barriers to finding housing.

The proposed changes will curtail the ability of individuals with criminal backgrounds due to mental health disabilities to find stable housing. People with disabilities are a protected class under the Fair Housing Act (FHA). The changes will hinder the recovery of those whose convictions stemmed from disabilities by making it harder for supportive housing providers to secure funding. The changes will have a disparate impact upon Texans who are protected under the FHA. Guidance from the Department of Housing and Urban Development (HUD) cautions that because of these disparities, blanket criminal background checks used to deny housing to applicants can have an illegal discriminatory effect and cautions providers and jurisdictions to ensure that such policies be narrowly tailored and "necessary to achieve a substantial, legitimate, and nondiscriminatory interest." These proposed changes will lock many individuals with disabilities out of TDHCA-sponsored supportive housing, adding yet one more obstacle in the way of reentering society safely and successfully.

We ask that you reject these changes in the 2021 QAP – supportive housing developments should have no additional requirements than other housing developments funded through the TDHCA Tax Credit Program. By HUD and TDHCA's own definition, supportive housing is intended to provide housing for persons with disabilities. Applying these requirements to only the supportive housing developments that primarily serve individuals with a disability, the requirements would appear to be facially discriminatory and thus intentionally discriminate. It would also cause a disparate impact on persons with disabilities and require applicants to seek reasonable accommodations that would in a sense make these requirements moot.

Thank you for the opportunity to provide these comments on behalf of Disability Rights Texas. For more information, please contact Jean Langendorf at jeanl@drtx.org.

(60) Lauren Butler

From: [Lauren Butler](#)
To: [HTC Public Comment](#)
Subject: Re: Qualified Allocation Plan (QAP)
Date: Wednesday, October 07, 2020 9:01:27 AM

I am submitting my comment regarding the QAP. I work for an organization that houses chronically homeless and disabled individuals. This “plan” would greatly inhibit our ability to help those that are suffering from homelessness. There are no barriers to permanent supportive housing right now, which means we can get people off of the streets and into a home, and then work on the other issues. The QAP would be absolutely detrimental to ending homelessness. I oppose this plan!!!

Sincerely,

Lauren Butler
Case Manager
Harmony House, Inc.
Phone: 713.221.6239
Fax: 713.221.6222
lauren_butler@harmonyhouse.org

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(61) Dalton Marcum

From: [Dalton Marcum](#)
To: [HTC Public Comment](#)
Subject: New QAP Comment
Date: Wednesday, October 07, 2020 9:36:35 AM

There must be another way in which we don't add to the homeless problem. I don't think this particular way is the way to go.

Dalton Marcum
Associate Director of Student Ministry
Chapelwood United Methodist Church
dmarcum@chapelwood.org
832-286-5724 (cell)
713-827-3979 (direct line)

(62) Alyssa Carpenter

October 7, 2020

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

RE: Comment on the Draft 2021 Qualified Allocation Plan

Dear Mr. Griego:

The following comments are in response to the draft 2021 Qualified Allocation Plan. I thank Staff for their work on this document throughout the year and the opportunity to provide input.

11.9(c)(4) Opportunity Index

Subparagraph (i) of the scoring item states that a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and a median household income rate in the two highest quartiles of the region may be eligible for Opportunity Index points.

Subparagraph (ii) of this scoring item states that a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and a median household income in the third quartile within the region may be eligible for Opportunity Index points if it "is contiguous to a census tract in the first or second quartile."

Subparagraph (ii) is missing the requirement that the contiguous census tract in the first or second quartile must also have a poverty rate of less than the greater of 20% or the median poverty rate for the region. As the language currently reads, there is a possibility that a third quartile census tract that is contiguous to a first or second quartile tract with a poverty rate *higher* than 20% or the median could be high opportunity, which makes no sense. A third quartile tract should only be eligible to be high opportunity due to its proximity to another high opportunity tract. If the contiguous tract cannot qualify for the opportunity index, then neither should the third quartile tract. This item could be clarified with the following suggested language and should not be considered a major change to the QAP.

(ii) The Development Site is located entirely within a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with a median household income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile for median household income that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, without physical barriers such as (but not limited to) highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. For purposes of this scoring item, a highway is a limited-access road with a speed limit of 50 miles per hour or more; and, (1 point)

11.9(c)(7)(B) Proximity to Jobs

Though you may receive comment to modify the distances or job totals for this scoring item, my comment is that no changes be made in the final 2021 QAP. The development community has been working with these figures for several weeks and a change to this now would be a significant alteration to the QAP scoring.

11.9(c)(8) Readiness to Proceed in Disaster Impacted Counties

I propose that this scoring item not apply to Applications under the At-Risk or USDA Set-Aside. The Readiness to Proceed scoring item requires the development to close and sign a construction contract before the end of November and is only available in FEMA disaster counties. It was my understanding that this scoring item was added in order to incentivize expeditious construction and completion of units in

disaster areas that may have lost existing housing units or need additional housing units. At Risk and USDA developments are existing and generally already have tenants residing at the property, so new units will not be added to the local housing stock. Additionally, applications where the development ownership will not change have an unfair advantage because the owner transfer process adds extra time to the closing schedule which makes closing in November uncertain for applications with owner changes. There are other scoring items such as Proximity to Jobs and Homeless units for Residents with Special Housing Needs that do not apply to At Risk or USDA, so this change would not be unprecedented.

11.9(d)(1) Local Government Support

This section outlines whether the resolution comes from the city and/or county for applications within a municipality, ETJ, and outside of a municipality/ETJ, but does not address sites that are partially within a municipality and partially in the ETJ or county. Can clarification be added for this scenario?

11.9(d)(7) Concerted Revitalization Plan

An Application may qualify for up to seven (7) points under this paragraph if no points are elected under Opportunity Index. I propose that this section further state that Applications that are eligible for Opportunity Index points be ineligible for Concerted Revitalization points.

Allowing a high opportunity site to take points for a revitalization plan gives that application a competitive advantage over other high opportunity applications because the highest scoring revitalization application is awarded first in several regions. This defeats the purpose of the scoring item and defies the award methodology process. It was my understanding that the highest scoring revitalization application under the award methodology was added by the legislature so that true revitalization applications could compete with high opportunity applications. The Concerted Revitalization scoring item states “An Application may qualify to receive points if the Development Site is located in a distinct area that was once vital and has lapsed into a condition requiring concerted revitalization.” If the Application is in a census tract that qualifies for the Opportunity Index, it is arguable that the area is not one that “was once vital and has lapsed into a condition requiring concerted revitalization” as required in the scoring item. Suggested language is below.

(7) Concerted Revitalization Plan. An Application may qualify for up to seven (7) points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index. Additionally, the Application must not be eligible under the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) or §11.9(c)(4)(A)(ii).

11.101(a)(2) Undesirable Site Features

If the QAP allows a local ordinance to supersede the distances in this section, then I propose that a local resolution also be acceptable. This allows the local government to approve development in their community and would also remove subjectivity and interpretation around certain features and avoid unnecessary RFADs. Example language is included below.

Where there is a local ordinance or resolution that specifies the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, then such smaller distances may be used and documentation such as a copy of the local ordinance or resolution identifying such distances relative to the Development Site must be included in the Application.

Items allowed to be Corrected during the Deficiency Process

Several 2020 Applications were allowed to provide missing or additional documentation for scoring items during the deficiency review process, which is in conflict with certain sections of the QAP. These instances had to do with Sponsor Characteristics, Proximity to Jobs, and Concerted Revitalization Plan. Additionally, there was a Board decision that allowed a change to be made to an Applicant’s Expense to Income Ratio when the initial Application was financially infeasible.

If such changes are going to be allowed, then I ask that the language prohibiting changes that exists in various sections of the QAP be revised and/or removed. Examples of existing language are highlighted below.

11.1 General

(d)(2) Definition of Administrative Deficiency

If an Applicant claims points for a scoring item, but provides supporting documentation that would support fewer points for that item, staff would treat this as an inconsistency and issue an Administrative Deficiency which will result in a correction of the claimed points to align with the provided supporting documentation. **If the supporting documentation is not provided for claimed points, the item would be assigned no points.**

11.1 General

(g) Documentation to Substantiate Items and Representations in an Application.

In order to ensure the appropriate level of transparency in this highly competitive program, Applications and all correspondence and other information relating to each Application are posted on the Department's website and updated on a regular basis. Applicants must use the Application form posted online to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, meeting of threshold requirements, or timely requesting a waiver or determination. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the Deficiency process. **Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. Although a responsive narrative will be created after Application submission, all facts and materials to substantiate any item in response to such an Administrative Deficiency must have been clearly established at the time of submission of the Application.**

11.9(a) General Information.

This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsections (b) - (e) of this section include those items required under Tex. Gov't Code, Chapter 2306, Code §42, and other criteria established in a manner consistent with Chapter 2306 and Code §42. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. The Application must include one or more maps indicating the location of the Development Site and the related distance to the applicable facility. Distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the facility, unless otherwise noted. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held. **Due to the highly competitive nature of the program, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency. However, Department staff may provide the Applicant an opportunity to explain how they believe the Application, as submitted, meets the requirements for points or otherwise satisfies the requirements.**

11.202(7) Deficiency Process.

(B) Deficiencies for Competitive HTC Applications. Unless an extension has been timely requested and granted prior to the deadline, if a deficiency is not fully resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then five (5) points shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If deficiencies are not resolved by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated, subject to the Applicant's right to appeal. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, and may not add any set-asides, increase the requested credit amount, revise the Unit mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency. (§2306.6708(b); §2306.6708) **Applicants may not use the Deficiency Process to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application.** To the extent that the review of deficiency documentation or the imposing of point reductions for late responses alters the score assigned to the Application, such score will be reflected in the updated application log published on the Department's website or a Scoring Notice may be issued.

11.204(6) Experience Requirement

Language in the draft has been added that states "Serving only as the HUB for a Development does not meet this requirement." What exactly does this mean? If a person or entity has control of the development either through the construction process, ownership, or both, and can prove experience through the list of

documentation in this section, then the HUB status should not be a disqualifier. This language should be removed.

Neighborhood Organization Boundaries on Record

First, there is potential confusion regarding the date a neighborhood organization must be on record and when the boundaries must be established based on the reading of different sections of the QAP. Relevant sections are below. Can this please be clarified and made consistent in all areas of the QAP?

11.8(b) Pre-Application Threshold Criteria

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the entire proposed Development Site as of the **beginning** of the Application Acceptance Period.

(B) Notification Recipients.

(i) Neighborhood Organizations on record with the state or county as of the **beginning** of the Application Acceptance Period whose boundaries include the entire proposed Development Site;

11.203 Public Notifications (§2306.6705(9))

(1) Neighborhood Organization Notifications.

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of **30 days prior to the beginning** of the Application Acceptance Period and whose boundaries include the entire proposed Development Site. As used in this section, "on record with the state" means on record with the Secretary of State.

(B) The Applicant must list, in the certification form provided in the pre-application and Application, all Neighborhood Organizations on record with the county or state as of **30 days prior to the beginning** of the Application Acceptance Period and whose boundaries include the proposed Development Site as of **the submission** of the Application, and the Applicant must certify that a reasonable search for applicable entities has been conducted.

(2) Notification Recipients.

(A) Neighborhood Organizations on record with the state or county as of **30 days prior to the beginning** of the Application Acceptance Period whose boundaries include the entire Development Site;

11.9(d)(4) Quantifiable Community Participation.

An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in current, valid existence with boundaries that contain the entire Development Site **30 days prior to the beginning** of the Application Acceptance Period. In addition, the Neighborhood Organization must be on record with the Secretary of State or county in which the Development Site is located as of the **beginning** of the Application Acceptance Period.

Additionally, I propose that these sections of the QAP be clarified to state that the actual Boundaries of the Neighborhood Organization also need to be on record with county or state. This will avoid issues with conflicting boundary maps like that of 20116 Dian Street Villas. A neighborhood organization must be on record with the county or state, have its boundaries on record with the county or state, and should also be able to show that the neighborhood organization would have been discoverable by a reasonable search as of 30 days prior to the beginning of application acceptance period.

Thank you for your attention to these comments. Please contact me with any questions.

Regards,



Alyssa Carpenter
ajcarpen@gmail.com

(63) Five Woods

From: [Laolu Davies-Yemitan](mailto:Laolu.Davies-Yemitan)
To: [Matthew Griego](mailto:Matthew.Griego)
Subject: Fw: Public Comment on Draft QAP - Historically Underutilized Businesses Section 11.204(6)
Date: Wednesday, October 07, 2020 12:05:09 PM

----- Forwarded Message -----

From: "Laolu Davies-Yemitan" <laolu@5woods.net>
To: "htc.publiccomment@tdhca.state.tx.us" <htc.publiccomment@tdhca.state.tx.us>
Cc: "Laolu Davies-Yemitan" <fivewoods5@yahoo.com>
Sent: 10/6/2020 5:07:06 PM
Subject: Public Comment on Draft QAP - Historically Underutilized Businesses Section 11.204(6)

Related to the proposed change striking participation as a HUB in meeting "Experience Requirement"

The proposed change to add language that states "Serving only as the HUB for a Development does not meet this requirement", is concerning, particularly in light of lack of clarity regarding the implications of such a change. On initial read, the language could be interpreted as suggesting that a Historically Underutilized Business (HUB) applicant who has only participated as a HUB and meets the other stipulated documentation requirement under Sec 11.204(6)A is not eligible to receive recognition as having met the experience requirement.

If this is in fact the case, then I believe such a change runs counter to the spirit of the state of Texas HUB statute created in 1995. For reference, I will point you to Sec. 2161.063(a) 4, where it affirms that part of the program's aims is "increasing the amount of business paced with historically underutilized businesses". I would further refer you to Sec. 2161.065 (a), where the statute establishes a Mentor-Protege program "to increase the ability of historically underutilized businesses to contract with the state".

As principal of a HUB firm that has consistently participated in the program since 2015, this proposed change is seemingly an affront at the diligent effort that has been put in to earning the requisite experience on multiple deals, with the goal of being able to acquire the requisite experience to be able to control a development and remain in control through placement in service.

If this is not the intent of this proposed change, then a further clarification in the background section would only be appropriate. Would also like to acknowledge that the language is perhaps simply a clarification of existing policy, in which case would also be good to get clarification.

Regards,

Laolu Davies-Yemitan, CCIM
Five Woods
Principal

2418 Elgin St, Houston, TX

(281) 948-9154

Laolu@5woods.net

(64) Ingrid Norbergs

From: [Ingrid Norbergs](#)
To: [HTC Public Comment](#)
Subject: Opposed to Proposed Change to the QAP
Date: Wednesday, October 07, 2020 12:26:04 PM

I am writing to register opposition to the proposed changes to the QAP that would require supportive housing tax credit properties to refuse to house individuals with criminal backgrounds (temporarily or permanently, depending on the severity of the crime).

Individuals with criminal history are at disproportionate risk of homelessness. These changes would increase the numbers of homeless individuals living on the streets and increase recidivism. Rehabilitation happens when people have the tools to build a stable and law-abiding future, such as employment and housing; not when the disadvantages individuals with criminal history already struggle with are compounded by a lack of access to housing.

As an attorney and legal aid professional who works directly with the homeless, I strongly urge the Department to reconsider.

Ingrid Norbergs
Senior Attorney
Beacon Law

pronouns: she/her/hers

713-220-9783 *direct*
713-220-9780 *main* *call or text
P.O. Box 53958, Houston, TX 77052 *mailing*
[1212 Prairie Street, Houston, TX 77002](#) *physical*

www.beaconlaw.org

Providing essential and next-step services to restore hope and help end homelessness in Houston

**We do not disclaim anything about this email. We're quite proud of it, really. But if you need a little more - If you're a client, the attorney-client privilege protects this email. If you're a lawyer working with us under a joint-representation arrangement, this email is privileged under that arrangement. If you've received this email by mistake, we'd appreciate it if you would reply to let us know, and then delete the email. We don't waive any client's privilege by erroneously delivered email. Also, we never give tax advice.

(65) Mercy Street

October 7, 2020

Texas Department of Housing & Community Affairs
Attn: Matthew Griego, QAP Public Comment
P.O. Box 13941
Austin, Texas 78711-3941

Dear Mr. Griego:

As an ordained pastor in Houston, Texas I would like to write in opposition to new guidelines proposed for the Qualified Allocation Plan for the Supportive Housing initiatives. The guidelines which would restrict renting to individuals with a criminal background are understandable at a theoretical level; however, given the population which this program serves, it does not make practical sense and is not helpful to the overall goal of reducing recidivism and building strong neighborhoods.

The congregation I serve is physically located in 77024 or the Memorial Villages of Houston. Our parishioners are from 50 different zip codes in the Houston area. Nearly 1/3 of our congregation has a criminal background and they struggle to find housing. Our church actively partners with organizations who are providing safe, affordable housing so individuals can rebuild their lives. Organizations such as New Hope Housing, Angela House, Santa Maria treatment center, Salvation Army and the list goes on. Many of these work with women who also need housing for their children.

Research shows affordable, safe and stable housing reduces recidivism, helps an individual rebuild their lives and saves financial resources in the long run. Our church provides access to supportive resources and mental health/spiritual care for the individual. We see our role as a faith community to work for shalom in the city in which God has placed us (Jeremiah 29:7).

I note in the proposed legislation that allowances could be made with referrals from professionals, pg 15 of <https://www.tdhca.state.tx.us/multifamily/docs/21-QAP-StaffDraft.pdf>

The criminal screening criteria may include provisions for mitigation of temporary denials including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant.

I would first advocate to not place these restrictive rules on misdemeanors and felonies for individuals. However, if the decision is necessary, then make it clear in the guidelines how letters of support from pastors, mental health professionals or treatment providers will impact the decisions.

Thank you for your work in Texas, especially to assist families struggling in these chaotic times.

Kind regards,



Rev. Melissa A Maher
713-354-4401
melissa@mercystreet.org

(66) TAAHP

October 7, 2020

Texas Department of Housing and Community Affairs
Attn: Marni Holloway, Director of Multifamily Finance
221 East 11th Street
Austin, Texas 78701
Email: Marni.Holloway@tdhca.state.tx.us

**Re: Texas Affiliation of Affordable Housing Providers – Comments
Regarding 2021 TDHCA Draft Qualified Allocation Plan**

Dear Mrs. Holloway:

The Texas Affiliation of Affordable Housing Providers (“TAAHP”) appreciates the opportunity to submit comments to the 2021 Qualified Allocation Plan (“2021 QAP”) to the Texas Department of Housing and Community Affairs (“TDHCA”). TAAHP has convened a meeting of its membership to discuss its priorities related to the 2021 QAP. It is TAAHP’s policy to submit only recommendations that represent consensus opinions of membership. On behalf of TAAHP, please accept the following consensus comments and recommendations for consideration in the finalizing the 2021 QAP.

- §11.7 Tie Breaker Factors – TAAHP membership requests that the tie breaker factors be simplified and avoid having them be based on census tract level data, which drives multiple developers to the same census tracts. To accomplish the same, TAAHP suggests the use of only the ‘distance’ tiebreaker rather than a multi-step tie breaker system.
- §11.9(c)(7)(B) Proximity to Jobs Area – Proximity to Jobs – TAAHP recommends an evaluation of an expanded radius in urban subregions and different radii for Rural and Urban subregions prior to the issuance of the 2022 Staff Draft. Any change to the radius for 2021 from this point forward will impact the competitiveness of sites already under evaluation relative to other nearby sites. To provide for more geographic dispersion in the 2021 application round, TAAHP recommends lowering the 2021 QAP job count thresholds as follows:
 - (i) The Development is located within 1 mile of ~~16,500~~ 13,500 jobs. (6 points)
 - (ii) The Development is located within 1 mile of ~~13,500~~ 10,500 jobs. (5 points)
 - (iii) The Development is located within 1 mile of ~~10,500~~ 7,500 jobs. (4 points)
 - (iv) The Development is located within 1 mile of ~~7,500~~ 4,500 jobs. (3 points)
 - (v) The Development is located within 1 mile of ~~4,500~~ 2,000 jobs. (2 points)
 - (vi) The Development is located within 1 mile of ~~2,000~~ 1,000 jobs. (1 point)

The new ‘Proximity to Jobs’ scoring item was very impactful in last year’s application round. It provided an effective alternative to the ‘Urban Core’ point option. In the Austin and Houston urban subregions, the number of deals that used

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Texas Housing Foundation

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STEPHANIE NAQUIN
Novogradac & Company LLP

HECTOR X. ZUNIGA
Key Bank

ROGER ARRIAGA
TAAHP Executive Director

'Proximity to Jobs' vs. 'Urban Core' was roughly 50/50. In San Antonio, 7 out of 9 awards elected 'Proximity to Jobs' points over 'Urban Core' points.

That said, the 1-mile radius and job count figures prioritized commercial sites located along major highways and transportation corridors rather than more traditional residential sites. While not intentional, this prioritization brings added noise pollution for residents and potentially worse air quality, plus more expensive and complicated development sites for owners. As an example, of the 7 'proximity' deals on the Houston urban subregion award and waiting list, the average site size was 2.76 acres costing nearly \$40 per square foot, on average. In 4 out of the 7 cases, the sites cost well over \$50 per square foot. In past years, sites outside of the 'urban core' point category tended to be larger and a fraction of that cost.

This scoring item has dramatically influenced the cost of non-Urban Core development. TAAHP requests an evaluation of these cost impacts and the effectiveness of dispersion using an expanded radius in the Urban subregions and different radii between Rural and Urban subregions. Additionally, membership recommends this scoring item be the topic of a 2022 QAP Roundtable.

- §11.9(c)(8) Readiness to Proceed in Disaster Impacted Counties ("RTP") – TAAHP reiterates previous comments and understands this change will most likely have to come from the Governor's office but believes this point category should be removed from the 2021 QAP entirely.

The November 30th closing deadline concentrates the review and permitting of RTP developments in too short a window. As per prior written comment from the City of Houston, its administration is balancing the strain of limited staff and constrained budgets. As was evident in Houston urban subregion in 2019, concentrating the reviews and approvals of the RTP deals put an unmanageable burden on the City of Houston and the Texas GLO which were unable to meet the November 30th deadline in virtually all cases. COVID-19 has exacerbated these issues, forcing staff to work from home, slowing the permitting and approval process further.

Furthermore, the deadline has forced developers to spend significantly more design and pursuit dollars earlier in the process without any certainty of an award. We estimate that at least twice the typical amount of pre-development funds were spent prior to award in 2018-2020 than non-RTP deals, in many cases on developments that did not receive funding because of last minute gyrations in scoring, underwriting, compliance review, etc., which was the case on several applications this round. That is a waste of resources we could be using to pursue other affordable deals.

Lastly, the rushed deadline restricts a developer's ability to adjust to changes in market conditions, such as increases in construction costs, drops in tax credit equity pricing, etc., all of which are currently applicable because of the current pandemic environment. Should an application amendment be needed, an applicant is forced to accept the penalty primarily due to taking appropriate action in the best economic interest of the development.

- §11.101(a)(3) & §11.101(b)(1)(C) Neighborhood Risk Factors – TAAHP suggests that the provisions related to school ratings be deleted from the application threshold requirements entirely.

Including schools as a threshold requirement is a remnant from the remediation plan that was developed by TDHCA during the Inclusive Communities Project v. TDHCA litigation, a lawsuit in which TDHCA prevailed, based on the facts on remand. Years later, school ratings remain a part of the QAP. Until recently, an applicant was eligible to provide mitigation in all cases, no matter the school rating. Based on the current language, there is a strict prohibition against building in areas with schools that failed to perform based on 2018 and 2019 TEA ratings.

What the current environment has taught is that schools are not just important for the education of our children, but they are places that provide non-educational aspects that are critical in stabilizing the lives of all children and families, including meal provision, socialization and a place where children can physically go while their parents go to work.

For children that reside in stable housing (or in a stable housing environment) it has been proven there is an increase in school performance. Therefore, to deny certain communities affordable housing based on one single determinant is irresponsible. Housing and all schools must go hand in hand to create stable and routine environments for the children need it most.

Considering the uncertainty as to how schools will be rated for the 2020-2021 school year, using school ratings from a 2018-2019 academic year to determine eligibility for a development that may not be under construction until 2022 and may not be leasing until 2024 seems unfounded. Including any school rating as a threshold requirement only serves as a deterrent to developments using the housing tax credit in areas that are otherwise well-suited and in great need of more affordable units.

- §11.204(15) – Feasibility Reports for Acquisition/Rehab Deals – TAAHP suggests the removal of the requirement for Acquisition/Rehab applications to provide Feasibility Reports. The information contained in Feasibility Reports are either not applicable to acquisition/rehabs or are covered in the Scope and Cost Review.

Feasibility Reports are conducted for new construction developments and, as stated in the Rule, is concentrated on site design, zoning, subdivision requirements, ordinances, ingress/egress, off-site costs, and site work cost. Acquisition/rehab developments are (i) already in existence, (ii) not undergoing significant site redesigns, (iii) not having to plat a new subdivision, (iv) not deciding the ingress/egress, (v) nor incurring significant off-site costs.

TAAHP believes this requirement is unduly burdensome on acquisition/rehab developments and request those applications proposing only acquisition/rehab be exempted from the requirement to provide Feasibility Reports in their entirety.

- §11.9(b)(2) & §11.204(6)(A) – Experience Certificates – HUB Language – TAAHP recommends removing the newly added language of §11.204(6)(A) that reads “Serving only as the HUB for a Development does not meet this requirement”. TAAHP believes that a

HUB that is materially participating in the development, construction, or operation of a Development would qualify for having met the 'Experience Requirement' set forth in §11.204(6) provided acceptable documentation is submitted as required under the rule.

- §11.304(2) & §11.901(20) – Appraisal Reviews – TAAHP requests the removal of the requirement for a second review of an appraisal, and its corresponding \$6,000 review fee, and supports TDHCA publishing a list of approved appraisers to eliminate any previous providers that may have caused concern. Appraisals are prepared by licensed and experienced professionals and must abide by the standards of USPAP (Uniform Standards of Professional Appraisal Practice). Further, it is our understanding that an appraiser would not be able to give an opinion on another appraisal without doing the full scope of appraisal work themselves, per USPAP rules, which is incredibly redundant. This adds an unnecessary burden to an already expensive application and is not consistent with TDHCA's practice of relying upon the other third-party reports (i.e. ESA, Scope & Cost Review, Feasibility Report, Market Study) without anything other than a staff review.

Thank you for your consideration of these comments. Please note that representatives from the TAAHP leadership welcome the opportunity to meet with TDHCA staff to discuss these recommendations more fully.

Please contact Nathan Kelley at (281) 782-7078 or nkelley@blazerbuilding.com, or TAAHP Executive Director Roger Arriaga at (512) 476-9901 or rarriaga@taahp.org with questions.

Sincerely,



Nathan L. Kelley
TAAHP QAP Committee Chair

Cc: Bobby Wilkinson, TDHCA
Brooke Boston, TDHCA
Marni Holloway, TDHCA
TDHCA Board
TAAHP Membership

(67) Scott Marks

From: [Marni Holloway](#)
To: [HTC Public Comment](#)
Subject: FW: Supportive Housing Rule Austin criminal background screening materials
Date: Friday, October 02, 2020 4:06:09 PM
Attachments: [Austin Screening Policy.pdf](#)
[Reentry Roundtable Screening Policy.pdf](#)

Probably not technically public comment, but we should double check with Beau

Marni Holloway

Multifamily Finance Director
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
(512) 475-1676

Reminder for Direct Loan Borrowers: TDHCA will not close earlier than 30 days after receipt of complete due diligence documents. We will not honor closings scheduled without our confirmation.

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats.

About TDHCA

The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in need. For more information, including current funding opportunities and information on local providers, please visit www.tdhca.state.tx.us

From: Scott A. Marks <smarks@coatsrose.com>
Sent: Friday, October 02, 2020 1:48 PM
To: Bobby Wilkinson <bobby.wilkinson@tdhca.state.tx.us>; Marni Holloway <marni.holloway@tdhca.state.tx.us>; Patricia Murphy <patricia.murphy@tdhca.state.tx.us>
Subject: Supportive Housing Rule Austin criminal background screening materials

Bobby,

You asked for more information on the City of Austin policy, so I am attaching two PDFs to this email and also a link below to a city resolution providing recent direction to the city manager by the city council on screening policy, as well as a link to a criminal background screening guide. The Reentry Roundtable Screening Policy PDF attached is an excerpt from the guide and includes a list of suggested lookback periods for various offenses. The chart takes into consideration recidivism studies on various crimes. Many of the lookback periods in the proposed supportive housing definition are not consistent with this chart.

This is the link to the recent city council resolution:

<https://www.austintexas.gov/edims/document.cfm?id=342168>

This is the link to the full screening guide by the Austin/Travis County Reentry Roundtable:

https://www.reentryroundtable.org/wp-content/uploads/2018/04/Austin-Criminal-Background-Screening-Guidebook.final_.pdf

I will send more soon, and very much appreciate your engaging with me on this proposed rule change.

COATS | ROSE

A PROFESSIONAL CORPORATION

Scott A. Marks

Director

Terrace 2
2700 Via Fortuna, Suite 350
Austin, Texas 78746
Direct: [512.684.3843](tel:512.684.3843) | Fax: 713.890.3911
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**** Effective December 1, 2019, our Austin office address will now be Terrace 2, 2700 Via Fortuna, Suite 350, Austin, Texas 78746 ****

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PROGRAM GUIDELINES
Rental Housing Development Assistance Program (RHDA)

City of Austin
Austin Housing Finance Corporation

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5. Property owners must offer a lease term of at least 1 year, unless tenant and owner mutually agree to a shorter lease term.

B. Tenant Selection Policies and Procedures.

1. Property owners must have written tenant selection procedures and policies that:
 - a. Are consistent with the purpose of providing housing for very low- and low-income families;
 - b. Are reasonable, and comply with applicable eligibility and acceptance requirements;
 - c. Meet the housing needs of families and recipients of Housing Choice Voucher Program assistance (formerly "Section 8");
 - d. Follow the *Texas Criminal Background Screening Guide for Rental Housing Providers*, published by the Austin/Travis County Reentry Roundtable to screen potential tenants
2. In the event of a rejected application for rental housing, property owners must give prompt written notification of the rejection and the basis for the decision.
3. Select tenants from a written waiting list in chronological order, or in the case of units set aside for permanent supportive housing or rapid re-housing, accept referrals exclusively from the Coordinated Assessment system maintained by the Ending Community Homeless Coalition. If units set aside are not occupied for more than 30 days of notifying ECHO of the vacancy, they may be filled via a project waiting list for other low-income tenants.

- C. For projects including permanent supportive housing or rapid-rehousing, include provisions for exercising discretion to waive certain screening criteria if and when the tenant can demonstrate the availability of case management services for a minimum of three months

D. Property Standards

The owner must maintain the total project in compliance with federal Uniform Physical Condition Standards (UPCS) and the City of Austin Building and Property Maintenance Codes for the duration of the Affordability Period. The City of Austin will periodically inspect the property to ensure compliance with this requirement. Projects with one to four RHDA-assisted units must be inspected by the City of Austin or by a certified UPCS inspector every three years within the Affordability Period or during the term of the Note with AHFC, whichever is longer. Projects of five (5) to twenty-five (25) RHDA-assisted units must be inspected every two years, and projects of 26 or more RHDA-assisted units will be inspected annually. For those properties under annual inspection requirements, each unit may not be inspected each year, but a representative sample of units (no more than 20%) will be inspected each year. If a significant number of violations are found during these inspections, all units at the property may be inspected.

E. Smoke Free Housing

The City of Austin encourages the development of smoke-free rental housing. Smoke-free housing protects the health of residents by decreasing exposure to harmful secondhand smoke. Also, apartment owners and managers reap the benefits of more efficient and less expensive unit turnovers, potentially lower insurance premiums, and reduced risk of fires. Smoke-free policies are legally permissible and can be a marketing advantage for attracting and retaining residents. More information is available at <http://www.livetobaccofreeaustin.org/owners.php>.

If a housing applicant has a criminal conviction on his or her record and the date of the conviction falls outside of the enumerated look-back period, then the applicant should not be denied housing based on the criminal background screening. In no discretionary situation should the enumerated look-back period extend greater than seven (7) years.²⁷ Research indicates that at seven years past the offense date, the likelihood that a person with a prior criminal record will engage in future criminal conduct decreases to where it approximates the likelihood that a person with no criminal history will engage in criminal conduct.²⁸ However, different criminal convictions yield different likelihoods of recidivism. The following chart offers suggested look-back periods for different types of crimes based on best practices from other similar policies.²⁹

Suggested Look-Back Periods Based on Type of Crime and Conviction

Type	Crime	Type of Conviction	*Suggested Look-Back Period from Date of Conviction
Crimes Against Persons	Assault and Battery Offenses	Felonies	3 years
	Domestic Violence Offenses	Felonies	3 years
		Misdemeanors	3 years
	Use of a Firearm Against a Person Offenses	Felonies	4 years
	Armed Robbery Offenses	Felonies	4 years
	Robbery Offenses (no weapon involved)	Felonies	3 years
	Intentional Homicide Offenses	Felonies	4 years
	Manslaughter Offenses	Felonies	4 years
	Kidnapping and Abduction Offenses	Felonies	4 years
	Forcible Sex Offenses ³⁰	Felonies	4 years
Non-Forcible Sex Offenses ³¹	Felonies	3 years	
Stalking Offenses	Felonies	3 years	
Crimes Against Property	Arson-Related Offenses	Felonies	4 years
	Burglary/Breaking and Entering-Related Offenses	Felonies	3 years
	Theft, Stolen Property, Fraud-Related Offenses	Felonies	3 years (only if 2+ felonies)
	Destruction/Damage/Vandalism of Property Offenses	Felonies	3 years (only if 2+ felonies)
Crimes Against Society	Drug Possession Offenses	Felonies	1 year (only if 2+ felonies)
	Drug Manufacture, Distribution, or Possession with Intent to Distribute Offenses	Felonies	3 years
	Driving Under the Influence-Related Offenses	Felonies	1 year (only if 2+ convictions)
	Driving While Intoxicated-Related Offenses	Felonies	1 year (only if 2+ convictions)

(68) Texas Council on Family Violence



INDIVIDUALLY WE POWER CHANGE.
TOGETHER WE POWER A MOVEMENT.

October 9th, 2020

Texas Department of Housing and Community Affairs
Attn: Matthew Griego, QAP Public Comment
P.O. Box 13941
Austin, Texas 78711-3941
htc.public-comment@tdhca.state.tx.us

RE: Draft 2021 Chapter 11, Qualified Allocation Plan (QAP)

On behalf of the Texas Council on Family Violence (TCFV), we respectfully submit these comments in response to the Texas Department of Housing and Community Affairs (TDHCA) notice regarding the Draft 2021 Chapter 11, Qualified Allocation Plan (QAP).

TCFV is the Texas statewide coalition of family violence service providers and allied programs working to promote safe and healthy relationships by supporting service providers, facilitating strategic prevention efforts, and creating opportunities for freedom from family violence. TCFV is a membership organization with over 1,300 members comprised of family violence programs, survivors of family violence, businesses and professionals, and other concerned citizens. While promoting safe and healthy relationships, TCFV advocates for the well-being and security of all Texans, including those from historically marginalized populations or who face additional barriers to safety such as poverty, homelessness, and housing instability.

TCFV thanks TDHCA for the opportunity to submit public comment for the Draft 2021 Chapter 11, QAP and for their continued commitment to advancing access to housing and support services for all Texans.

TCFV supports the 84 HHSC-funded Family Violence Shelter and Nonresidential Centers, as well as the 13 Special Nonresidential Projects (SNRPs), providing services to over 71,500 survivors and their children in 2019.¹ Still, our family violence shelters were forced to deny 48% of shelter requests in 2019, solely because they lacked space.² TCFV knows some of these denials are directly tied to an inability for survivors currently in shelter to transition to safe, stable, and affordable housing. Similarly, we know that some requests for shelter are prompted by the lack of availability of safe, affordable housing options and assistance for survivors in their communities. In order to address this challenge, TCFV encourages TDHCA to take into account the experiences and needs of all survivors of family violence and their families. Many of these survivors come from communities of color and/or areas with a longstanding history of poverty. With the knowledge we hold about the roots of systemic racism and its intersections with criminalization, we ask TDHCA to revise its draft rules in order to not inadvertently further perpetuate this historical oppression. Specifically, we must acknowledge and recognize the disproportional rate of people of color and poor people and their communities affected by criminalization, including survivors. TCFV encourages TDHCA to consider the following information and remove

¹ Texas Health and Human Services Commission Family Violence Program. Family Violence Program Statistics. Available upon request.

² Id.

additional barriers of criminal history as it relates to the award and allocation of Housing Tax Credits, specifically concerning the Tenant Selection Criteria (pages 14-15) of the QAP.

In Texas, there are only 29 affordable and available homes per every 100 extremely low-income renter households representing a significant shortage.³ With a scarcity of resources already a factor for all Texans, the knowledge that Black, Indigenous, and Latinx people are routinely negatively impacted by systemic and structural racism in housing, employment, and other systems put these survivors at ever mounting odds faced by communities of color.⁴ This systemic and structural racism leads to people of color being disproportionately represented in low and extremely low income communities where the housing crisis is most acute. Further, we know that being a victim of family violence, due to economic abuse and financial fall out associated with leaving a dangerous situation, has profound and lasting ripple effects on survivors' ability to be economically solvent.⁵

As previously mentioned, we know there is a lack of availability of safe and affordable housing inventory in Texas. We are aware of the barriers communities of color face when accessing in housing, but for TCFV we also know survivors face even more barriers. When lack of affordable housing and systematic racism are coupled with a criminal background the outlook is even more dire. While federal legislation, the Violence Against Women Act (VAWA), includes the prohibition against the denial of admission/assistance, eviction, or subsidy termination of an individual based on his/her status as a survivor,⁶ many survivors have a prior arrest or conviction that is related to the violence committed against them. For example, the abuser may have forced the survivor to commit a crime, the survivor may have been mistakenly arrested during an incident of abuse, or the survivor may have used drugs as a way to cope with the abuse.⁷ Additionally, survivors that have been coerced by abusers to participate in criminal activity or that have been forced to take plea deals for assault charges received due to acts of self-defense face yet another barrier to immediate admission into safe housing.

Survivors face staggering rates of homelessness as well, with over 90% of all survivors interviewed during the [Texas State Plan research project](#), experienced homelessness at least once.⁸ Nearly half more than once and many upwards of 5 times. Further, the same study showed that the number one gap impacting service experience and survivor health and safety was the lack of affordable and safe housing.⁹ High demand for housing results in increased rent amounts, which decreases economic options for survivors weighing decisions to leave their relationships and find alternative options. Survivors who have had previous criminal charges, evictions due to partner's past debts, or undocumented status have even fewer options.¹⁰ In order to end homelessness and provide genuine opportunities to start over, we must lower the barriers to safe and affordable housing for all Texans.

³ Depland, Michael. (March 13, 2020). Texas ranks near last in affordable and available housing for the lowest income renters, new report shows. Retrieved on September 28, 2020, from <https://texashousers.org/2020/03/13/the-gap-2020-texas-last-low-income-renters/>.

⁴ Urban Institute. (2020). Five Charts That Explain the Homelessness-Jail Cycle—and How to Break It. Retrieved on September 28, 2020, from <https://www.urban.org/features/five-charts-explain-homelessness-jail-cycle-and-how-break-it>.

⁵ Shoener, S. and Sussman, E. (August/September 2013). Economic Ripple Effect of IPV. Domestic Violence Report. Retrieved on September 29th, 2020, from https://csaj.org/document-library/Shoener_and_Sussman_2013_-_Economic_Ripple_Effect_of_IPV.pdf.

⁶ National Housing Law Project (2014). Violence Against Women Act (VAWA) 2013 Packet. Retrieved on September 28, 2020, from <http://nhlp.org/files/VAWA-2013-Packet.pdf>.

⁷ National Housing Law Project. (2013). Domestic Violence Survivors with Criminal Records: What You Should Know When Applying for Federally Subsidized Housing. Retrieved on September 28, 2020, from <https://www.nhlp.org/wp-content/uploads/2018/05/3-28-13-Crim-Records-Info-Packet-English.pdf>.

⁸ Wood, L., Backes, B.L., McGiffert, M., Wang, A., Thompson, J. & Wasim, A. (2019). *Texas state plan 2018: Availability of services at Texas family violence programs and assessment of unmet needs of survivors of family violence*. The University of Texas at Austin Steve Hicks School of Social Work, Austin Texas.

⁹ Id.

¹⁰ Id.

Homelessness and the criminal justice system are also deeply intertwined.¹¹ The same Urban Institute research found that people experiencing homelessness are more likely to interact with the justice system because being forced to live outside can all too often lead to citations or arrests for low-level offenses like loitering or sleeping in parks. Further, people currently or previously involved in the justice system, who are often disconnected from supports and face housing and job discrimination, are more likely to experience homelessness.¹² By far the most striking disproportionality can be found among African Americans, who make up 40 percent of the homeless population despite only representing 13 percent of the general population.¹³ Formerly incarcerated people typically return to low-income communities where resources, particularly affordable, accessible housing, are scarce. A criminal record poses an additional barrier to accessing affordable, accessible housing for justice-involved individuals, placing them at risk of housing instability, homelessness, and ultimately recidivism.¹⁴

Supportive housing programs exist, in their essence, to provide assistance to those who face the greatest challenges in accessing housing and maintaining stability. While other government supported programs maintain specific mandates in place, such as requiring criminal and credit checks, supportive housing programs are positioned to serve those that are unable to overcome those specific, often interrelated, barriers. Studies have shown the effectiveness of supportive housing programs¹⁵ in increasing residential stability¹⁵ amongst formerly incarcerated participants by providing wrap around services that account for all risk-factors potentially returning an individual into the vicious cycle of housing and incarceration.¹⁶ Mandatory minimum denial periods of one, two, or three years, as proposed, may only serve to perpetuate the cycle of homelessness experienced specifically by survivors and make the most vulnerable populations susceptible to the criminal coercive methods often employed by predators and abusers as a means of exploiting these individuals and families with no discernable alternatives to access safety, shelter, and the support necessary to achieve stability and self-sufficiency.

In addition, reasonable time limits on the use of criminal history ensure that the information remains relevant to the tenant screening process. Time limits also comport with federal law, which limits the inquiry to criminal activity that occurred during a “reasonable time” before the screening process takes place.¹⁷ Although HUD has suggested that five years is a reasonable lookback period for serious crimes, some Public Housing Authorities (PHA) are looking back seven, ten, and even twenty years for a wide variety of crimes.¹⁸ TDHCA must eliminate unreasonable lookback periods that deter people with criminal records from applying for housing.¹⁹

¹¹ Urban Institute. (2020). Five Charts That Explain the Homelessness-Jail Cycle—and How to Break It. Retrieved on September 28, 2020, from <https://www.urban.org/features/five-charts-explain-homelessness-jail-cycle-and-how-break-it>.

¹² Id.

¹³ National Alliance to End Homelessness. (January 2020). Racial Inequality. Retrieved on October 5, 2020, from <https://endhomelessness.org/homelessness-in-america/what-causes-homelessness/inequality/>.

¹⁴ National Low Income Housing Coalition. (2020). Housing Access for People with Criminal Records. Retrieved on September 28, 2020, from https://nlihc.org/sites/default/files/AG-2020/6-07_Housing-Access-for-People-with-Criminal-Records.pdf.

¹⁵ Gillespie, S., Batko, S., Five Charts Explain Homelessness Jail Cycle and How to Break It. Retrieved September 18, 2020, from <https://www.urban.org/features/five-charts-explain-homelessness-jail-cycle-and-how-break-it>.

¹⁶ Fontaine, J. (November 2013). Examining Housing as a Pathway to Successful Reentry: A Demonstration Design Process. What Work Collaborative. The Urban Institute.

¹⁷ Tran-Leung, M.C. (February 2015). When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing. The Shriver Center, Sargent Shriver National Center on Poverty Law. Retrieved on September 28, 2020, from <https://www.povertylaw.org/article/when-discretion-means-denial/>.

¹⁸ Id.

¹⁹ Id.

Under federal law and regulation, there are only two permanent admission bans that include households that contain a person who is required to register as a sex offender for life and when a household member has been convicted of manufacturing methamphetamine on federally assisted property.²⁰ Knowing that Texas is lacking in low-income housing, according to a new study, [The Gap Report](#), from the National Low Income Housing Coalition, we must not continue to create these types of barriers to housing Texans.²¹ With fewer housing and economic alternatives, returning to an abusive partner or homelessness can become the only options.²² In addition, we must do better to recognize the systemic racism Texans face when attempting to access affordable housing options. In order to create a better Texas, we have to stand together to knock down barriers to safety and stability. If we want to create a safer and healthier Texas, we must create opportunities for individuals with criminal histories to have a real second chance. When we begin to re-envision a new system that fits the needs of all Texans, we begin working toward eliminating the systemic racism that has permeated housing assistance since its inception.

All too often a survivor's life is lived at the margin. The margin where safety can be found in an abusive home. The margin where a day or little money separates them from a home or homelessness. The margins of being from a community of color seeking to access housing from systems built upon structural racism. A survivor whose partner was friends with law enforcement, and they were pushed into the margins with an unjust criminal history. To support these survivors, or a survivor who faces all of these barriers, TCFV urges TDHCA to take into consideration the comments presented and strike the proposed changes to the Draft 2021 Chapter 11, QAP, specifically the changes below as it relates to the award and allocation of Housing Tax Credits concerning the Supportive Housing definition and Tenant Selection Criteria on pages 15:

- (-b-) Temporary denial for a minimum of three years based on criminal history at application or recertification of any felony conviction for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;
- (-c-) Temporary denial for a minimum of two years for non-violent felonies; and
- (-d-) Temporary denial for a minimum of one year for Class A misdemeanors.

In addition, TCFV also encourages TDHCA to reconsider the proposed changes related to the criminal screening criteria, Section II (listed below), on page 15, specifically the types of letters of recommendation and the length of time to consider for felony crimes. First, TCFV strongly urges TDHCA to deliberately include and list a family violence advocate or an advocate who assisted the survivor as one of the available options to write and submit a letter of recommendation as one of the provisions for mitigation of temporary denials. Second, TCFV recommends eliminating the lookback period for felony crimes listed below (conviction is more than 20 years old or no additional felony convictions within the last 20 years) altogether or at a minimum adopting HUDs suggested lookback period of 5 years for serious crimes, as it conflicts with HUDs best practice and is another example of an unnecessary barrier.

²⁰ National Low Income Housing Coalition. (2020). Housing Access for People with Criminal Records. Retrieved on September 28, 2020, from https://nlihc.org/sites/default/files/AG-2020/6-07_Housing-Access-for-People-with-Criminal-Records.pdf.

²¹ Houston Public Media. (March 15, 2019). Texas Has 'Significant Shortages' Of Low-Income Rentals, Study Finds Retrieved on October 5, 2020, from <https://www.houstonpublicmedia.org/articles/news/2019/03/15/325402/texas-has-significant-shortages-of-low-income-rentals-study-finds/>.

²² Id.

(II) The criminal screening criteria may include provisions for mitigation of temporary denials including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years.

In summary, Texas must continue to create opportunities and access for survivors of family violence to safe and affordable housing options, because we know that housing and economic stability leads to increased safety for survivors and their children. The proposed Tenant Selection Criteria changes would potentially exclude Texas' most marginalized and vulnerable, including survivors of family violence and their families, from a life free of violence, safety, and affordable housing.

TCFV also sincerely thanks TDHCA for the time and care evident in the draft QAP and looks forward to their consideration of these comments and ongoing partnership with the Department on creating safe housing solutions for all Texans.

Sincerely,

A handwritten signature in cursive script that reads "Gloria Aguilera Terry".

Gloria Aguilera Terry
Chief Executive Officer

(69) Resource and Crisis Center of Galveston

From: [Dennis Ferguson](#)
To: [HTC Public Comment](#)
Subject: TDHCA Proposed Change to the QAP
Date: Thursday, October 08, 2020 10:34:58 AM
Attachments: [Outlook-fakxpk1a.png](#)

Hello:

As a Director of an organization that provides services to a diverse population, I know that to add an additional barrier to program services will exacerbate the ability of our clients to access those services. I strongly oppose any proposal to add criminal screening. While the agency may perform this screening to protect the current clients it should not be a mandated refusal to offer services. The decision to serve or not serve should be the organization's authority and not a policy decision in the Qualified Allocation Plan.

Thank you,

Dennis



Dennis Ferguson
Executive Director

Office: 409-763-1441
Direct: 409-443-0544
Hotline: 888-919-SAFE
www.rccgc.org

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(70) Michelle Helmke

From: [Abigail Versyp](#)
To: [Matthew Griego](#)
Subject: FW: QAP Homeless public comment TDHCA
Date: Thursday, October 08, 2020 10:49:26 AM

This came to the HOME Program inbox.

From: Helmke, Mrs. Michelle (ACF) <michelle.helmke@acf.hhs.gov>
Sent: Monday, October 05, 2020 9:35 AM
To: HOME Program <home@tdhca.state.tx.us>
Cc: info <info@mail.tdhca.state.tx.us>
Subject: QAP Homeless public comment TDHCA

Abigail Versyp, I oppose making housing more difficult for anyone including and especially people who are trying to repair their lives after jail or serving time. **This change to the QAP would severely and adversely impact the ability of folks across the state to secure supportive housing and in turn would lead to increased recidivism and increased homelessness. This would be concerning at any time but is especially concerning during a pandemic.**

Sincerely, - Michelle Helmke

(71) Beth Spencer

From: [Beth Spencer](#)
To: [HTC Public Comment](#)
Subject: Matthew Griego, QAP Public Comment
Date: Thursday, October 08, 2020 11:23:03 AM

To: htc.public-comment@tdhca.state.tx.us

Dear TDHCA Multifamily Policy Research Specialist Matthew Griego,

I **firmly** oppose the proposed criminal screening requirements in the Qualified Allocation Plan (QAP) that would require certain providers refuse to house individuals with criminal backgrounds (temporarily or permanently, depending on the severity of the crime).

I am an 11 year domestic violence victim advocacy provider. When you work directly with victims, you see first-hand that even the criminal justice system is used against Domestic Violence Victims. When domestic violence occurs law enforcement are given the difficult task of determining what occurred well after an incident takes place. They can and do get it wrong; especially when a victim is in so much fear for their life they are unable to speak out against their offender which is often right there to exert their power and control over that victim.

October marks domestic violence awareness month, I urge you to consider the real consequences this QAP proposal would have in a victim's life that has a charge in their background. These issues are never just one thing or another, there are always individual areas of gray.

A victim is being beaten so badly she finally fights for her life and the marks aren't on her because they are internal injuries and deep bruises that show up later, she was being strangled and feeling her life slip away from her so she convulses and flails and scratches at the arm killing her. He's now bleeding and she kicks to try to get away and lands that kick on the hand pinning her to ground.

She goes to jail because she is scared silent and he has all the visible injuries at the time. Her charge, Domestic Violence- Adult Assault.

No this QAP is a nightmare of doing the same thing that abusers have always done. REVICTIMIZE the VICTIM.

I am not okay with this QAP and nor should you be.

Thank you for your time.

Please allow my voice to be heard.

Sincerely,

Beth Spencer, B.A.
Grants Compliance
Manager
Office: 409-763-1441



Direct: 409-443-0515
Hotline: 888-919-SAFE
www.rccgc.org

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(72) Kate Grabyan

From: [Kate Lasher](#)
To: [HTC Public Comment](#)
Subject: 2021 Chapter 11 QAP
Date: Thursday, October 08, 2020 12:26:56 PM

Hello,

Just writing to say that I don't think it's a good idea to exclude nonviolent felons from housing assistance. We have a ton of homeless people here in Houston, this is only going to make the problem worse. I hope this section is reconsidered before putting it into effect.

Regards,
Kate Grabyan

(73) Martha Chang

From: [Martha Chang](#)
To: [HTC Public Comment](#)
Subject: QAP Public comment
Date: Thursday, October 08, 2020 12:31:03 PM

ATTN: Matthew Griego

I am opposed to the rule change on p 15 of the Draft QAP that would bar those with felony convictions from supportive housing for two years, This would ensure the failure of so many compassionate efforts to house the homeless, by essentially barring a huge class of unhoused people from obtaining a safe place to live.

Thank you for your attention
Sincerely,
Martha Chang
Austin, Tx

(74) Just Liberty



Scott Henson, Executive Director
scott@justliberty.org
(512) 417-0120
Justliberty.org

October 8, 2020

Members of the Board
Texas Department of Housing and Community Affairs
Multi-family Division

Attn: Matthew Griego
QAP Public Comment
P.O. Box 13941
Austin, Texas 78711-3941

Submitted Via Email: htc.public-comment@tdhca.state.tx.us

Dear Members of the TDHCA Board,

Just Liberty and the undersigned organizations oppose changes proposed by staff on page 15 of the 2021 QAP Staff Draft that appear to authorize permanent or temporary disqualification for supportive housing for people trying to reintegrate after a large range of criminal convictions.

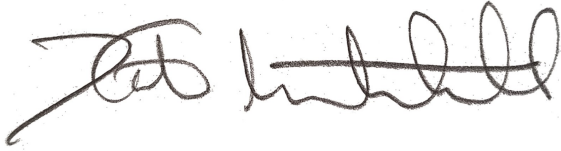
The rule appears to disqualify almost everyone leaving the Texas prison system from access to supportive housing, along with tens of thousands more who come home from jail after conviction on a Class A misdemeanor. In addition, the rule does not distinguish between people who are convicted and serve time, and those who are on probation. Nor does it distinguish between first time offenders and repeat offenders. People with a past history of even a single conviction for manufacture or delivery of a controlled substance can *never* get access to supportive housing. Therefore we estimate that this rule will deflect tens or hundreds of thousands of people into homelessness. Where else are they supposed to go?

TDCJ releases more than 60,000 people a year. There are about 370,000 people on community supervision for violent or nonviolent felonies, all of whom would be temporarily excluded from supportive housing for two years under this proposal. The breadth of the language (“or similar offense involving harm to others”) ensures that tens of thousands more convicted of Class A misdemeanors and a range of Class B and C assaults or misdemeanor family offenses (specifically including violation of a protective order regardless of outcome) may also fail to qualify for housing.

Passage of this rule is likely to increase recidivism and sends a message that Texas will never let a person get past a criminal act no matter how long ago it was committed. Under the new rule, even a person whose drug distribution conviction is more than 20 years old and who has no felonies in the last 20 years can continue to be excluded. They can only appeal their exclusion from supportive housing, with no requirement that the appeal result in a decision favorable to that unhoused person.

People with a criminal conviction already have trouble gaining access to housing and are 10 times more likely to be homeless than the general population. Formerly incarcerated black men are most likely to experience homelessness.¹ This rule will ensure that cities and counties attempting to tackle homelessness and place individuals in a range of supportive housing situations will fail because group and other supportive home developments will be prohibited by state law from housing many experiencing homelessness, who already face legal discrimination in the private housing market. That can't be the intent behind this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathy Mitchell". The signature is fluid and cursive, with a large initial "K" and "M".

Kathy Mitchell, Just Liberty
Robert Williams, Alliance for a New Justice System,
Chas Moore, Austin Justice Coalition
Chris Harris, Homes Not Handcuffs
Emily Gerrick, Texas Fair Defense Project

¹ Nowhere to Go: Homelessness Among Formerly Incarcerated People. <https://www.prisonpolicy.org/reports/housing.html>

(75) Steve Jensen

From: [Steve Jensen](#)
To: [HTC Public Comment](#)
Subject: Opposition to proposed Tenant Selection Criteria
Date: Thursday, October 08, 2020 2:42:03 PM

To the TDHCA Members:

I am writing to express my dismay and strong opposition to the proposed rule that would preclude convicted felons from applying for supportive housing.

As human beings, we are NOT the worst thing we have ever done. All of us deserves mercy and compassion, especially in times of need.

A convicted felon who has been released from prison has paid his or her societal debt. Nonetheless, our society keeps holding that debt over felons' heads until they meet their (often untimely) deaths. Once released from prison, in spite of prodigious effort, it is often close to impossible for felons to find a decent job. Thus, they are often among the people most in need of housing assistance.

All of the above observations apply regardless of the race, creed, or any other disadvantaged status that a convicted felon may have. But the effect of this proposed rule is even more pernicious because of its overwhelmingly disproportionate effect on people of color and other disadvantaged minorities. Despite what we teach our children, our criminal justice system does not render justice with a blind eye. Thirty-four percent (34%) of our correctional population in the United States are African-Americans, who are incarcerated at over five times the rate of whites. The data demonstrate that our system of so-called "justice" targets people of color, and especially black people.

Thus, because a disproportionate portion of convicted felons are people of color, your proposed exclusion of felons from supportive housing will unquestionably have a systemic racist impact. This is how systems of racism are built and thrive — when institutions like the Texas Department of Housing and Community Affairs ignore reality, cave into political pressure driven by tribalistic fears, and enact rules and laws that hurt black people.

I am white, wealthy, male, and privileged in almost every way. I strongly believe it is time for people like me to stand up and speak out against this type of racism.

Do the right thing. Do NOT adopt this rule.

Thank you.

Steve Baughman Jensen
1543 Eastus Dr.
Dallas, TX 75208
(214) 356-0004

(76) Carol Baker

From: [Carol Baker](#)
To: [HTC Public Comment](#)
Subject: Fwd: LIHTC Properties and their agenda
Date: Thursday, October 08, 2020 2:42:09 PM

----- Forwarded message -----

From: **Carol Baker** <themsc.baker@gmail.com>
Date: Wed, Oct 7, 2020, 4:51 PM
Subject: LITC Properties
To: Caybryn Southern <csouthern@homelesshouston.org>

Ms Southern,

I'm understanding that the committee is accepting comments on Low Income Housing Tax Credit Properties not accepting persons with criminal backgrounds as tenants.

Being that we are discussing backgrounds as a reason not to allow a tenant to lease, let's discuss the background of seeking a lease with LIHTCP. This program is to create affordable apartment communities with lower than market rents by offering tax incentives to the property owners.

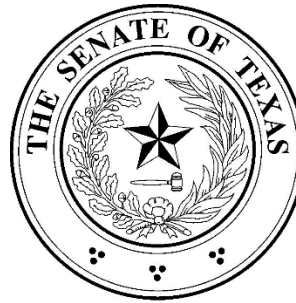
During my period of chronic homelessness since 2015 and my last attempt to secure housing through the Rapid ReHousing Program I presented precisely to LIHTC Properties. I discovered that they do not lease to persons with criminal backgrounds. I'm not aware of any that give this opportunity. I discussed this with the city council and a former member of the council Mr. Dwight Boykins. I explained the written definition of LIHTCP vs. what I actually experienced at these properties. I further detailed what would make LIHTCP more conclusive, give greater attraction and a significant representation of what it offers for the city of Houston and how it could serve as a model for other cities.

Property owners that are seeking to build in the city of Houston as a Low Income Housing Tax Credit Property should contract to allocate a percentage of units for persons that have criminal backgrounds. Those persons who have shown achievements since release, those who have completed parole/probation successfully should strongly be considered. (Nothing is provided for persons that have been formerly incarcerated to award their progress, their transformation). This would give greater, in depth meaning to the term "tax credit" property. Housing is a right, not a position or title someone has to work toward or qualify for. The "Right to Housing" should begin with LIHTCP for those who have been formerly incarcerated. Give the participants a lower tax yet impose a greater presence of units for those formerly incarcerated.

Furthermore, how long will persons that have been formerly incarcerated continue to be punished by the state, city and county for time already served by keeping them homeless. Having housing is a condition of parole. LIHTCP should be the guarantee for housing those who were incarcerated through The Way Home.

Thank you for the opportunity,

(77) Texas Senators and Representative,
Houston area



October 8, 2020

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street, Austin, TX 78701

Dear Director Wilkinson,

Since 2012, the City of Houston and its partners have permanently housed 18,000 individuals and families – with nearly 90% still housed two years after placement – resulting in an overall reduction in homelessness of more than 50% since 2011, making Houston arguably the most successful big city in the United States at reducing homelessness.

This success is directly due to the partnerships between state, local governments, and the private sector, along with the strong coordination among one hundred Houston non-profit and faith-based organizations. Specifically, our vital partnership with the Texas Department of Housing and Community Affairs (TDHCA) has been instrumental in not just “responding” to homelessness, but permanently reducing it by effectively applying resources to comprehensively address the long-term, holistic needs of individuals and families experiencing homelessness.

However, Houston’s success is in danger of tragic reversal if this draft rule is implemented.

Texans experiencing homelessness have challenging backgrounds – many would not be homeless otherwise. The changes in eligibility outlined in the draft Qualified Action Plan (QAP) from Texas Department of Housing and Community Affairs do not reflect that reality.

A new section in this year’s QAP would effectively bar individuals with criminal records from being housed in supportive housing projects. Specifically, the proposed rule includes:

- Permanent denial if convicted of illegal manufacture or distribution of a controlled substance
- Permanent denial based on criminal history of sexual assault, kidnapping, or arson

- At least a three-year denial for any felony conviction for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense
- At least a two-year denial for non-violent felonies
- At least a one-year denial for Class A misdemeanors

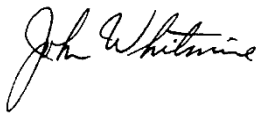
This proposal would prevent housing for a large number of Houston’s homeless – who are the intended beneficiaries of supportive housing.

- This proposal will create a huge class of untouchable citizens stuck on our streets. It places an insurmountable barrier to those who are trying to escape the streets and will undoubtedly increase homelessness.

The TDHCA’s management of tax credit projects is an integral part to our combined success reducing homelessness in Houston. However, it could quickly be undone. The unintended consequence of this draft plan will be to ensure that people with a troubled criminal history will return to crime again because they have no other option.

Instead of assisting people out of homelessness, the proposed rules erect new barriers to some of the most vulnerable members of our community and potentially sentence them to a lifetime of living on the streets. We strongly urge you to rethink this misguided plan.

Sincerely,



Senator John Whitmire
District 15



Senator Borris Miles
District 13



Senator Carol Alvarado
District 6



Rep. Senfronia Thompson
District 141



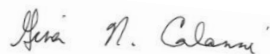
Rep. Armando Walle
District 140



Rep. Ron Reynolds
District 27



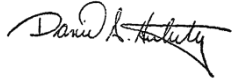
Rep. Jon Rosenthal
District 135



Rep Gina Calanni
District 132



Rep. Sarah Davis
District 134



Rep. Dan Huberty
District 127



Rep. Gene Wu
District 137



Rep. Harold Dutton
District 142



Rep. Jarvis Johnson
District 13



Rep. Anna Eastman
District 148



Rep. Christina Morales
District 145



Rep. Ana Hernandez
District 143



Rep. Shawn Thierry
District 146

(78) Linda White

From: [Marshall White](#)
To: [HTC Public Comment](#)
Subject: Low barrier housing/Criminal history
Date: Thursday, October 08, 2020 2:56:42 PM

I teach Parenting and Life Skills and Addiction Recovery classes in Morris county and many of my clients are low income and in danger of becoming homeless, as they are living with family or friends. A large percentage of them do not qualify for public; low income housing due to criminal history.

While I understand the principal behind such restrictions; I believe that after an individual has " paid their debt to society", most should be allowed to be considered for approval for low income housing.

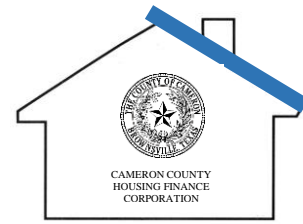
The exception; and restrictions should Absolutely apply is if the applicant has a history of pedophilia, rape, or crimes against children. In those cases, I believe that it is in the best interest of the families and single parents who live in low income housing to deny such individuals access. For obvious reasons, those individuals need housing options that don't allow access to children or women who live alone.

I also teach Parenting and Life Skills at the Johnston unit in Winnsboro, Tx. Many inmates are required to take these classes before they are released back into society. Many are required to take these classes as part of their parole package. The Texas Dept. of Criminal Justice is very diligent in encouraging their prison population in self improvement activities, counseling, religious services, and classes that will help them function at a high level when they are released.

God gave me a second chance and I am forever grateful. I think there are a lot of good people out there who have done bad things; let's not keep punishing them for what they have already been punished for.

Respectfully Submitted ; Linda White R.N.

(79) Cameron County Housing Finance Corp



October 8, 2020

Ms. Leslie Bingham, Vice Chair
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941
Info@tdhca.state.tx.us

RE: Advocacy for Cameron County Success in 9% Housing Tax Credit Program

Dear Ms. Bingham:

Cameron County is located in TDHCA State Service Region 11. This discussion is focused on the Urban Region 11 Sub-Region which contains 95% of the population of Cameron County. Region 11 contains the counties of Cameron, Webb and Hidalgo.

ISSUE:

Awards and development of affordable housing by the 9% HTC program in Urban Region 11 is disproportionately weighted in favor of Hidalgo County. This fact coupled with the fact that 4%/Private Activity Bond financed projects are almost non-existent provides a double whammy of missed opportunity for Cameron County. The lack of 4%/Private Activity Bond projects is due to the fact that incomes are much lower on average than across the state and, therefore, there is less rental income to leverage the loan that makes up the gap in a 4%/PAB transaction. Construction costs are not drastically lower in the area and therefore the numbers break without an influx of gap funding. The 9% HTC program is the most financially feasible way to get affordable housing on the ground in Cameron County and that opportunity is being missed year after year.

ANALYSIS:

Region 11 Urban contains a total population of 1,242,065 broken down as follows:

Hidalgo County = 53% of population
Cameron County = 27% of population
Webb County = 22% of population

Over the past 5 years (2020-2016 cycles), awards for the 9% cycle in Region 11 Urban broken down by total credit amount were:

Hidalgo County = 76.35%
Cameron County = 23.65%
Webb County = 0%

The disproportion is further evidenced if you look at total tax credit awards (9% and 4%) over the history of the program:

Hidalgo County = 71%
Cameron County = 17%
Webb County = 13%

REASON:

The reason for the disproportion is due to the scoring of the TDHCA 9% Housing Tax Credit program that awards High Opportunity Areas (higher income and low poverty census tracts) and the Underserved category (age and presence of housing tax credit financed units in census tract.) For the Urban areas of Brownsville and Harlingen, there are literally NO census tracts that can score full points as a High Opportunity area and an Underserved Area. Instead, these two areas must either have lower points (and therefore not score as competitively) or find a Census Tract that has a Concerted Revitalization Plan in place. CRPs are most often in the urban core of the municipality, but these same areas do not score the underserved points. If you look at Hidalgo County, the Urban Areas of McAllen, Edinburg, Mission and Pharr are peppered with more than 15 census tracts that pick-up points as High Opportunity AND Underserved. In addition, the Underserved category allows a point for areas that are Economically Distressed Areas that have received funds by the Water Development Board in the past five years – Hidalgo County qualifies and Cameron County does not.

Another further hit on scoring for Cameron County is the Proximity to Job scoring category. The Brownsville/Harlingen MSA covers a slightly smaller area (1,276 miles) versus the McAllen/Edinburg Mission MSA area (1,582 miles), but there are almost double the people living in the McAllen/Edinburg/Mission MSA. When this translates into a Proximity to Job scoring area that is a one-mile radius, it means that the McAllen/Edinburg/Mission MSA has more jobs per square mile – 93 primary jobs per square mile in Brownsville/Harlingen MSA versus 144 primary jobs per square mile in McAllen/Edinburg/Mission MSA. While we recognize the importance of locating affordable housing in close proximity to jobs, it doesn't make sense to continue an imbalance that does not provide affordable housing where people do live and work and are in dire need of affordable housing as well.

Together, these scoring categories cause a severe disadvantage to Cameron County.

SOLUTION:

There is one 9% HTC scoring category that could easily be adjusted to allow Cameron County those few precious points to push projects up to a competitive level. The Proximity to the Urban Core sub-category of the Proximity to Job Areas category provides 6 points for a project that is within 2 miles of City Hall for a City with a population of 190,000-749,999. Brownsville just misses that cut off with a population of 182,083. No cities in Hidalgo County would qualify for these specific 6 points (would rely on the Proximity to Jobs category.) Laredo in Webb County already qualifies for these points.

This is a simple adjustment with MINIMAL impact. If the threshold is dropped from 190k to

180k, just the Urban areas of Brownsville and Grand Prairie (in DFW area of Region 3 Urban) would be picked up. The next highest population is 164,760 of McKinney, so there is no issue with a lot more projects rising above this threshold.

WHAT CAN YOU DO?

The Rio Grande Valley, especially Cameron County is experiencing extreme demand for affordable housing. Growth in the job labor market resulting from multi-billion dollar projects within our county which are already preparing their construction sites will tighten up the current short supply of mid-range housing options. This problem will only begin to cascade making housing too expensive for those entering the housing market for the first time. Young professionals in career fields such as teachers, law enforcement and public safety will not be able to live and work in the same communities. While there may be a quick fix for the Brownsville area, the other communities such as Harlingen, San Benito, Port Isabel, Los Fresnos, and La Feria also are experiencing an aging housing stock while the cities' inner communities see very little opportunity for revitalization. We are asking for your help to re-invest in Cameron County to make us compete on an even basis with our neighboring county.

Thank you very much for the opportunity to comment. If you need more information, please feel free to call me at (956) 371-0339, or Mr. Mark Yates, the Director of the Cameron County Housing Finance Corporation at (956) 244-2194.

Sincerely,



Sergio Gonzalez, President
Cameron County Housing Finance Corporation
1100 East Monroe Street, Rm 105
Brownsville, TX 78520

Cc: Eddie Trevino, Jr.

(80) Ryan Grainger

From: [Ryan Grainger](#)
To: [HTC Public Comment](#)
Subject: Comment on Public Housing for Felons
Date: Thursday, October 08, 2020 3:27:54 PM

Hello,

I'm sending this email in regards to Governor Abbott's recent proposal. While I see the intended effects of the Qualified Allocation Plan as offering a potential solution to a myriad of problems facing communities crippled by crime, I feel as though the unintended side-effects may outweigh any benefits.

If someone who has served their time and paid the punishment for their transgressions against God is looking to redeem themselves, the first step on their road to redemption is severely hindered by an inability to find adequate shelter. Forcing someone to stay on the streets instead of allowing them somewhere safe to start their new life won't only hurt the ex-felon, but the community as a whole.

Without a place to lay their head, to receive mail, and to tend to basic hygiene finding employment will be difficult, if not impossible. Texans deserve a second chance, and I'm praying that you will offer that to them.

God Bless,
RJG

(81) Roberta Burroughs

From: [Roberta Francis Burroughs](#)
To: [HTC Public Comment](#)
Subject: PROPOSED CHANGE TO 2021 CHAPTER 11, QUALIFIED ALLOCATION PLAN (QAP)
Date: Thursday, October 08, 2020 3:29:13 PM

Dear sir or madam:

I am writing to express my opposition to the proposed new rule barring people with criminal histories from Texas supportive housing. Enactment would increase homelessness due to the fact that many individuals with criminal histories who need supportive housing are already having severe difficulty securing housing. (DRAFT 2021 CHAPTER 11, QUALIFIED ALLOCATION PLAN (QAP, Section 122).

While I recognize the importance of ensuring the safety of all individuals who are consumers of supportive housing (including those who are not ex-offenders), as well as the safety of proximate residents, the proposed rule would ensnare many who are trying to get their lives back on track. Getting one's life on track as an ex-offender is already difficult due to numerous barriers to re-entry --- it is highly likely that an un-housed ex-offender will find it to be impossible to get on track, no matter how sincere the effort.

I have read the proposed mitigation measures and I do not believe that they will remove the potential for homelessness that the change will cause.

This is not only my view as a housing planner and a concerned citizen of Texas, it is also the view of many with whom I have spoken who are housing providers and advocates for homeless persons. They agree with me that the rule would have disastrous consequences for a population cohort that is already experiencing severe challenges with securing housing.

Finally, I submit that there is no benefit to society from ex-offenders becoming homeless or backsliding, so a rule barring these individuals from supportive housing needs to be re-considered.

I appreciate the opportunity to comment.

Best regards,
Roberta F. Burroughs

(82) Texas Homeless Network



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October 6, 2020

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President & CEO

Eric Samuels

To the Honorable Members of the TDHCA Governing Board
C/O Texas Department of Housing and Community Affairs
Attn: Matthew Griego, QAP Public Comment
P.O. Box 13941
Austin, Texas 78711-3941

Re: Commenting and opposing on the proposed inclusion of criminal screening requirements as described on page 15 of the 2021 QAP Staff Draft Supportive Housing definition section.

Dear Vice Chair Bingham and Members of the TDHCA Governing Board:

On behalf of Texas Homeless Network, I am registering my opposition regarding the proposed changes to the definition of "Supportive Housing" in Chapter 11 of the 2021 Staff Draft of the Texas Qualified Allocation Plan ("Draft QAP") for the awarding and allocation by the Texas Department of Housing and Affairs ("TDHCA") of Competitive and non-Competitive Housing Tax Credits.

The Supportive Housing definition in the Draft QAP establishes additional barriers limiting opportunity for people experiencing homelessness to escape that condition and further ties the hands of homeless response systems that seek to help individuals and households out of homelessness. On any given night in Texas, there are over 27,000 people experiencing homelessness. That number may rise to more than 40,000 at any point in time if there is no support for those renters at the precipice of a financial cliff as the national eviction moratorium protections near an end. So, not only is this proposed change that needlessly includes criminal screening requirements to the definition of "Supportive Housing" counterproductive to the goals of Texas's homeless response systems in normal times, during a pandemic, it's imprudent and dangerous. Although THN is fully opposed to the proposed changes to the QAP, the final version of QAP should at the very least eliminate non-violent felonies and class A misdemeanors from disqualifying criminal history screening policies. If supported, this proposal will ultimately be costly to taxpayers but, more importantly, to the well-being of Texas' most vulnerable.

Texas's 11 homeless response systems work tirelessly day after day to reduce homelessness and improve their communities' overall health through these actions. They know that assisting their fellow Texans to escape homelessness is the compassionate thing to do and the most cost-efficient. People experiencing homelessness between ages 25-44 have an all-cause mortality rate nine times that of their housed counterparts, and the chronically homeless, a targeted sub-population for low barrier supportive housing, can cost taxpayers \$35,000 a year, mostly in emergency room costs. However, they and Texans experiencing homelessness face barriers daily in their struggle to climb out and into safe and affordable housing.

Every segment of the population experiencing homelessness encounters significant obstacles due to various factors, some of which are partially remedied by providing low barrier housing options like those afforded through the low-income housing tax credit program. This funding allows property owners to operate programs that provide vital housing that can be deeply affordable and supportive. While unable to increase supportive services for people with acute healthcare needs, including mental illness and substance abuse treatment, these housing options offer the best health care of all, housing. However, the largest barriers are faced by those suffering from chronic homelessness.

There are nearly 4,000 Chronically Homeless on Texas's streets right now, those who have been on the street for years with acute health care needs. These are the people in most need of opportunities to exit homelessness, but unfortunately, these are the people most denied opportunities. These are the individuals that would be most affected by this proposed addition to the Supportive Housing Definition. These, disproportionately, are people with criminal histories, albeit mostly minor nonviolent crimes, and people with untreated illnesses, including serious mental illness and substance use disorders. These are disproportionately people of color, especially Black and Latino Texans, so it's important to note that the convergence of systemic racism with these other factors adds to the barriers faced by this sub-population. These are the people unable to find housing, even when using subsidies, because of these criminal &/or medical histories.

Supportive housing created through tax credits may not correct all these inequities, but it is one option that offers opportunities for the chronically homeless and homeless response systems. THN favors a housing first approach that does not limit access to housing based on past interaction with criminal justice, disability, or other factors. A significant number of people in this condition have criminal histories of nonviolent offenses but offenses that nonetheless would disallow their participation in tax credit projects if these proposed changes were to go into effect. These include misdemeanor offenses like DWI. A type of crime that someone may have committed previously in their life as their household began to unravel before they ended up homeless. These offenses also include burglary of a car, a crime that should be prosecuted, but a crime that most of us who are comfortably housed could conceivably understand someone committing if they were on the street and desperate.

The people that commit these crimes should be offered a second chance just as their housed neighbors. These types of supportive housing programs are the most important way for homeless crisis response systems to offer these, our most vulnerable Texans in need of a second chance just that, a second chance. Projects like Housing First Oak Springs that Austin/Travis County Integral Care operates as an example of supportive housing that offers second chances that allow people to excel and escape homelessness. This is the type of project that would not exist if these proposed additions were in place at the time of its funding. Moreover, because of LURA these proposed additions would disallow projects like these to lower barriers and offer those second chances that so many need. Without low-barrier supportive housing homeless response systems don't have the tools to move people suffering from chronic homelessness off the street. And, ultimately, this will harm our Texas communities, and cost us a great deal more than it would if we invested in low barrier deeply affordable and supportive housing that provides the opportunities for those experiencing homelessness and those working to end homelessness to make homelessness a condition that is rare, brief, and non-recurring.

Thank you for the opportunity to comment on these proposed changes. Again, I strongly urge you to reject these changes to the Draft QAP.

Sincerely,

A handwritten signature in black ink that reads "Eric Samuels". The signature is written in a cursive style with a large initial "E".

Eric Samuels
President/CEO
Texas Homeless Network

(83) Carol Laufer

From: [Carol Laufer](#)
To: [HTC Public Comment](#)
Subject: Qualified Allocation Plan (QAP)
Date: Thursday, October 08, 2020 4:17:16 PM

To Whom It May Concern:

I am emailing to voice my opposition to the change to the Qualified Allocation Plan (QAP) that would require that supportive housing tax credit properties refuse to house individuals with criminal backgrounds (temporarily or permanently, depending on the severity of the crime). I believe this additional barrier to housing is unnecessary and destructive to communities and peoples lives. I will keep this email brief and include only 3 specific reasons not to change the QAP in this way.

I work in a congregate housing site that has benefited from tax credits as part of its finance package. I work directly with the people who would be impacted by this rule change. I have high expectations for the community standards of the apartment building that I work in because I want to feel safe when I am working since I am a small, 55 year old woman. Over 50% of my clients have criminal backgrounds yet I feel safe working with them. With one or two exceptions, they exhibit prosocial behaviors, are concerned about the quality of their living environment, and are working hard to resurrect something positive for their futures.

I also oppose this change because I understand the process to navigate people experiencing homelessness into housing. The process already includes robust criminal background checks by both property management and the Houston Housing Authority. It is confusing to me that the state would want to hold control for something that the local community is already managing. It fits my definition of unnecessary regulations by the state,

Furthermore, this rule change will disrupt the flow of moving those who are experiencing homelessness into homes, which, by definition, is the only way to end homelessness. This is concerning because I do not want to live in a city that makes it more difficult for the homeless to move into housing. Even as Houston's Continuum of Care has been so successful at cutting our homeless population by over 55% in the last 9 years, we still have too many people without homes. This rule change will only increase these numbers; that's not good for anyone-the housed and the unhoused alike.

People with criminal backgrounds can and do make good neighbors and community members. The local community of landlords and the Housing Authority address the need to check criminal backgrounds locally. Slowing the process of moving people who are in need of housing into housing increases our homeless population and will have detrimental effects on the local community at large. Please do not add an additional barrier to housing by refusing to house those with criminal backgrounds.

Thank you for your time and consideration,

Carol A. Laufer, LCSW-S
Housing Case Manager

(84) Stefanie Collins

From: [Stefanie Collins](#)
To: [HTC Public Comment](#)
Subject: Public Comment -- 2021 QAP, 10 TAC 11.1(d)(122)(B)(v), Supportive Housing Tenant Selection Criteria
Date: Thursday, October 08, 2020 4:39:10 PM

October 9, 2020

Texas Department of Housing and Community Affairs
QAP Public Comment
P.O. Box 13941
Austin, TX 78711

Attn: Matthew Griego, htc_public-comment@tdhca.state.tx.us

Dear TDHCA Governing Board:

I am writing to express concerns related to draft *2021 QAP, 10 TAC 11.1(d)(122)(B)(v), Supportive Housing Tenant Selection Criteria*. Supportive housing is a vital resource for those leaving correctional facilities and seeking to reenter society as productive community members. It is also a critical service for those living with criminal histories that act as barriers to accessing necessities, such as housing, from the private sector. The research reflects that formerly incarcerated persons are less likely to re-offend, pose a risk to themselves or others, or burden other government resources if they have stable, safe, and supportive housing.

It would genuinely be counterproductive to achieving our long-term goals of reducing homelessness and criminal activity rates to further restrict supportive housing based on the applicant's type of conviction. If it must be restricted, it should be done based on an applicant's assessment, not categorically based on type of conviction.

Respectfully,

Stefanie Collins
Attorney at Law
SBN 24058516
608 West 12th Street
Austin TX 78701
Tel: 512-784-8550
Fax: 512-782-0168
www.drivelegaltx.com

Facebook: <https://www.facebook.com/stefaniecollinsattorney/>
LinkedIn: <https://www.linkedin.com/in/stefanie-collins-b65413ab/>
Twitter: @stefcollinslaw
Instagram: @collinsstefanie

Pronoun preferences - Neutral, all pronouns are acceptable and encouraged.

Member of Texas Criminal Defense Attorneys Association, Austin Criminal Defense

Attorneys Association, Texas Independent Bar Association, Austin LGBT Bar, Austin LGBT Chamber of Commerce, and Queer Women in Leadership

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Twitter: @stefcollinslaw
Instagram: @collinsstefanie

Pronoun preferences - Neutral, all pronouns are acceptable and encouraged.

Member of Texas Criminal Defense Attorneys Association, Austin Criminal Defense Attorneys Association, Texas Independent Bar Association, Austin LGBT Bar, Austin LGBT Chamber of Commerce, and Queer Women in Leadership

(85) Carter Mize

From: [Mize, Carter](#)
To: [HTC Public Comment](#)
Subject: Comment on Ch. 11 QAP
Date: Thursday, October 08, 2020 4:41:15 PM

Hello. My name is Carter Mize.

The TDHCA has proposed new rules for housing assistance eligibility in Draft 2021 Chapter 11, Qualified Allocation Plan (<https://www.tdhca.state.tx.us/multifamily/docs/21-QAP-StaffDraft.pdf>)

If ratified, the new rules would ban felons from accessing housing assistance, effectively rendering hundreds, if not thousands of people homeless.

We don't want to increase homelessness in our communities, especially with homeless felons. Felons already have a hard road to recovery as is. Christ Jesus said in Matthew 25:40 "Truly I tell you, whatever you did for one of the least of these brothers and sisters of mine, you did for me." Let's make rules that follow his example, instead of going against all that He stood for.

Anyone who has to consider these rule changes should give **an emphatic "no."**

(86) Sallie Burchett



October 8, 2020

Matthew Griego
Multifamily Policy Research Specialist
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

Via: htc.public-comment@tdhca.state.tx.us and matthew.griego@tdhca.state.tx.us

RE: 2021 Draft QAP Comments

Dear Mr. Griego.

I am writing to you today to provide public comment on the 2021 Draft QAP. Specifically, we have concerns regarding HUB experience, school mitigation, tie-breakers, and proximity to jobs.

HUB EXPERIENCE

The purpose of the HUB program is to promote full and equal business opportunities to underrepresented races, ethnicities, and women to mitigate the economic opportunity disparity in the State of Texas. By denying a HUB the opportunity to qualify for experience in their HUB role, this contradicts the purpose of the HUB program. It also contradicts the Department's requirement that the HUB have material participation regularly, continuously, and substantially. If the HUB's participation is regular, continuous, and substantial it should also qualify for legitimate experience.

SCHOOL MITIGATION

We support waiving mitigation for schools that trigger a Neighborhood Risk Factor Report. We recommend a more transparent rule for this year that strikes the Neighborhood Risk Factor for schools in its entirety, removing any ambiguity of what is required in the report.

SITE RANK: TIE-BREAKERS & PROXIMITY TO JOBS

The hunt for next cycle sites begins after the TDHCA Board gavel bangs in July. Modifying the criteria for establishing how a site scores and competes on tie-breakers in the beginning of November does not provide enough time to fully vet a site and get it under contract by the pre-application deadline. If the Department determines that modifying the tie-breakers and proximity to job measures better serves its constituents, please do so based on carefully vetted objective data that meets the Department's policy objectives. Further, please provide the development community time to absorb and comment on any new criteria before implementation.

The tie-breakers should stay the same as currently drafted. Changing the tie-breakers radically alters the competitive nature for sites in 19 of 26 subregions. Jobs criteria should also stay the same. Modifying the radius or the number of jobs to qualify for points fundamentally shakes up the competitive nature of sites in all 26 subregions. Revising the number of jobs to equate to the number of jobs in the urban core is not an apples to apples exercise. While access to jobs is paired with the urban core scoring item in the QAP, jobs and urban core are not the same to the resident. Best practice for community development is holistic

Mr. Matthew Griego

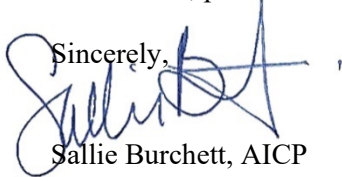
October 8, 2020

Page 2

and includes much more than solely jobs. It is measured by 3 additional criteria: *live*, work, *learn*, and *play*. We support changing any scoring or tie-breaker item if it is based on sound and objective data driven policies early in the cycle. Maintaining the scoring items as currently drafted better serves the Department because the development community has had adequate time to fully vet their sites.

Thank you for your time and attention in considering this public comment. If you need additional information, please do not hesitate to contact me at (512) 473-2527 or sallie@structuretexas.com.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Sallie Burchett', with a stylized flourish at the end.

Sallie Burchett, AICP

(87) Sara Calderon

From: [Sara Ines Calderon](#)
To: [HTC Public Comment](#)
Subject: 2021 CHAPTER 11, QUALIFIED ALLOCATION PLAN (QAP)
Date: Thursday, October 08, 2020 4:48:38 PM

Hello I wanted to share my thoughts on this plan, specifically forbidding housing to felons on Page 15. During the worst economic depression of a lifetime, the proposal plans to exclude even more people from access to housing -- how is this going to solve any problems other than empty underpasses? I live in Austin and there's already a terrible housing / homelessness crisis and y'all are seriously trying to add fuel to the fire? Where are people supposed to live?

(88) CSH



Debbie Thiele
Managing Director, CSH Western Region

October 8, 2020

Texas Department of Housing and Community Affairs
Attn: Matthew Griego
P.O. Box 13941
Austin, Texas 78711-3941

Submitted via email: htc.public-comment@tdhca.state.tx.us

Dear Mr. Griego,

On behalf of Corporation for Supportive Housing (CSH), I am writing with recommendations for the 2021 Qualified Allocation Plan (QAP), which is currently under review by the Texas Department of Housing and Community Affairs (TDHCA). The COVID-19 pandemic is shedding light on critical gaps in American housing and community-based service delivery that, in part, can be addressed through the LIHTC program. While the issue of housing insecurity is often seen through the lens of homelessness, it has much broader impacts. It has become increasingly clear that housing and health are inextricably linked.

Supportive housing is an evidence-based intervention that combines deeply affordable housing with healthcare services in the form of tenancy supports for individuals and families who need both housing and services in order to access and remain in housing. CSH's [Supportive Housing Needs Assessment](#) indicates that 129,702 households in Texas could be stably housed with supportive housing rather than experiencing homelessness or living unnecessarily in costly institutions.

Through CSH's annual analysis of the 54 QAPs released by states and territories, we have become familiar with best practice language and language that can restrict a state's ability to further the development and operations of supportive housing. Because of this, we believe it is critical to address what we see as the largest and potentially most damaging proposed change to the 2021 QAP – **Proposed Background Check Requirements for Supportive Housing.**

The justice sector currently “houses” more than 20% of those in need of supportive housing in Texas, paying far beyond the cost of supportive housing on a daily and annual basis. The proposed requirements for background checks in the QAP will discriminate against and deny more than 27,000 individuals the access they need to a proven intervention that works for communities. This will also have a disparate impact on Black individuals. In the state of Texas, Black individuals are up to 5.25 times more likely to be involved in the criminal justice system^{i,ii}. Because race is a federally protected

class and this proposed change would have an adverse discriminatory effect on Black individuals, we believe this change would present legal challenges to the Fair Housing Act.

When two jurisdictions in Texas conducted a proactive Frequent Users Service Enhancement (FUSE) initiative to house justice-involved individuals in supportive housing, the outcomes included: 1) reductions in re-arrest, 2) reductions in overall bookings, and 3) reductions in the number of misdemeanors and feloniesⁱⁱⁱ. To further deny individuals and communities the opportunity to create stability through supportive housing would not only be detrimental to them, it would further encumber an already overburdened system's operations and financial capacity.

The proposed changes for additional background checks is also antithetical to the movement across America to make access to housing more fair and just, particularly for those with previous justice involvement, and to begin to undo the long history of discriminatory policies in housing.

CSH also recommends the following items to strengthen supportive housing opportunities in the QAP:

1. Create a Supportive Housing Set-Aside

CSH estimates that 129,702 units of supportive housing are needed across the state of Texas^{iv}. We expect the COVID-19 pandemic to also increase this number as many individuals and families will be affected by loss of income and increasing housing instability as a result. While TDHCA incentivizes supportive housing through awarding additional points to applicants for proposed projects, it is hard to determine just how meaningful individual points are when compared against the total score needed to receive the tax credit award. To maximize access to supportive housing for vulnerable individuals and families, we recommend creating a supportive housing specific set-aside. We recommend an allocation of at least 10%. Based on the 2019 credit allocation of \$80.2 million, this would lead to over 430 units of supportive housing annually and align Texas with other state efforts to address the supportive housing gap through credit allocations^v.

2. Prioritize the Populations Most in Need of Supportive Housing

CSH believes that there are six critical sectors that essentially create pipelines into the homeless system. By targeting these sectors further upstream with designated supportive housing resources, we can alter our emergency and institutional response system so that fewer people end up homeless and more people thrive in their communities. These sectors include: affordable housing, aging, health care, justice, child welfare, and intellectual and development disability (IDD). In Texas, the three highest sector-involved populations in need of support services include: Intellectual and Developmental Disabilities (73,288 units/57%), justice (27,119 units/21%), and aging (15,669 units/12%)^{vi}. Considering this, we recommend including scoring incentives for projects proposing to service one of these three populations. Additional points should be awarded for developing cross-sector commitments with providers and governmental agencies that serve these sectors already. Commitments should reflect the agreement between the sector experts and the developer applicants to provide appropriate services and supports for tenants of the supportive housing units.

3. Allow Points for Large Families in the Supportive Housing Set-Aside

Approximately a quarter of families experiencing homelessness have five or more people in the household^{vii}. Lack of stable housing is often a precipitating factor for a family's involvement in the child

welfare system. Supportive housing offers a safe, stable, and affordable solution for families so they can stay together while improving overall safety and well-being. Children and youth who have a reliable place to call home spend fewer days in foster care, experience a reduction in subsequent abuse and neglect cases, and increase their school attendance. These families should have access to units that can provide adequate space to house multiple children and also receive support services.

4. Clarify Supportive Housing Definition

We applaud THEDA for taking a step in the right direction as one of just a handful of housing finance agencies that have defined supportive housing in the QAP. We recommend enhancement of the definition to also indicate that supportive housing is permanent housing that has no time limits, tenants pay a portion of the rent, and tenants have the same rights and responsibilities as renters in other low-income or market rate housing units. The definitions for SRO and Transitional Housing under Section 11.1 General, Subsection (d) – Definitions should also be clarified. Both definitions currently reference transitional units as supportive housing. The two are not the same. Transitional housing is time-limited and supportive housing is not. We recommend clarifying that supportive housing, by definition, is permanent housing, and that the intent is to have available services for individuals in transitional housing.

5. Ensure Quality Standards

We also recommend that the definition of supportive housing address the [national quality standards](#). Quality supportive housing is housing that is – (1) tenant-centered, (2) easily accessible to tenants of all backgrounds, (3) coordinated amongst housing partners with a shared goal, (4) integrated with voluntary services and community connections, and (5) sustainable over time^{viii}. To ensure supportive housing maintains a level of quality, TDHCA should require applicants to submit a [Commitment to Quality checklist or an endorsement](#) with their application. This is a simple but incredibly helpful checklist that outlines and defines 16 quality indicators that the applicant is or is not committing to with their project. We would be happy to discuss how this tool can be used for the 2021 QAP and provide you with more information about CSH's Quality Endorsement.

6. Allow Section 811 Program Vouchers to be Used with Tax Credits

The QAP includes language that would prohibit the use of housing vouchers from the Section 811 Program in conjunction with the tax credit^{ix}. This would discourage landlords and developers from creating supportive housing (which requires operating subsidies). It is important to maximize the financial support for supportive housing providers by ensuring that tax credit financing is supported by operating subsidies in order to increase the availability of supportive housing to those in need. We recommend removing this from the QAP completely.

7. Ensure Equitable Access to Housing and Services

TDHCA has a unique opportunity to both understand the history of racism in housing and to begin to shift this paradigm. To do this effectively, TDHCA must address implicit biases in budgetary, programmatic, and policy decisions. One of the best ways to address inequities in housing is to identify opportunities for persons with lived experience to participate as critical stakeholders through the QAP process. TDHCA should also use the Supportive Housing Needs Assessment referenced above to gain a better understanding of the racial disparities in housing across the state. Such data should be used to

develop concrete actions to advance racial equity in the development and delivery of housing and services.

We also recommend including specific considerations for neighborhood distribution of units. While under Section 11.3 Housing De-Concentration Factor, there are measures to reduce repeat development in the same neighborhood across multiple years, it is not clear if approved developments continue to reduce racial segregation and increase housing options and choice in “high opportunity”, racially integrated neighborhoods as required by *TDHCA v Inclusive Communities Project, Inc.* Making this analysis transparent and available for the public to review should also be included in the overall needs assessment.

8. Develop Key Performance Indicators (KPIs) and Report on Progress

The best initiatives have clearly outlined goals that are measurable. The QAP can be strengthened by clearly outlining the number of supportive housing units projected and actualized from the LIHTC supportive housing allocation. TDHCA can then set clear expected outcomes and review data annually to determine progress on both implementation and unit production plans.

CSH believes that a greater investment in quality supportive housing now can lead to significant outcomes in the future. Supportive housing is proven to improve individual health and well-being and increase housing stability with about 84% of supportive housing residents remaining housed after two years^x. It can also lead to decreased utilization of costly crisis services such as prolonged hospitalizations, frequent emergency room (ER) visits, and incarceration; all of which are expensive interventions that provide only temporary solutions to long-term problems. There was an average savings of \$935 per person in Medicaid spending on those in supportive housing on 2013.^{xi} Supportive services create consistency that encourages improvement in health outcomes that can affect cost savings in health care services.

CSH is the national champion for supportive housing, demonstrating its potential to improve the lives of very vulnerable individuals and families by helping communities create over 335,000 real homes for people who desperately need them. Building on nearly 30 years of success developing multi and cross-sector partnerships, CSH engages broader systems to fully invest in solutions that drive equity, help people thrive, and harness data to generate concrete and sustainable results. By aligning affordable housing with services and other sectors, CSH helps communities move away from crisis, optimize their public resources, and ensure a better future for everyone.

Given our commitment and experience, CSH urges you to adapt the above recommendations and thanks you for considering these points in your review by the TDHCA Governing Board as an opportunity to create more cost-effective supportive housing in Texas.

Sincerely,



Debbie Thiele

Managing Director, Western Region

CSH

ⁱ Racial Disparities and Disproportionality Index, <https://www.csh.org/supportive-housing-101/data/>

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- ii This includes jails, prisons, and justice involved transition age youth.
- iii FUSE Research and Resources, <https://www.csh.org/fuse/>
- iv Supportive Housing Needs Assessment, <https://www.csh.org/supportive-housing-101/data/>
- v Please see the CSH Supportive Housing Calculator for more information: <https://www.csh.org/qap/#Calculator>
- vi Supportive Housing Needs Assessment, <https://www.csh.org/supportive-housing-101/data/>
- vii Homelessness in America: Focus on the Families with Children. (2018) USICH
- viii The Dimensions of Quality Supportive Housing is a national standard created by CSH and based on two years of research with communities across the country. Additional information on the Dimensions of Quality Supportive Housing can be accessed at <https://www.csh.org/supportive-housing-101/quality/>
- ix Texas Department of Housing and Community Affairs. (n.d.). *2020 Texas Qualified Allocation Plan*, p.52-53. Retrieved from <https://www.tdhca.state.tx.us/multifamily/docs/20-DRAFT-QAP-ch11.pdf>
- x Thomas, Lori M., Jeffery K. Shears, Melannie Clapsadl Pate, and Mary Ann Priester. "Moore Place Permanent Supportive Housing Evaluation Study: Year 1 Report." UNC Charlotte College of Health and Human Services (February 2014)
- xi New York City Department of Health and Mental Hygiene. "New York/New York III Supportive Housing Evaluation: Interim Utilization and Cost Analysis" (2013).

(89) Preston Petty

From: [Preston Petty](#)
To: [HTC Public Comment](#)
Subject: Qualified Allocation Plan (QAP) Criminal Screening Requirements
Date: Thursday, October 08, 2020 5:14:32 PM

Dear TDHCA,

Without low-barrier supportive housing, communities will not have sufficient options to move people suffering from chronic homelessness off the street. Ultimately, this will harm our Texas communities, increase repeat instances of homelessness, and cost us a great deal more than it would if we invested in low-barrier deeply affordable and supportive housing available to all Texans.

We need MORE opportunities for low-barrier housing, especially for those who have criminal history backgrounds, not fewer. Please reconsider these harmful and unnecessary restrictions to the housing stock of our fellow Texans.

Sincerely,
-Preston Petty

(90) New Hope Housing



New Hope Housing

October 8, 2020

Texas Department of Housing and Community Affairs
Attn: Marni Holloway, Director of Multifamily Finance
221 East 11th Street
Austin, TX 78701
Email: marni.holloway@tdhca.state.tx.us

Re: 2021 Draft Qualified Allocation Plan - Public Comment

Dear Marni,

I am writing to offer comment on the 2021 published draft of the Qualified Allocation Plan (“QAP”). My comments draw on twenty five years of experience developing and operating Supportive Housing for Houstonians. New Hope Housing currently manages 1,358 units of Supportive Housing for individuals and families, with an additional 100 supportive units under construction.

All concerned with New Hope Housing are grateful to the board and staff of TDHCA for your important work in financing direly needed Supportive Housing. We believe firmly in the transformative nature of the Supportive Housing + Services you have helped make possible. We see the real human impacts every day. Thank you.

We understand there was some concern in the 2020 9% LIHTC round regarding a possible lack of Supportive Housing criminal history screening, and that the current draft of the Supportive Housing definition is an outgrowth of that concern. While we understand the origin of these concerns, we are unaware of any Supportive Housing developments that lack a criminal history screening. We are similarly unaware of crime problems at operating Supportive Housing developments within TDHCA programs. I testified to this fact at the September board meeting.

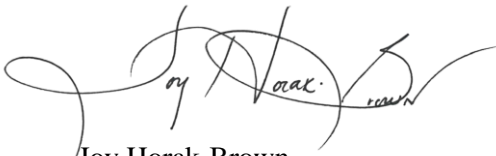
I also in my testimony advised again placing granular screening criteria within a decades-long Land Use Restriction Agreement. That seems to us unnecessarily restrictive and cumbersome, not to mention costly. Relying on a protracted amendment process impedes Supportive Housing developers from establishing sound criteria that respond to changing community needs.

It is very important to us that New Hope Housing’s buildings offer a peaceful environment to the residents who live there, to the staff who work there, to the surrounding neighborhood, and to you when you come to visit. That goal is achievable within the framework of offering opportunities to some citizens who have paid their debt to society and are reentering, as was highlighted by board member Leo Vasquez in September.

New Hope Housing strongly recommends the removal of screening criteria from the Supportive Housing definition. Should that not be looked upon favorably, we have included two alternative solutions. These solutions have been discussed and agreed upon with our colleagues at Foundation Communities and are detailed in the attached redline and clean versions of the rule provision.

We appreciate more than you know the thoughtful consideration you have given to Supportive Housing over time. We look forward to continuing to craft, together with you, the path forward to best serve Texans in need.

Sincerely,

A handwritten signature in black ink, appearing to read "Joy Horak-Brown". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Joy Horak-Brown
President & CEO



Supportive Housing Definition – Tenant Selection Criteria

As a leading provider of supportive housing in Texas we are concerned about the new language added as Section 11.1(d)(122)(B)(v), which provides proscriptive requirements for owners to screen out tenants of supportive housing projects.

We agree that requiring owners to have clear, publicly available tenant selection criteria is essential to a fair screening process. However, we feel strongly that determination of the most appropriate criteria is best left to individual owners, based on the specifics of their Developments and communities. Over the last twenty years our criminal screening criteria has continued to evolve, and we think it would be a mistake to have detailed requirements fixed into the program.

Some local jurisdictions and Housing Authority partners have their own criteria, and the proposed TDHCA criteria could prevent projects from accessing critical local gap funding or other partnerships essential to making supportive housing projects viable, as a result of conflicting screening mandates. Additionally, such requirements will make it more difficult to meet the Continuum of Care (COC) set-aside in section 11.9(c)(6)(B).

We have suggested three options below, ranked in order of preference. In the case of #2 or #3, we believe that the most appropriate method of TDHCA oversight is verification of the existence of the required Tenant Selection Criteria and not a file audit. A compliance methodology that is dependent on reviewing specific applicant criminal review will be cumbersome for both TDHCA staff and property managers.

1. Our strong first preference is to have Section 11.1(d)(122)(B)(v) removed in its entirety.
2. Our second preference would be to replace the current section with a simpler rule:

11.1 (d)122(B)(v): have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of criminal history screening criteria.

3. If TDHCA staff believe that a more refined rule is required, we respectfully request that TDHCA consider replacing it with this revision, which more closely reflects the criteria of certain HUD programs:

11.1 (d)122(B)(v): have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of criminal history screening criteria credit, criminal conviction, and prior eviction history that may disqualify a potential resident.

(l) The criminal screening criteria must, at minimum, include: not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(-a-) Permanent denial based on criminal history at application or recertification—for lifetime registered sex offenders, or any conviction for murder-related offense, sexual assault, kidnapping, or felony manufacture of methamphetamines; and

(-b-) Temporary denial for a minimum of three years two years from date of arrest based on criminal history at application or recertification of any for a violent or armed felony conviction, for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;

- ~~(c) Temporary denial for a minimum of two years for non-violent felonies; and~~
- ~~(d) Temporary denial for a minimum of one year for Class A misdemeanors~~

~~(II) The criminal screening criteria may include provisions for mitigation of that waive temporary or permanent denials, such as including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others, with personal knowledge of the tenant. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years.~~

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

Without redlines, the proposed 11.1(d)122(B)(v) would read as follows:

(v) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of criminal history screening criteria.

(I) The criminal screening criteria must, at minimum, include:

- (-a-) Permanent denial based on criminal history at application for lifetime registered sex offenders, or any conviction for felony manufacture of methamphetamines; and
- (-b-) Temporary denial for a minimum of two years from date of arrest based on criminal history for a violent or armed felony conviction.

(II) The criminal screening criteria may include provisions for mitigation of that waive temporary or permanent denials, such as letters of recommendation from mental health professionals, employers, case managers, or others.

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

(91) Rodney Ellis Harris County Commissioner



RODNEY ELLIS
Commissioner

Texas Department of Housing and Community Affairs
Attn: Matthew Griego
QAP Public Comment
P.O. Box 13941
Austin, Texas 78711-3941

October 8, 2020

Dear Director Bobby Wilkerson,

This letter is to express my concerns with the proposed changes to the 2021 Qualified Allocation Plan and the new criminal background screening criteria. I strongly oppose the new tenant screening policies, which is why I voted in support of the Harris County Community Services Department resolution denouncing the proposed changes during the Commissioners Court on September 29, 2020. The new criminal background screening criteria would create additional barriers to accessing housing for justice-involved individuals who experience homelessness and decrease the ability of the homeless response system to house people with criminal records. The proposed language would also disproportionately impact people of color who are overrepresented in both the homeless system and justice system.

Last year, more than 55,000 people in Harris County interacted with the homelessness system, and a disproportionate number of these individuals have criminal backgrounds. This is no happenstance; many people fall into homelessness because they are released from the criminal justice system without a home. According to research, people who have been incarcerated more than once are 13 times more likely than the general public to experience homelessness, and people who have been incarcerated only once are 7 times more likely.¹ Furthermore, research shows that formerly incarcerated people without stable housing are twice more likely to recidivate than those living in stable housing.² Justice-involved individuals already face barriers in accessing housing because of their criminal records, a limited supply of affordable housing, and discrimination. These factors place them at risk of housing instability, homelessness, and ultimately recidivism.

The proposed changes in the QAP would disproportionately impact Black residents in Harris County. Black people make up only 20% of the population of Harris County, but

¹ Urban Institute. Five Charts that Explain the Homeless Jail Cycle and How to Break It. September 16, 2020.

² Lucius Couloute. Prison Policy. Nowhere to Go: Homelessness among formerly incarcerated people. August 2018.

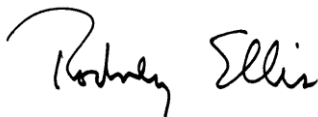
56% of those experiencing homelessness³ and 49% of the Harris County jail population.⁴ As our County works towards achieving racial equity, it is important that we do not have policies in place that further exacerbate these disparities.

I understand that the proposed changes are rooted in concerns of neighborhood safety. There have always been myths surrounding affordable and supportive housing, which lends to misconceptions about what happens when affordable supportive housing is built. Some research shows that low-income housing developments can actually cause reductions in violent crime⁵ and can help attract more racially and economically diverse populations.⁶ The reality is that providing vulnerable individuals with housing and supportive services, rather than having them live on the streets, is a safer option for our whole community.

Finally, the proposed QAP language would undo the progress that Harris County and local homeless service providers have made towards our region's housing and reentry goals. The Texas Department of Housing & Community Affairs (TDHCA) should focus on making sure that people leaving prison and jails have the resources they need to be successfully incorporated back into functioning members of society and not create additional and unnecessary barriers to supportive housing. For the reasons outlined in this letter, I strongly urge the TDHCA to rescind this the proposed language in the 2021 Qualified Allocation Plan.

Thank you and I look forward to continued, constructive engagement with the Texas Department of Housing & Community Affairs on this and other important housing issues. Please feel free to contact me, or my Chief of Staff, Brandon Dudley at Brandon.Dudley@cp1.hctx.net; and Janae Ladet, Policy Advisor at Janae.Ladet@cp1.hctx.net if you have any questions.

Sincerely,



Rodney Ellis
Harris County Precinct One Commissioner

³ 2020 Homelessness Count and Survey. Coalition for the Homeless.

⁴ Harris County Justice Administration Department. Jail Population Dashboard. Data Retrieved on September 25, 2020.

⁵ Freedman Matthew, Owens Emily. Low-income housing development and crime. Journal and Urban Economics. September 2011.

⁶ Rebecca Diamond, Timothy McQuade. Natural Bureau of Economic Research. April 2016.

(92) Joshua Cook

From: [Joshua A Cook](#)
To: [HTC Public Comment](#)
Subject: Feedback on felon exclusions in DRAFT 2021 CHAPTER 11, QUALIFIED ALLOCATION PLAN (QAP)
Date: Thursday, October 08, 2020 8:58:16 PM

Hi,

Felons should have the same access to supportive housing as anyone else. If you can not safely allow them into your housing, your prison system has utterly failed and you need to focus on fixing that.

Releasing someone from prison and forcing them into homelessness is cruel. They already face heavy job discrimination, if they don't have a strong family support structure, this is dooming them to failure.

Prisons should be focused on rehabilitating criminals, and this kind of policy only helps to further trap them in the prison system by denying them access to success outside. Failing to rehabilitate criminals, releasing them when you don't think they are ready, and then denying them access to basic public goods because you failed to help them is evil.

The time to punish, and correct people is in prison. Why are you trying to punish them outside too? It doesn't help public safety, the economy, or the felons. This policy is just a way to cover up the real issues and its disgusting.

Thank you for your time,
Joshua Cook

(93) San Antonio NHCD



**CITY OF SAN ANTONIO
NEIGHBORHOOD & HOUSING
SERVICES DEPARTMENT**

October 6, 2020

Marni Holloway, Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701
Marni.holloway@tdhca.state.tx.us

Re: Preliminary Comments Regarding 2021 Qualified Allocation Plan and Uniform Multifamily Rules

Dear Ms. Holloway,

The City of San Antonio's Neighborhood and Housing Services Department (NHSD) appreciates the opportunity to provide feedback on the Staff Draft of the 2021 Qualified Allocation Plan (QAP). NHSD is dedicated to enhancing the quality of life for the residents of San Antonio. We believe the Housing Tax Credit programs administered by TDHCA are integral to our efforts to provide quality, safe, and affordable housing throughout San Antonio.

NHSD is participating in the Texas Housing Group, a network of affordable housing leaders from Texas cities with populations over 500,000. The Texas Housing Group is working to create affordable housing opportunities for all Texans who need access to them. Group members worked together to craft several recommendations contained in this letter regarding the draft 2021 QAP.

San Antonio's feedback to the draft is below by Section:

Section 11.1(d)(122) (Definition of Supportive Housing)

The introduction of the proposed specific Tenant Selection Criteria in the 2021 QAP severely hampers the ability of developers, nonprofits, and localities to meet the needs of the most-difficult-to-serve homeless population. The City of San Antonio understands and shares the desire for thoughtful management plans from supportive housing providers including written Tenant Selection Criteria in accordance with Texas Administrative Code §10.802. When supportive housing providers design their Tenant Selection Criteria, they should be mindful of the safety of both their residents and neighbors. For example, we understand the need for Tenant Selection Criteria to take into account criminal histories including, registered sex offenders and others with a violent criminal history. However, the 2021 QAP proposed language is overly specific and restrictive. By limiting the ability of supportive housing developers to develop their own, thoughtful Tenant Selection Criteria, this proposal prevents housing for a large number of San Antonians experiencing homelessness, the intended beneficiaries of supportive housing. This proposal will exasperate the economic disparities found in San Antonio and indeed, the state, while reinforcing multigenerational poverty, and disproportionately harming our residents of color.

Further, NHSD knows people with records still need housing and can be good tenants. Since September 2019, the City of San Antonio and our local Continuum of Care (CoC), the South Alamo



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Regional Alliance for the Homeless (SARAH) have partnered to help vulnerable groups access housing through the PLACE program. The PLACE program provides supports to landlords who are willing to waive screening criteria and fees to house applicants with poor rental histories, evictions, or previous criminal convictions. Through PLACE, twenty so called “risky” households have been successfully rehoused at reduced cost to service providers. Only one landlord has ever requested reimbursement from the program, with the other households proving to be good tenants. With limited access to supportive housing in San Antonio, we hope that any future housing tax credit developments would not be off limits to our PLACE participants.

The unintended consequence of this draft plan will be to ensure that people with even a minor criminal history will be unable to find adequate, safe housing. This is particularly troubling as we continue to grapple with the effects of COVID-19, and what local government officials fear is an impending eviction crisis. The three-year denial of residents with evictions means it will be even more difficult for families evicted as a result of job loss during the COVID-19 pandemic to find housing again.

Instead of assisting the vulnerable, the proposed change erects new barriers and potentially sentence them to a lifetime of living on the streets. I strongly urge you to rethink this misguided approach.

Furthermore, the proposed Tenant Selection Criteria:

- Conflicts with a change directly made by the Governor in the 2020 QAP, at 10 TAC 11.6(c)(6)(B), whereby a Development commits an additional 2% of the total Units to Persons referred from the Continuum of Care; and
- Results in serious and credible violations of the Fair Housing Act, not only by TDHCA itself, but also by the developers and their partners who are forced by TDHCA to comply with the proposed Tenant Selection Criteria.

Regarding the first point above (conflict with 10 TAC 11.6(c)(6)(B)), we believe that the Governor purposefully put this scoring item in the 2020 QAP in order to help address chronic homelessness across the state of Texas. As you know, a local CoC Program is a federally-led but also state- and locally-supported initiative to quickly rehouse homeless individuals and families. The CoC Program establishes a “coordinated entry system,” by which individuals and families are ranked according to a host of reasonable metrics. For good reason, those metrics typically push the chronically homeless to the top of the coordinated entry system. Presumably, then, 10 TAC 11.6(c)(6)(B) is designed to leverage LIHTC developments to house the chronically homeless. As has been clearly shown by research, the chronically homeless, compared to the general population, disproportionately have criminal histories. Therefore, and inexplicably, the proposed Tenant Selection Criteria under the definition of Supportive Housing creates a barrier to housing for the very people that certain items in the QAP purportedly intend to serve and house.

Regarding the second point above (probable Fair Housing Act violation), the QAP, and we presume TDHCA, unambiguously wish to work with the federal government and localities to address chronic homelessness in the state of Texas. Given that “chronically homeless” is defined by the federal government, in part, as “a homeless individual *with a disability*” (emphasis added) and given that the Fair Housing Act prohibits discrimination in housing, in part, because of a disability, we fear that the proposed Tenant Selection Criteria is exposing both TDHCA and its partners (developers, lenders, investors, HUBs, nonprofits, cities—namely, anyone and everyone involved in a LIHTC



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development) to undeniable and significant liability for violating the Fair Housing Act. The violation, on the surface, appears to be so egregious, that one wouldn't even have to employ the disparate impact test; it is simply outright discriminatory. The addition of a supposed (and arcane) "appeals process" through subclauses (II) and (III) in no way mitigates the *prima facie* discrimination evident in subclause (I).

Proposed Amended Language:

Remove the proposed language found in Section 11.1 (d)(122)(B)(v)(I)(a)-(d) from the 2021 QAP and work with your partners to develop a more reasonable tenant selection criteria regarding criminal histories during the public engagement process for the 2022 QAP.

Section 11.3. Housing De-Concentration Factors. (b) Two Mile Same Year Rule (comment 1).

It is important cities can accommodate their rapidly growing population with an adequate supply of affordable units, and we are concerned the two-mile same year rule impedes this process. Newcomers of all incomes need to be able to live near jobs. The two-mile same year rule has limited the ability of large cities in Texas (with the exception of Houston) to support highly qualified developments that have the potential to significantly benefit the immediate area and the City as a whole.

In practice, this rule has caused developers to compete over the support and delay development, essentially negating the intent of the section. Having to wait two years between developments can create an unnecessary bottle neck in areas where there is a high demand for affordable housing and a concentration of jobs. We share TDHCA's desire not to concentrate poverty, but as developments increasingly tend towards mixed-income, we believe two developments can be in close proximity without concentrating poverty.

The addition of Proximity to Jobs points in the 2020 QAP has made more areas of the city competitive. With more areas of the city becoming competitive, blanket de-concentration rules are less necessary. Growing cities know their local landscape best and should be empowered to waive this rule if it is in the best interest of the city. If a city believes too many projects are concentrated in one area, they may choose not to issue Resolutions for certain projects or may choose not to waive the rule.

Proposed Amended Language:

Recommend additional language that any political subdivision subject to the Two-Mile rule (e.g. communities contained within counties with populations exceeding one million) have the ability to waive it if approved by local officials.

Section 11.3. Housing De-Concentration Factors. (b) Two Mile Same Year Rule (comment 2).

The QAP allows for a municipality with a population of two million or more where a federal disaster has been declared within the past five years to waive the Two-Mile Same Year rule provided the governing body has voted to waive the rule, and is authorized to administer disaster recovery funds as a subgrant recipient for the disaster identified in the federal disaster declaration.



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As municipalities continue to struggle with COVID-19, this rule should be extended. All cities entrusted to administer disaster recovery funds during this federal disaster should have the ability to waive this rule.

Proposed Amended Language:

Recommend additional language that any political subdivision authorized to administer disaster recovery funds related to COVID-19 have the ability to waive it if approved by local officials regardless of population.

Section 11.3. Housing De-Concentration Factors. (g) One Award per Census Tract Limitation

It is important cities can accommodate their rapidly growing population with an adequate supply of affordable units, and we are concerned the one award per census tract rule impedes this process. Newcomers of all incomes need to be able to live near jobs. The one award per census tract rule has limited the ability of large cities in Texas to support highly qualified developments that have the potential to significantly benefit the immediate area and the City as a whole.

In practice, this rule has caused developers to compete over the support and delay development, essentially negating the intent of the section. This rule combined with lower scoring for projects in the same census tract as previously awarded developments creates an unnecessary bottle neck in areas where there is a high demand for affordable housing and a concentration of jobs. We share TDHCA's desire not to concentrate poverty, and as developments increasingly trend towards mixed-income, we believe two developments can be in close proximity without concentrating poverty.

The addition of Proximity to Jobs points in the 2020 QAP has made more areas of the city competitive. With more areas of the city becoming competitive, blanket de-concentration rules are less necessary. Growing cities know their local landscape best and should be empowered to waive this rule if it is in the best interest of the city. If a city believes too many projects are concentrated in one area, they may choose not to issue Resolutions for certain projects or may choose not to waive the rule.

Proposed Amended Language:

Recommend additional language that any political subdivision have the ability to waive the one award per census tract limitation, if approved by local officials.

(d)(7) Concerted Revitalization Plan

The requirements outlined for Concerted Revitalization Plans (CRP) are prescriptive and we are concerned these prevent the municipality from determining what development plans are eligible, thus compromising local control. There is a need to better define a CRP and how it functions in the QAP. Many of the pending CRP plans identify the needs for an area to be funded with future Capital Improvement Projects cycles, however commitments for these items are usually provided until each fiscal year occurs, sometimes years out from an application seeking LIHTCs. It is recommended that TDHCA provide flexibility on this item to allow counties, municipalities and other agencies identify the potential sources within the plan with commitments to be funded with identified sources to be committed in future years.



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Municipalities should also have the opportunity to pass resolutions of objection as well as the current ability to offer support and/or no objection. If a project is truly detrimental to a community or to a city's priorities to the extent that the governing body is willing to pass a resolution of objection, then that project should be penalized in the state scoring mechanism

Proposed Amended Language

The adopted plan must have sufficient and documented ~~and committed~~ funding to accomplish its purposes on its established timetable. This funding must be flowing in accordance with the plan, such that the problems identified within the plan are currently being or have been sufficiently addressed.

Section 11.5 Competitive HTC Set-Asides (3) At-Risk Set-Aside

Not all developments with expiring affordability covenants are associated with a public housing authority or public finance corporation. The requirement needlessly limits who applies for funds.

Proposed Amended Language:

Remove language restricting access to this set-aside to public housing authority and public finance corporation projects.

Section 11.101 (3) Neighborhood Risk Factors

We support not requiring mitigation for schools for Applications submitted under the 2021 QAP due to COVID-19 school closures.

Other Considerations

The City of San Antonio and the developers working within city limits have been using the average income set aside heavily. We know TDHCA continues to ask for compliance guidance related to the average income set aside. While we wait for more guidance from the IRS, we request compliance surrounding the average income set aside be discussed during the 2022 QAP roundtables.

We understand there are limits in statute pertaining to what staff can change regarding the QAP. NHSD is developing a legislative strategy leading up to the 2021 legislative session which will include items related specifically to the QAP. In the meantime, we welcome the opportunity to work with TDHCA to develop methods to advance our shared visions without legislative interventions.

Thank you for your consideration. Please contact me if you have any questions.

Regards,

A handwritten signature in blue ink that reads "Veronica R. Soto".

Verónica R. Soto, FAICP
Director, Neighborhood and Housing Services Department

Veronica.Soto@sanantonio.gov

210-207-6620

(94) Perry Covington

From: [Perry Covington](#)
To: [HTC Public Comment](#)
Subject: Opposing proposed inclusion of criminal screening requirement for Supportive Housing.
Date: Friday, October 09, 2020 8:34:02 AM

The proposed changes including criminal screening requirements would set the effort to end homelessness back 10 year. The nature of homelessness is that many of those we work with have had issues with the criminal system. For some those issues were what started them down the road to homelessness. Regardless of what led to their homelessness state each person experiencing homelessness represents a huge cost to the community they are in. Raising the barriers for getting out of homelessness would simply prolong the time they are on the streets and a burden to the community. Moving forward with this proposal would cost communities across Texas hundreds of thousands of dollars. Keeping barriers low so those experiencing homelessness can start moving toward putting their lives back together and become productive parts of the community is good for everyone.

Please help us to keep moving toward making homelessness rare, brief, and nonrecurring by rejecting this proposal.

Perry Covington
Housing Navigator
Abilene Hope Haven
325-205-2262

(95) Foundation Communities



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Austin, TX 78704

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visit us on facebook
follow us on twitter

October 9, 2020

Marni Holloway, Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
Email: Marni.Holloway@tdhca.state.tx.us

RE: Comments for the 2021 Qualified Allocation Plan

Ms. Holloway,

It has been quite a year. We want to thank you and the staff for your diligence and commitment to quality affordable housing. Enclosed please find Foundation Communities' comments to the 2021 QAP. We support the staff's effort to keep changes minimal in such a strange year, but ask that staff coordinate virtual roundtables next year so that stakeholders can have more opportunity for input in the 2022 QAP.

Sincerely,

Walter Moreau

Walter Moreau
Executive Director
Foundation Communities



a Partner Agency of



11.1(d)(122)(B)(v) Supportive Housing Criminal Screening Criteria

As a leading provider of supportive housing in Texas we are concerned about the new language added as Section 11.1(d)(122)(B)(v), which provides proscriptive requirements for owners to screen out tenants of supportive housing projects.

We agree that requiring owners to have clear, publicly available tenant selection criteria is essential to a fair screening process. However, we feel strongly that determination of the most appropriate criteria is best left to individual owners, based on the specifics of their Developments and communities. Over the last twenty years our criminal screening criteria has continued to evolve, and we think it would be a mistake to have detailed requirements fixed into the program.

Some local jurisdictions and Housing Authority partners have their own criteria, and the proposed TDHCA criteria could prevent projects from accessing critical local gap funding or other partnerships essential to making supportive housing projects viable, as a result of conflicting screening mandates. Additionally, such requirements will make it more difficult to meet the Continuum of Care (COC) set-aside in section 11.9(c)(6)(B).

We have suggested three options below, ranked in order of preference. In the case of #2 or #3, we believe that the most appropriate method of TDHCA oversight is verification of the existence of the required Tenant Selection Criteria and not a file audit. A compliance methodology that is dependent on reviewing specific applicant criminal review will be cumbersome for both TDHCA staff and property managers.

1. Our strong first preference is to have Section 11.1(d)(122)(B)(v) removed in its entirety.

2. Our second preference would be to replace the current section with a simpler rule:

11.1 (d)122(B)(v): have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of criminal history screening criteria.

3. If TDHCA staff believe that a more refined rule is required, we respectfully request that TDHCA consider replacing it with this revision, which more closely reflects the criteria of certain HUD programs:

11.1 (d)122(B)(v): have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of criminal history screening criteria credit, criminal conviction, and prior eviction history that may disqualify a potential resident.

(I) The criminal screening criteria must, at minimum, include: not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(-a-) Permanent denial based on criminal history at application or recertification for lifetime registered sex offenders, or any conviction for murder related offense, sexual assault, kidnapping, or felony manufacture of methamphetamines; and

~~(-b-) Temporary denial for a minimum of three years two years from date of arrest based on criminal history at application or recertification of any for a violent or armed felony conviction. for discharge/display of firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;~~

~~(-c-) Temporary denial for a minimum of two years for non-violent felonies; and~~

~~(-d-) Temporary denial for a minimum of one year for Class A misdemeanors~~

(II) The criminal screening criteria may include provisions for mitigation ~~of that waive~~ temporary ~~or permanent~~ denials, ~~such as including documented drug/alcohol treatment, participation in case management,~~ letters of recommendation from mental health professionals, employers, case managers, or others. ~~with personal knowledge of the tenant. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years.~~

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

Without redlines, the proposed 11.1(d)122(B)(v) would read as follows:

11.1 (d)122(B)(v): have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of criminal history screening criteria.

(I) The criminal screening criteria must, at minimum, include:

(-a-) Permanent denial based on criminal history at application for lifetime registered sex offenders, or any conviction for felony manufacture of methamphetamines; and

(-b-) Temporary denial for a minimum of two years from date of arrest based on criminal history for a violent or armed felony conviction.

(II) The criminal screening criteria may include provisions for mitigation ~~of that waive~~ temporary or permanent denials, such as letters of recommendation from mental health professionals, employers, case managers, or others.

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

11.1(d)(122) Supportive Housing with Direct Loans

We are very supportive of staff's added language which specifically allows Direct Loans for Supportive Housing. This is a critical piece of gap funding for SH deals. The Supportive Housing definition and related underwriting requirements are very complex and we wanted to note a few logistical inconsistencies.

- In the added language to the Supportive Housing definition in section 11.1(d)(122)(E)(i) we believe that the intent is to eliminate the infeasibility conclusions from 11.302(i)(3) & (4), not (4) & (5). This might have been an error due to changes in numbering.
- Section 11.302(i) currently includes an erroneous reference to 6B, which has been renumbered as 5(B). Additionally, it is our understanding that all of Section 5, not just 5(B) will except paragraphs (3)-(4). We suggest changing the reference from 6B to 5.
- In section 11.302(i)(5)(B)(iv), staff added an exception for Supportive Housing if accompanied by an irrevocable commitment to fund operating deficits. However, section 11.302(i)(5)(B) still states that "A Development financed with a Direct Loan will not be re-characterized as feasible with respect to (4)(B)", which is negative cash flow during the term of the loan. If the Sponsor is making an irrevocable commitment to fund operating deficits, then negative cash flow should NOT be an infeasibility conclusion. This also conflicts with the intent of the exception added to the Supportive Housing Definition. We would suggest moving the irrevocable commitment requirement to the definition. This would reduce confusion and conflict because the definition already excepts Supportive Housing projects from these infeasibility conclusions.

11.8(b)(2)(B) Notification Recipients

As part of our reasonable search for applicable Neighborhood Organizations, we oftentimes discover conflicting, outdated, or inaccurate mailing addresses and contact information in neighborhood websites, and city, county, records and/or state databases. We never know which one is 'accurate'. As a precaution we always email *and* mail notices, with the hopes that one is accurate. Sometimes the email address is accurate and the mailing address is not. Or vice versa. We suggest the following changes to address this logistical issue.

Regardless of the method of delivery, the Applicant must provide ~~an accurate~~ mailing address in the Pre-application, if a mailing address can be found in a reasonable search.

11.302(g)(4) Direct Loans

We understand that TDHCA feels that new parameters are necessary in order to meet federal requirements regarding over-subsidization, but we believe the language as proposed could generate numerous unintended consequences. Many projects do not have any owner equity, which would leave it unclear how the cash flow limit should be calculated. Additionally, many projects, especially supportive housing projects, may be required to have high first-year cash flow by the investor in order to demonstrate long-term feasibility and meet minimum operating-to-expense ratios, if the cash flow trends down over time. The cash flow may also be an important source to pay services fees that cannot be included above the line due to investor or lender restrictions.

We believe this needs more careful consideration before implementation, and we welcome the opportunity to participate in stakeholder discussions on how this may be more carefully resolved in future QAPs. Meanwhile, we request that TDHCA remove the language until it can be more carefully considered. At minimum, we urge the department to exempt supportive housing from this provision.

(96) Doni Green

From: [Doni Green](#)
To: [HTC Public Comment](#)
Subject: public comment on QAP Staff Draft
Date: Friday, October 09, 2020 9:46:46 AM

Please accept my public comment on the Staff Draft of the Qualified Allocation Plan (QAP).

I've reviewed the Staff Draft and have two general recommendations.

- Under 11.9.C(3)(A) Resident Services (page 41 of 150), I noted that "The Owner may change, from time to time, the services offered; however, the overall points as selected at Application will remain the same." I'm concerned that Owners' flexibility to change service at any time for any reason reduces their accountability to TDHCA and residents. I propose that Owners be required to undergo a review and approval process before being allowed to change resident services. I understand that Owners are currently required to notify residents of the resident services they offer. If they change resident services, I believe they should be required to give notice to residents of such changes.
- Under 11.101(a)(7)(E)(v) Community Supportive Services, I appreciate the inclusion of "specific service coordination." Further, I appreciate the inclusion of "a part-time resident services coordinator." Of all the community supportive services that Owners may offer, I believe that service coordination is among those with greatest benefit. It doesn't make any assumptions regarding the services that current and future tenants may need, and is intended to assist tenants in accessing the specific health and social services that are of benefit to them at any given point in time. To that end, I support increasing the total number of points that may be awarded to "specific service coordination" and "part-time resident services coordinator" to further incentivized these critical services.

Thanks for the opportunity to comment.

Doni Green
Director of Aging Programs
North Central Texas Council of Governments
Phone: 817-695-9193
Fax: 817-695-9274
Email: dgreen@nctcog.org



(97) Dylan Lowery

From: [Dylan Lowery](#)
To: [HTC Public Comment](#)
Cc: [Shontell Gauthier](#); [Alexis Sheehy](#)
Subject: Attn: Matthew Griego, QAP Public Comment
Date: Friday, October 09, 2020 9:52:33 AM
Attachments: [image003.png](#)

Dear Vice Chair Bingham and Members of the TDHCA Governing Board:

First, as a concerned citizen, and second, as a service provider for older adults experiencing homelessness I am registering my opposition regarding the proposed changes to the definition of “Supportive Housing” in Chapter 11 of the 2021 Staff Draft of the Texas Qualified Allocation Plan for the awarding and allocation by the Texas Department of Housing and Community Affairs of Competitive and non-Competitive Housing Tax Credits.

I will get straight to the point: the proposed changes reverse hard fought advocacy to create communities where people can reenter and become productive citizens. This is not just an issue of homelessness and affordable housing, it is also an issue of aging; our incarcerated brothers and sisters are growing old and we wish to create supportive communities they can come home to and age with dignity. I urge you all to visit reentryrountable.org to learn more about the work happening in Austin/Travis County and how we are “building successful strategies for reentry and reintegration.”

Without low-barrier supportive housing communities we will not have sufficient options to move people suffering from chronic homelessness off the street, or have decent housing for people coming out of the criminal justice system. Ultimately, this will harm our Texas communities, increase repeat instances of homelessness, and cost us a great deal more than it would if we invested in low-barrier deeply affordable and supportive housing available to all Texans.

Respectfully,

Dylan Lowery

He/Him

Housing Stability Case Manager

Family Eldercare

1700 Rutherford Ln. | Austin, TX 78754

512.483.3586 Office | 512.459.6436 Fax | FamilyEldercare.org



Family Eldercare's physical office is closed to all non-staff members effective March 18, 2020 until further notice, and we are shifting to remote operations. Our services continue, and I can be reached by phone and email during regular business hours. Updates at <https://www.familyeldercare.org/covid-19/>

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(98) Sue Kellogg

From: [Sue Kellogg](#)
To: [HTC Public Comment](#)
Subject: New restrictions on supportive housing
Date: Friday, October 09, 2020 10:32:44 AM

To whom it may concern: please, please do not put these new rules into affect. There's absolutely no evidence that such rules are needed; to some extent they are duplicative of federal policy, and they will be deeply hurtful for people struggling to rebuild their lives and trying to do the right thing. Much evidence shows that housing is critical for people to begin to restart their lives and take a better path. Policies that lead to homelessness and reincarceration are dangerous for the state of Texas. I thought the state was trying to reduce the recidivism rate; this is counterproductive. Again, please, please do not put these rules into affect. Sincerely, Susan Kellogg, Houston, TX.

Sent from my iPad

(99) Marsha Edwards

MARSHA H. EDWARDS
221 N Brighton Ave - Dallas, TX 75208
(972) 977-5516

Texas Department of Housing and Community Affairs
Attn: Patrick Russell
P.O. Box 13941
Austin, Texas 78711-3941
Email: htc.public-comment@tdhca.state.tx.us

Re: Texas Department of Housing & Community Affairs (TDHCA) 2021 Qualified Allocation Plan (QAP)

Dear Mr. Russell:

The Texas Department of Housing and Community Affairs (TDHCA) submitted its draft proposal for the 2021 Qualified Allocation Plan (QAP). Among the changes, the Plan would require supportive housing tax credit properties to refuse to house individuals with criminal backgrounds (temporarily or permanently, depending on the severity of the crime). **Please register my opposition to the changes proposed on page 15 of the document (listed at the end of this letter).**

In recent years, the State of Texas made great strides to address the issue of mentally ill in the criminal justice system. SB 292 and the Sandra Bland Act aim to reduce recidivism by decreasing the frequency of arrest and incarceration among people with mental illness. The denial of housing in this provision will undo the gains of the past 3 years.

Anyone facing homelessness or housing instability is likely to experience significant physical and financial turmoil. Barriers to housing can layer on top of and exacerbate other collateral consequences associated with a criminal record — like barriers to employment — further undermining one's ability to reenter the community. Moreover, people who are homeless are more likely to face incarceration, making it more likely that justice-involved people without stable housing will recidivate.

According to the Urban Institute, offering stable and safe housing is the only proven strategy for addressing the reactionary incarceration strategy of those who suffer from homelessness.

This change to the QAP would severely and adversely impact the ability of homeless response systems across the state to secure supportive housing for their clients, which in turn would lead to increased recidivism and increased homelessness.

Involvement with the criminal justice system should not result in a lifetime sentence to homelessness or financial insecurity. Ensuring access to housing is good for justice-involved individuals, their families, their communities, and our State. People with records, like everyone else, deserve a place to call home.

I am opposed to the changes cited below. Please contact me if I can provide additional information.

Respectfully,



Marsha Edwards

Draft 2021 Chapter 11, Qualified Allocation Plan (QAP) – page 15

(v) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident.

(I) The criminal screening criteria must not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(-a-) Permanent denial based on criminal history at application or recertification of any conviction for murder related offense, sexual assault, kidnapping, or arson;

(-b-) Temporary denial for a minimum of three years based on criminal history at application or recertification of any felony conviction for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;

(-c-) Temporary denial for a minimum of two years for non-violent felonies; and

(-d-) Temporary denial for a minimum of one year for Class A misdemeanors

(II) The criminal screening criteria may include provisions for mitigation of temporary denials including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

(100) Philip Guffy

From: [Philip Guffy](#)
To: [HTC Public Comment](#)
Subject: Comment on Proposed Rule Regarding Supportive Housing
Date: Friday, October 09, 2020 11:14:45 AM

I am writing to oppose the proposed rule change that would require Supportive Housing Developments to bar people convicted of certain crimes. Such a rule would not promote public safety. In fact, it would do the opposite as people would be forced into the streets and made desperate rather than being in a stable situation with access to support resources. Further, if one of the goals of our criminal justice system is to rehabilitate and reintegrate formerly incarcerated people, denying them housing services only frustrates that goal.

Please do not approve this rule change as it is counterproductive and not in the best interests of the public.

Thank you for your consideration.

Philip Guffy
Houston, Texas

--

Philip Guffy
pguffy@gmail.com
832.715.3662

(101) Lindsay Bing

From: [Lindsay Bing](#)
To: [Matthew Griego](#)
Subject: Fwd: QAP Public Comment: Chapter 11
Date: Friday, October 09, 2020 11:23:26 AM

----- Forwarded message -----

From: **Lindsay Bing** <lbings@utexas.edu>
Date: Fri, Oct 9, 2020 at 11:00 AM
Subject: QAP Public Comment: Chapter 11
To: <htc.publiccomment@tdhca.state.tx.us>

Dear Matthew Griego,

I am writing to strongly urge the Texas Department of Housing and Community Affairs to **strike all restrictions which would bar people with criminal records from accessing affordable and supportive housing.**

I am a doctoral student at UT-Austin, and I study the collateral consequences of the criminal justice system. I also run the Texas Prison Education Initiative, a volunteer-organization that teaches college courses inside prisons. I know from both academic and personal experience that housing restrictions hurt public safety.

Historically, Texas has had some of the most severe criminal justice policies in the world. The state has previously led the nation on incarceration rates, meaning that **a significant share of Texans have prior felony and serious misdemeanor convictions.**

The new rules would make it harder for our fellow Texans to fully integrate into society, find work, become self-reliant, and steer clear of future arrests.

The Texas legislature has just begun meaningful justice reforms. This policy would be a giant leap backwards, and risks endangering the public further by abandoning our citizens who very much need social support as they return to society.

Sincerely,

Lindsay

--
Lindsay Bing
Doctoral Student
Population Research Center Trainee
Department of Sociology
University of Texas at Austin

--

Lindsay Bing
Doctoral Student
Population Research Center Trainee
Department of Sociology
University of Texas at Austin

(102) DMA



October 9, 2020

Marni Holloway
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Dear Marni:

On behalf of DMA Development Company, LLC, I am submitting the following comments to the QAP and the Multifamily Rules.

Qualified Allocation Plan

§11.7 Tie Breaker Factors – DMA requests that the first tie breaker be eliminated because it causes developers to chase certain census tracts over others due to whether the census tract is over the average poverty rate. It is very complicated as well and it doesn't achieve any policy objective because in most cases, the tie is between two census tracts with only a few percentage point difference in poverty rates.

Having a census tract-based tie breaker drives multiple developers to the same census tracts, which drives up land prices in those few census tracts. Having one tie breaker, that developers cannot game, is a simpler approach that achieves the clear policy objective of deconcentration.

§11.9(c)(7)(B) Proximity to Jobs Area – Proximity to Jobs – DMA agrees with TAAHP's recommendation of lowering the 2021 QAP job count thresholds as follows:

- The Development is located within 1 mile of 16,500 13,500 jobs. (6 points)
- The Development is located within 1 mile of 13,500 10,500 jobs. (5points)
- The Development is located within 1 mile of 10,500 7,500 jobs. (4 points)
- The Development is located within 1 mile of 7,500 4,500 jobs. (3 points)
- The Development is located within 1 mile of 4,500 2,000 jobs. (2points)
- The Development is located within 1 mile of 2,000 1,000 jobs. (1point)

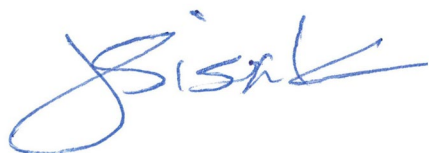
But our position is that this change does not go far enough because it does not solve the problem that the small 1 mile radius causes, which is that very expensive commercial sites are the only ones that can score competitively. This is a problem for several reasons. First, commercial sites are in many cases not appropriate for residential development since they are often located on major highways or thoroughfares. Second, commercial sites are expensive to purchase. Third, commercial sites are often small and so in order to get a reasonable amount of units on the site, the developer needs to go up, which requires additional costly amounts of concrete and steel, and podium parking in many cases. The program, due to the strict cost per square foot limitations, does not get the biggest bang for its buck out of these sites. It is an inefficient use of resources.

That said, DMA recommends that the 1-mile radius be increased to 2-mile.

§11.9(c)(8) Readiness to Proceed in Disaster Impacted Counties (“RTP”) – This deadline, which for a second year in a row will be impossible to meet, achieves no policy objective. No deal closed by the deadline last year, so it achieved nothing but extra consternation within the development industry and extra administrative work for TDHCA.

DMA requests that this provision be removed.

Sincerely,



Janine Sisak
Senior Vice President/General Counsel

cc: Bobby Wilkinson – TDHCA Executive Director

(103) Dallas County District Attorney



JOHN CREUZOT
CRIMINAL DISTRICT ATTORNEY
DALLAS COUNTY, TEXAS

Texas Department of Housing and Community Affairs
Attn: Patrick Russell
P.O. Box 13941
Austin, Texas 78711-3941
Email: htc.public-comment@tdhca.state.tx.us

Re: Texas Department of Housing & Community Affairs (TDHCA) 2021 Qualified Allocation Plan (QAP)

Dear Mr. Russell:

The Texas Department of Housing and Community Affairs (TDHCA) submitted its draft proposal for the 2021 Qualified Allocation Plan (QAP). Among the changes, the Plan would require supportive housing tax credit properties to refuse to house individuals with criminal backgrounds (temporarily or permanently, depending on the severity of the crime). **Please register my opposition to the changes proposed on page 15 of the document (listed at the end of this letter).**

Research repeatedly shows **Housing** is the key to successful reentry for justice-involved individuals (Shriver Center on Poverty Law, Texas Criminal Justice Coalition, Justice Policy Center, Brennan Center for Justice Study and many more). Home is the cornerstone from which people build healthy, productive lives for themselves and their families.

Entire families and communities suffer when people with records are unable to secure housing. The collateral penalties of a criminal record are not limited to justice-involved individuals. For example, nearly half of all U.S. children have a parent with a record; housing instability can significantly undercut these kids' ability to graduate high school, enroll in, and finish college. These blows to upward mobility do not just harm individuals and their families — in the end, they ultimately harm us all.

Anyone facing homelessness or housing instability is likely to experience significant physical and financial turmoil, but the stakes are even higher for people with records. Barriers to housing can layer on top of and exacerbate other collateral consequences associated with a criminal record — like barriers to employment — further undermining one's ability to reenter the community. Moreover, people who are homeless are more likely to face incarceration, making it more likely that justice-involved people without stable housing will recidivate.

According to the Urban Institute, offering stable and safe housing is the only proven strategy for addressing the reactionary incarceration strategy of those who suffer from homelessness.

This proposal will disproportionately affect the African American community who is overrepresented in the incarcerated population as well as in our homeless population.

This change to the QAP would severely and adversely impact the ability of homeless response systems across the state to secure supportive housing for their clients, which in turn would lead to increased recidivism and increased homelessness.

Involvement with the criminal justice system should not result in a lifetime sentence to homelessness or financial insecurity. Ensuring access to housing is beneficial for justice-involved individuals, their families, their communities, and our State. People with records, like everyone else, deserve a place to call home.

I am opposed to the changes cited below. Please contact me if I can provide additional information.

Respectfully,


John Creuzot
Dallas County Criminal District Attorney

Draft 2021 Chapter 11, Qualified Allocation Plan (QAP) – page 15

(v) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident.

(I) The criminal screening criteria must not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(-a-) Permanent denial based on criminal history at application or recertification of any conviction for murder related offense, sexual assault, kidnapping, or arson;

(-b-) Temporary denial for a minimum of three years based on criminal history at application or recertification of any felony conviction for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;

(-c-) Temporary denial for a minimum of two years for non-violent felonies; and

(-d-) Temporary denial for a minimum of one year for Class A misdemeanors

(II) The criminal screening criteria may include provisions for mitigation of temporary denials including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

(104) Jamie O'Quinn

From: [Jamie O'Quinn](#)
To: [Matthew Griego](#)
Subject: QAP Chapter 11
Date: Friday, October 09, 2020 11:34:01 AM

Dear Mr. Griego,

My name is Jamie O'Quinn and I am a doctoral candidate in the Department of Sociology at UT Austin. I am writing to ask The Texas Department of Housing and Community Affairs to **strongly oppose** any further restrictions on supportive housing for people with criminal records through QAP Chapter 11. Such restrictions further inequalities caused by mass incarceration of people of color in the US. Please do not hesitate to reach out to me to discuss this further.

Sincerely,
Jamie O'Quinn, MA

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Jamie O'Quinn, PhD Candidate
[The University of Texas at Austin](#) | Department of Sociology | She/her

(105) Michelle Eilers

From: [Michelle Eilers](#)
To: [Matthew Griego](#)
Subject: Comment on QAP10, Chapter 11
Date: Friday, October 09, 2020 11:35:55 AM

Dear Matthew Griego,

I'm a resident of Austin and a lifelong Texan and I oppose the proposed rule to bar people with criminal records from accessing supportive housing. I tried emailing the public comment email address several times but my email bounced.

Poor people and people of color are disproportionately arrested and are more likely to hold criminal records, despite not having higher rates of committing crimes, and despite that the vast majority of crimes are low-level drug offenses and not violent. This rule would again target individuals who face a daily uphill battle to meet their basic needs in our society.

This rule also means that individuals with criminal records will continue to be punished long after they have served their rightful punishment. When the courts decide appropriate punishment, it is not intended to extend the full life of an individual. People with criminal records are capable of and want to engage in society and participate as citizens in our democracy. Indeed, in states like Florida where voting rights for those with felony convictions were recently restored, there is a very large interest in voter registration.

This is especially relevant for housing that provides social services, because individuals with criminal records often need assistance with finding work and providing for their family, because of discrimination that occurs because of their record. By taking away this resource, we are essentially saying we're okay with these individuals failing at meeting their most basic human needs - food, shelter, and employment. This is morally repugnant and unnecessarily cruel.

Please do not enact this new rule.

Sincerely,
Michelle Eilers

--

Michelle Eilers
Doctoral Student, Sociology and Demography
University of Texas at Austin
MSc Demography and Health, 2015
London School of Hygiene and Tropical Medicine
(979) 743-6605

(106) Phylis Wakefield

From: [phylis wakefield](#)
To: [Matthew Griego](#)
Subject: Public Comment: Housing
Date: Friday, October 09, 2020 11:42:11 AM

I am appalled at the potential barring of people with criminal records from accessing supportive housing. Supportive housing, community services, public education are essential in reducing recidivism and enhancing communities.

I strongly support **the removal of any provisions barring people with criminal records from accessing affordable & supportive housing!** (policy section QAP 10, Chapter 11)

Phylis Wakefield

--

Phylis Wakefield, Ph.D.

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(107) Maria Garcia

From: [Maria Garcia](#)
To: [HTC Public Comment](#)
Subject: Comment on Proposed Change
Date: Friday, October 09, 2020 11:46:19 AM

The change being proposed by the Texas department of housing and community affairs that would require supportive housing properties to refuse housing to people with criminal backgrounds even though they have already received justice, is incredibly unfair and unethical. The fact that some people would be permanently refused and some would have to be refused for at least one year if they have something as small as a class a misdemeanor (aka as small as getting arrested for pot). Sounds like systematic racism getting written into the rule book to me. Would essentially guarantee an increase in homelessness for these populations. Does not seem like a solution to me, just creating more issues. --
Maria Garcia

(108) Morgan Dickson

From: [Morgan Dickson](#)
To: [HTC Public Comment](#)
Subject: QAP comment
Date: Friday, October 09, 2020 11:49:07 AM

I am against the proposed changes to the QAP in regards to prohibiting individuals with criminal history to be outright refused or temporarily denied housing. I find it completely counterproductive to progress to further punish people by essentially subjugating them to homelessness. These people have already faced justice at the hands of the law, and do not need to once again be kicked while they are down. There is no grace or opportunity for redemption in this proposal. Housing first means housing for all including and especially the most vulnerable.

Additionally, we know there are a disproportionate number of minorities and especially african american people incarcerated due to systematic oppression. This proposal will only continue to enforce these racist systematic structures.

Please reconsider. This is an incredibly destructive rule that would set this state back.

(109) Aging Programs of North Central Texas

North Texas Aging and Disability Services

Texas Department of Housing and Community Affairs

Attn: Matthew Griego, QAP Public Comment

Htc.public-comment@tdhca.state.tx.us

P.O. Box 13941

Austin, Texas 78711-3941

MASCARI CORPORATION, dba North Texas Aging and Disability Services, is a contract provider of Housing Navigation Services. These services are provided under contract with the North Central Texas Council of Governments through its North Central Texas Aging and Disability Resource Center "NCT ADRC". Additionally, it is important to note that I, Marty Mascari, have extensive experience in providing community supportive services to resident of housing tax credit properties across Texas. I spent six and a half years as Executive Director of Housing Services of Texas, later known and Housing Services Incorporated, and was responsible for service within 34 HTC communities. The comments below are being submitted in response to the Public Comment period for the staff draft of the 2021 QAP.

Under 11.101(a)(7) The supportive service that is going to have the greatest impact on the residents of any HTC development is a dedicated service coordinator or contract service coordination with a dedicated onsite office. This is more important than transportation, after school or adult education programs as it should include an assessment of every residents needs and coordinate services accordingly. It is nearly impossible for a developer to project the social service needs of a proposed development until the property reached significant stabilized occupancy. In recent years, the need for service coordination has become increasingly important as we work to deinstitutionalize persons with intellectual and developmental and various other disabilities as well as resident with more complex medical needs through programs like 811 and Money Follows the Person. Additionally, each community is unique in its resources available to assist persons in need. One community will have an elaborate, client choice, food pantry with a substantial supply and variety of non-perishable, fresh, frozen, and refrigerated items and allow people in need to be served on a weekly basis as needed. At the same time, another community may rely on one or a small number of faith-based food closets and may restrict services to a one-time crisis annually. Proper service coordination provides an ongoing awareness of the changing needs of the tenants as well as the ongoing updates of community resources to meet these needs. Additionally, it provides the adjustment of onsite programs and support services bases on the needs of the residents and a lack of community services in a specific area, such as a food closet.

That being said, the current point system for Resident Supportive Services does not permit for an equitable value for providing of service coordination based on the cost and benefits. In looking at some of the other items, Services Coordinator should be 25 points. Some examples 11.101(a)(7)(C)(ii) the coordination of annual income tax preparation services which can be coordinated with a couple of phone calls thru the VITA program and a flyer to the residents, or 11.101(a)(7)(E)(ii) Notary Services which cost the landlord nothing but requiring one of their staff to be a notary and I question how often this service is actually needed/used. Additionally, if properly incentivized, a service coordinator can coordinate many of the Adult Supportive Services, 11.101(a)(7)(C), Health Supportive Services, 11.101(a)(7)(D), and Community Supportive Services, 11.101(a)(7)(E).

North Texas Aging and Disability Services

For this QAP, I would like to see items 11.101(a)(7)(E)(v) and 11.101(a)(7)(E) (vii) combined with a priority given to critical needs of Seniors, Persons with Disabilities and Supportive Housing and that the minimum weekly hours requirement be adjusted based on the number of units in the development. My suggestion would be a minimum of 15 hours per week for 30 or fewer units, 20 hours per week for 31 to 60 units, 30 hours per week for 61 to 90 units and 40 hours per week for 91 or more units. I would like this to be a minimum of 6 points.

I would like to see for the QAP 2022 that the Community Supportive Services point system be overhauled to provide for equitable points based on cost/benefits of each item. We are also in need of an incentivized system to allow developers to be rewarded for going above and beyond to meet the residents needs and to disincentivize the idea of just checking off the box with minimal effort or expense.

Submitted by:

Martin Mascari
President

(110) Maggie Luna

October 9, 2020

Texas Department of Housing and Community Affairs
QAP Public Comment, P.O. Box 13941
Austin, TX 78711

Attn: Matthew Griego, htc.publiccomment@tdhca.state.tx.us

Dear TDHCA Governing Board:

I am writing to express concerns related to draft *2021 QAP, 10 TAC 11.1(d)(122)(B)(v), Supportive Housing Tenant Selection Criteria*. Supportive housing is a vital resource for justice involved individuals with the highest barriers to housing.

Concerns:

- The proposed rule change will dramatically impact access to supportive housing for a group that already faces significant barriers to housing, thereby increasing the rate of homelessness.
- The draft is also inconsistent with Governor Abbott's support of addressing chronic homelessness in Texas. Abbott supported changes to the 2020 QAP to leverage Low Income Housing Tax Credit developments to house those who are chronically homeless by aligning with local homeless continuums of care.
- The proposed tenant selection criteria far exceed existing Housing and Urban Development (HUD) criteria by including both the manufacturing and delivery of illegal drugs, beyond methamphetamines; and it includes a lifetime ban for anyone on a registry.

Relevant Research & Community Resources:

- Years of research and experience demonstrate that supportive housing can dramatically reduce recidivism, especially for groups that have conviction histories for more serious offenses.
- Criminal offenses that occurred more than five years prior to move-in had no significant impact on housing outcomes.

We appreciate you considering these issues, and we ask that you not approve the changes to the QAP. Rather, we ask that the Texas Department of Housing and Community Affairs work with stakeholders, including community organizations dedicated to promoting housing access for justice involved individuals as well as those who would be impacted by changes to the QAP, in developing a solution that addresses the concerns of all parties.

Respectfully,

Maggie Luna

(111) Veronica Morales

From: [Veronica Rizo Morales](#)
To: [Matthew Griego](#)
Subject: 2021 QAP, 10 TAC 11.1(d)(122)(B)(v), Supportive Housing Tenant Selection Criteria
Date: Friday, October 09, 2020 12:23:16 PM

October 8, 2020

Texas Department of Housing and Community Affairs
QAP Public Comment, P.O. Box 13941
Austin, TX 78711

Attn: Matthew Griego, htc.publiccomment@tdhca.state.tx.us

Dear TDHCA Governing Board:

I feel compelled to express concern about *2021 QAP, 10 TAC 11.1(d)(122)(B)(v), Supportive Housing Tenant Selection Criteria*. Supportive housing is necessary for anyone with any kind of criminal record! They already have the highest barriers to housing without additional rules and laws.

Concerns:

- The proposed change would impact access to supportive housing for a group that already faces significant barriers to housing.
- It would, in fact, increase homelessness.
- It is inconsistent with Governor Abbott's support of addressing chronic homelessness in Texas. Abbott supported changes to the 2020 QAP to leverage Low Income Housing Tax Credit developments.
- The proposed tenant selection criteria far exceed existing Housing and Urban Development (HUD) criteria by including both the manufacturing and delivery of illegal drugs, beyond methamphetamines; and it includes a lifetime ban for anyone on a registry.

Relevant Research & Community Resources:

- It has been repeatedly proven that supportive housing dramatically reduces recidivism; especially for those with conviction histories for serious offenses.
- Criminal offenses that occurred more than five years prior to move-in had no significant impact on housing outcomes.

Thank you for considering these issues. Please do not approve the changes to the QAP. Rather, have the Texas Department of Housing and Community Affairs work with stakeholders, including community organizations that support justice involved individuals, as well as those who would be impacted by changes to the QAP, in developing a solution that addresses the concerns of all parties.

Respectfully,

Veronica Morales

Concerned citizen of Dallas, TX - USA

(112) Alicia Duncombe

From: [Alicia L Duncombe](#)
To: [Matthew Griego](#)
Subject: QAP 10, Chapter 11
Date: Friday, October 09, 2020 12:25:55 PM

Hi Matthew,

I'm emailing about the new rules for supportive housing (QAP 10, Chapter 11) that would bar sex offenders and those convicted for "illegal manufacture or distribution" of drugs from accessing it. Access to affordable housing is key to preventing recidivism for this population. Please reconsider these overly strict rules.

Thank you,
Alicia Duncombe
601 Cardenas Ln
Austin, TX 78748

--

Graduate Student | Department of Sociology
Trainee | Population Research Center
University of Texas at Austin
She*Her*Hers

(113) Texas Harm Reduction Alliance



October 9, 2020

Texas Department of Housing and Community Affairs
QAP Public Comment, P.O. Box 13941
Austin, TX 78711

Attn: Matthew Griego, htc.publiccomment@tdhca.state.tx.us

Dear TDHCA Governing Board:

I am writing to express concerns related to draft *2021 QAP, 10 TAC 11.1(d)(122)(B)(v), Supportive Housing Tenant Selection Criteria*. Supportive housing is a vital resource for people with substance use disorders and creating high barriers for individuals who have a criminal history will only contribute to an increase in homelessness for this population.

Concerns:

- The proposed rule change will dramatically reduce access to supportive housing for a group that already faces significant barriers to housing, thereby increasing the rate of homelessness.
- The draft is inconsistent with Governor Abbott's support of addressing chronic homelessness in Texas. Abbott supported changes to the 2020 QAP to leverage Low Income Housing Tax Credit developments to house those who are chronically homeless by aligning with local homeless continuums of care.
- The proposed tenant selection criteria far exceed existing Housing and Urban Development (HUD) criteria by including both the manufacturing and delivery of illegal drugs, beyond methamphetamines; and it includes a lifetime ban for anyone on a registry.
- Supportive housing, by definition, is designed for people with complex needs, including involvement with the criminal legal system and substance use disorders.

The changes contradict the evidence:

- Years of research and experience demonstrate that supportive housing can dramatically reduce recidivism, especially for groups that have conviction histories for more serious offenses.
- Criminal offenses that occurred more than five years prior to move-in had no significant impact on housing outcomes.
- Housing First models of supportive housing are an effective strategy for people experiencing homelessness who also have substance use and mental health disorders and cannot be effective with the proposed changes to the QAP.



We appreciate you considering these issues, and we ask that you not approve the changes to the QAP. Rather, we ask that the Texas Department of Housing and Community Affairs work with stakeholders, including community organizations dedicated to promoting housing access for people with substance use disorder through supportive housing strategies.

Sincerely,

Cate Graziani

Cate Graziani
Co-Executive Director
Texas Harm Reduction Alliance
1909 E. 38th ½ St Suite C
Austin, TX 78723

(114) Phase Engineering

From: [Tracy Watson](#)
To: [HTC Public Comment](#)
Cc: [Ross Doctoroff](#)
Subject: FW: Public Comment: Proposed 2021 Qualified Allocation Plan (QAP)
Date: Friday, October 09, 2020 12:32:36 PM
Importance: High

On behalf of Phase Engineering, Inc. we offer the below comments to the proposed 2021 Qualified Allocation Plan (QAP), specifically related to a Scope and Cost Review (SCR) per Section 11.306.

The following is a list of our general comments:

1. I was going to comment on the photographs in (c), but someone already made that deletion. I support that deletion.
2. In regards to Section (d)(1), historical significance of the buildings does not relate to evaluating the condition of the buildings and should not also be relied upon the provider to mitigate the renovation of related historic features. Historical designation is already being evaluated under other application items that the applicant has assembled their team to conduct. I think that if any historical features or buildings are identified during the course of the application process, then the cost/scope should be provided to the provider and an opinion of the adequacy of the cost/scope should be included in the SCR. This should be made clear in the section pertaining to historical significance. Also, a definition or factors that qualify a building as historic should be included in the QAP.
3. Description of scope of work as indicated in Section (d)(2) should be detailed as it pertains to what the TDHCA is actually expecting. How detailed does it need to be? Who is responsible for providing the narrative that goes into the report? Does the narrative that goes into the report need to match the developer's scope of work if the provider is required to derive the narrative independently of the developer? The responsibility of the narrative should be identified in the QAP.
4. Section (d)(5) has caused a significant amount of uncertainty. What does the TDHCA want in regards to which "Department" this is referring to and what Uniform Physical Condition Standards it is actually referring to. What scoring criteria? What does the TDHCA actually want?
5. Section (d)(6) has caused the most uncertainty and inconsistency. What actual statements does the TDHCA want? Can the TDHCA just list what requirements they want referred to in this Section instead of refer the reader to a completely different portion of the QAP that is related to some other application requirement? The TDHCA also wants the provider to address that they met and addressed these requirements. What is actually needed to address this? Why can't this section just be direct and related to accessibility requirements and specifically spell out what requirements are necessary? The edited SCR indicates "relating to Site and Development Requirements and Restrictions", but what does that actually mean to any person that is not significantly experienced in doing this kind of work for the TDHCA?
6. Why does the Development Cost Schedule need to go into the SCR? It is already being submitted to the TDHCA in the application. If there are variations in the Cost Development Schedule versus the provider's SCR, then I agree that those variations should be addressed (although it seems that the TDHCA is unwilling to accept SCRs that have a variation and a good explanation)?
7. Section (8)(A) identifies Immediately Necessary Repairs and Replacement, Section (8)(B)

identifies Proposed Repair, Replacement, or New Construction, Section (8)(C) identifies Reconciliation of Costs and Section (8)(D) identifies Expected Repair and Replacement Over Time. Can the supplement sheet be revised to include the same header names to be consistent with the rule, or can the QAP include these column headers in the actual text to be referred to?

8. Why does the TDHCA allow the reports listed under Section (8)(D)(f)(1-4)? None of these reports address narrative required under the SCR in regard to the provider's opinion of agreement in the scope and costs. This appears to create a fair amount of inconsistency in comparison of different projects that are both seeking funding under the TDHCA. If the TDHCA is still going to accept these alternative types of reports, then the QAP should list the criteria upon what is required in these reports that will satisfy the TDHCA's reviewer. In a nut shell, a PCR is similar to a PNA that is similar to a CNA, but a PCR, PNA and CAN are not similar to an SCR.
9. Will the TDHCA specifically identify the actual verbiage that it is requesting and where in the report the verbiage need to be as identified in Section (8)(D)(i). The same goes for generic required language that needs to be in the reliance letter under Section (8)(D)(h).

Tracy Watson

VP Special Projects

Cell 713-854-8670

Tracy@PhaseEngineering.com

Order Proposals Online at www.PhaseEngineering.com

(115) Miranda Nadeau

From: [Miranda M Nadeau](#)
To: [Matthew Griego](#)
Subject: Comment for TX Dept of Housing & Community Affairs
Date: Friday, October 09, 2020 12:59:24 PM

Dear Mr. Griego,

My name is Miranda Nadeau, and I am a Texas resident and voter in Austin, Travis County. I am aware that a new rule proposed in the Texas Department of Housing and Community Affairs would bar people with criminal records from accessing supportive housing. I am writing to voice my **strong opposition** to any provisions barring people with criminal records from accessing affordable and supportive housing. Such a provision is sure to exacerbate recidivism rates and further contribute to the dehumanization of our fellow citizens. Please record and pass on my comment to the relevant decision-makers.

Thank you,
Miranda M. Nadeau, Ph.D.
2210 Del Curto Road #A
Austin, Texas 78704

(116) The Humane Society Texas



October 9, 2020

Texas Department of Housing and Community Affairs
Attn: Matthew Griego
QAP Public Comment
P.O. Box 13941
Austin, Texas 78711-3941
Submitted Via Email: htc.public-comment@tdhca.state.tx.us

Dear Mr. Griego,

The Humane Society of the United States (HSUS) is a national animal welfare non-profit organization that, for over 70 years, has worked to protect animals large and small from cruelty and to prevent neglect. A significant part of the HSUS' work is protecting companion animals—and the humans who love them—from discriminatory laws and practices that can separate families and pets. The forced separation of families from their pets is immensely traumatic for both humans and animals, particularly when families are forced to surrender their pets in order to secure other needs, like housing.

Moreover, we recognize that the same poverty and structural inequity that creates inequitable access to healthy food, education, jobs, health care and housing also creates obstacles to affordable veterinary and pet wellness services. With tens of millions of pets living with loving families in poverty, there is an inextricable link between an individual or family's access to resources, including an affordable, decent, and safe home and the welfare of the companion animals who are part of that family.

I am the Texas State Director of the HSUS, but I am also a former affordable housing attorney in Texas with several years of experience assessing the impacts of various provisions of the Qualified Allocation Plan on low-income renters and renters of color across our state. This background, in combination with the decades of experience of staff at the HSUS who advocate for more equitable access to resources in the context of pet wellness gave us a unique perspective as we reviewed the 2021 Draft QAP.

To that end, please accept the following comments in response to the 2021 Staff Draft of the Texas Qualified Allocation Plan (QAP).

- I. **The HSUS opposes the increased distance to amenities allowed in the rural and urban Opportunity Index in §11.9(c)(4)(B) and recommends maintaining the maximum distances allowed by the 2020 QAP.**

The proposed change from a 1-mile maximum allowable distance from amenities, such as grocery stores, to 2 miles will disproportionately impact tenants who are pet owners and who are physically disabled and/or do not have access to a car.

As mentioned above, the HSUS advocates for equitable access to resources, including pet wellness resources. Housing policies—and where our state prioritizes affordable housing development, in particular—should reflect a prioritized access to vital resources, like grocery stores and pet supply stores. It’s likely that many of the proposed site developments under this proposed 2-mile radius would allow for affordable housing to be built in areas that the United States Department of Agriculture (USDA) defines as having “low access” to healthy food, meaning that 500 people and/or 33 percent of the tract population resides more than 1 mile from a supermarket or large grocery store [in urban areas].”¹

Lack of easy access to grocery stores may also particularly impact pet owners living in these properties because grocery stores, are often where pet owners buy pet food, toys, treats, etc. Therefore, the HSUS opposes the proposed change to a 2-mile radius from amenities, like grocery stores, and recommends maintaining the current 1-mile radius.

II. The HSUS strongly opposes, and recommends completely striking, the proposed criminal background screening criteria in §11.1(d)(122)(B)(v) from the 2021 QAP.

The proposed criminal background screening criteria for Supportive Housing Developments are overly broad, discriminatory, and only serve to further limit an already slim safety net of resources for low-income pet owners who are re-entering society after being involved in the criminal justice system.

The role of Supportive Housing in providing necessary housing stability and services for our most vulnerable renters is well documented.² In particular, Supportive Housing models focus on providing resources for targeted groups of people, including those with a history of experiencing homelessness (or are at a greater risk of experiencing homelessness), those with a history of substance abuse disorders, and those with a history of mental illness.³ Each of these underlying issues (homelessness, substance abuse, and mental illness) is also correlated with increased interaction with the criminal justice system.⁴ Staff’s recommendation to disallow tenants on the basis of Class A Misdemeanors and non-violent felonies is overly broad for the purpose of ensuring the safety of other tenants and staff at Supportive Housing Developments. A significant number of people experiencing homelessness have criminal histories of nonviolent offenses but offenses that nonetheless would disallow their participation in tax credit projects if these proposed changes were to go into effect. If these rules are implemented there is an immense risk that a significant proportion of the very people that Supportive Housing is meant to serve will be unable to utilize this vital safety net program thus separating families from their pets or forcing them into homelessness. Other commenters (see Texas Housers

¹ United States Department of Agriculture, Economic Research Service, “Documentation”, available at <https://www.ers.usda.gov/data-products/food-access-research-atlas/documentation/> (Last visited Oct. 9, 2020).

² Fontaine, J., Urban Institute, *The Role of Supportive Housing in Successful Reentry Outcomes for Disabled Prisoners*, available at, <https://www.huduser.gov/periodicals/cityscape/vol15num3/ch3.pdf>

³ *Id.*

⁴ “This particular population—those affected by behavioral health issues and histories of residential instability—are disproportionately represented in the correctional population.” *Id.* at p. 54,

comments, e.g.) go into greater detail about the impact this change would have on our most vulnerable renters, including a likely disproportionate impact on Black renters.

What we want to add to the already robust discussion in others' comments about the impact of these proposed rules on already vulnerable tenants, is a discussion of the additional implications these rules will likely have on the companion animals that are part of the families who would be ineligible for housing under these proposed changes. The HSUS is in support of a housing first approach⁵ that does not limit access to housing based on past interaction with the criminal justice system, disability, or other factors. We are a proponent of equitable housing policies, in general, because we also recognize that preventing our most vulnerable pet owners from access to a safe, decent place to live—one of the most important and basic needs for any person or pet—will likely result in harm to pets and even force people to give up pets that they otherwise love and care for as important members of their families.

Pets are an integral part of life—with almost two-thirds of people living with at least one animal.⁶ Studies suggest that upwards of 10% of the nation-wide population of people experiencing homelessness have at least one pet.⁷ As Texas Homeless Network pointed out in their comments, on any given night in Texas, there are over 27,000 people experiencing homelessness, which—according to national trends—may translate into upwards of 2,700 pets also homeless with their owners. Moreover, decades of research on the importance of the relationship between pets and people show that there are significant physical, emotional, and mental health benefits of pet ownership.⁸ Protecting the bonds between people and their pets in this vulnerable population is incredibly important and no person should be denied the opportunity to experience the emotional and physical benefits that come with pet ownership. A brief review of Texas Supportive Housing Developments across the state suggests that these property owners have, in many cases, recognized this important human-animal bond by making their properties pet-friendly.

At the HSUS, we believe that advocating for the welfare of companion animals necessarily includes advocating for equitable access to resources for pet owners. Preventing so many of our state's most vulnerable renters and pet owners from being served by Supportive Housing programs in Texas will, ultimately, result in what might be an otherwise avoidable separation of pets and their families. Therefore, HSUS recommends that Staff remove these criminal background screening provisions from the final 2021 QAP.

⁵ *Id.* at p. 56.

⁶ Hodgson, K., et. al, Pets' Impact on Your Patients' Health: Leveraging Benefits and Mitigating Risk, *Journal of the American Board of Family Medicine* 28(4) 526-534 (2015), available at <https://www.jabfm.org/content/28/4/526.full>.

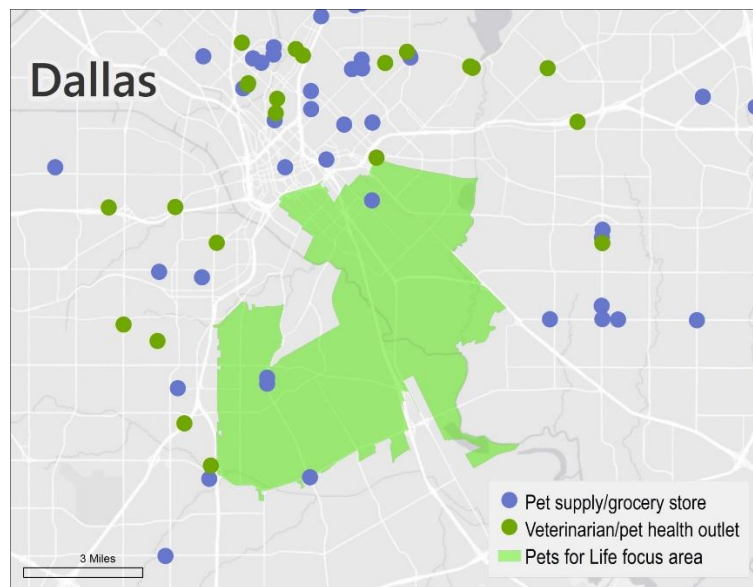
⁷ National Alliance to End Homelessness, Improving Outcomes In Homelessness: Keeping People and Pets Together, available at <https://endhomelessness.org/wp-content/uploads/2020/03/Keeping-People-and-Pets-Together-031220.pdf>.

⁸ Irvine, L., The Humane Society Institute for Science and Policy, Animals as Lifechangers and Lifesavers: Pets in the Redemption Narratives of Homeless People, available at https://www.wellbeingintlstudiesrepository.org/cgi/viewcontent.cgi?article=1007&context=acwp_habr.

III. The HSUS opposes allowing Developers to obtain a resolution from the relevant city or county local government rather than being required to submit a Neighborhood Risk Factors Report if a proposed development is in a census tract with a poverty rate greater than 40%.

Across the country there are strong patterns of significantly higher private investment in low-poverty, majority white neighborhoods than in high-poverty neighborhoods, and neighborhoods whose residents are primarily people of color.⁹ Without intentional investment in neighborhoods to build grocery stores, hospitals and doctors offices, veterinary clinics, and pet supply stores, residents in high-poverty neighborhoods will continue to live in resource deserts.

For example, the map below shows the complete lack of resources in high-poverty census tracts in South Dallas. The residents in these zip codes range from approximately 70% to 98% Black and Latino and the average poverty rate in these zip codes is 43%. When compared to the surrounding neighborhoods that have a much higher percentage of white residents, the neighborhoods highlighted in this map are conspicuously lacking grocery stores, veterinary clinics, and pet supply stores—despite there being many pet owners in those neighborhoods who have to purchase pet supplies, just like any other pet owner. This is a direct result of the failure in both the public and private sectors to invest in these majority Black and Latino communities, making it incredibly challenging for residents to find the resources they need to maintain their own health, much less access the resources pet owners need to care for their pets.



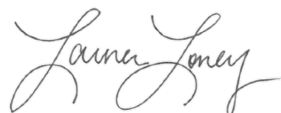
⁹ Moore, N., National Public Radio, *Study: Private Investment Flows to White, Wealthy Areas in Chicago By Wide Margins* (May 22, 2019), available at <https://www.npr.org/local/309/2019/05/22/725693671/study-private-investment-flows-to-white-wealthy-areas-in-chicago-by-wide-margins>; Theodos, B. and Meixell, B., *Preventing Unequal Investments in U.S. Cities*, U.S. News (Feb. 26, 2019 at 12:40 p.m.), available at <https://www.usnews.com/news/cities/articles/2019-02-26/its-time-to-end-unequal-access-to-capital-in-us-neighborhoods>.

To build a development in a high-poverty neighborhood, a Developer should have to prove to TDHCA that the neighborhood is receiving both public *and* private investment in resources that will benefit existing tenants. A simple resolution from the local government saying that they are comfortable with a new development is not sufficient evidence. Therefore, the HSUS opposes the provision in the 2021 QAP Staff Draft that allows for this resolution and recommends, instead, requiring Developers to submit a Neighborhood Risk Factor Report showing strategies for mitigating a high poverty rate in a proposed development site.

At the HSUS's Pets For Life¹⁰ program, we recognize that a deep connection with pets transcends socio-economic, racial, and geographic boundaries and that no one should be denied the opportunity to experience the benefits and joy that come from the human-animal bond—particularly not when that denial is due to a lack of financial means that has been perpetuated by generations of systemically racist and inequitable housing, food, and education policies. Ensuring that low-income pet owners have access to decent, affordable housing in neighborhoods where there is ready access to necessary resources is an absolutely vital component of protecting the human-animal bond.

Thank you so much for taking the time to consider these comments and if you have any questions please don't hesitate to reach out to me at lloney@humanesociety.org or (512) 534-7939.

Sincerely,

A handwritten signature in cursive script that reads "Lauren Loney".

Lauren Loney
Texas State Director, State Affairs
lloney@humanesociety.org
P. 512-534-7939

¹⁰ <https://www.humanesociety.org/issues/keeping-pets-life>

(117) Cleoney Lawrence

From: [Cleoney Lawrence](#)
To: [HTC Public Comment](#)
Subject: Objection to the Qualified Allocation Plan
Date: Friday, October 09, 2020 1:08:03 PM

The new changes to the Qualified Allocation Plan would make it difficult for our organization and many other organizations to assist our clients in finding housing. During a global pandemic, it is even more imperative that homeless response systems across the state have the ability to find housing for their clients.

This change to the QAP could lead to an increase in homelessness which would undo all of the progress made up to today. There has been a 53% decrease in the Greater Houston area, with more than 19,000 people being housed since 2011. Under this new change, all of that hard work would not have been possible.

I ask that you refrain from making this change as it would be yet another obstacle for our clients to restabilize.

--

Cleoney Lawrence
Staff Attorney
Beacon Law, a program of The Beacon



(713) 220-9753 (direct); (281) 764-7070 (facsimile)
P.O. Box 53958, Houston TX 77052 (mailing)
1301 Texas, Houston TX 77002 (physical)

beaconhomeless.org

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(118) Integral Care



October 6, 2021

Comment Submission RE: Multifamily **DRAFT 2021 CHAPTER 11, QUALIFIED ALLOCATION PLAN (QAP)**
2021 QAP Staff Draft Chapter 12 Bonds
2021 QAP Staff Draft Chapter 13 MFDL

Integral Care, the Local Mental Health Authority (LMHA) and Local Intellectual and Developmental Disability Authority (LIDDA) for Travis County, is dedicated to meeting our critical role in providing essential behavioral healthcare services and protecting the health and safety of our staff, clients and the community. For more than 30 years, Integral Care has worked to address the intersection of homelessness and behavioral health issues. Particularly during COVID-19, the nature of this pandemic has helped emphasize the Housing First principle – housing is a healthcare intervention. Integral Care completed construction of Terrace at Oak Springs last year, the first of its kind Housing First apartment community in Central Texas with an onsite primary and mental health care clinic. 50 people experiencing homelessness, including 25 veterans now call Terrace at Oak Springs home.

Integral Care utilizes a variety of funding sources to support the development of new housing, including Low Income Housing Tax Credits (LIHTC). LIHTCs play a key role in the development and preservation of affordable housing for our community and provide a source of equity financing that multifamily developers can use to create affordable rental housing here in Travis County.

The new proposal for the 2021 Qualified Allocation Plan (QAP), Multifamily Housing Revenue Bond Rule (Bond Rule) and Multifamily Direct Loan Rule (Direct Loan Rule) will severely impact our work in Permanent Supportive Housing and Housing First in the community we serve. Areas of concern include **(page 15 of 150, item 122- Supportive Housing)**:

- Temporary denial for a minimum of three years based on criminal history at application or recertification of any felony conviction for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;
- Temporary denial for a minimum of two years for non-violent felonies; and
- Temporary denial for a minimum of one year for Class A misdemeanors
- The criminal screening criteria may include provisions for mitigation of temporary denials including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years

These exclusionary housing policies will considerably limit Integral Care's ability to provide housing for individuals in our community. One of the groups hardest hit by the pandemic have been individuals

experiencing homelessness. Shelters are met with challenges as they continue to house hundreds of individuals while adhering to the rigid sanitary standards needed to stave off the virus. Between mid-March and the end of May, Integral Care placed 55 individuals in permanent supportive housing amid stay-at-home orders and social distancing. Successful placements are better accomplished with less punitive policies, as many of our clients with Serious Mental Illness (SMI) experience chronic homelessness and have criminal histories with limited access to housing. Homelessness itself is criminalized, as law enforcement often arrests individuals experiencing homelessness for offenses such as panhandling, sleeping in public spaces, or urinating in public. Additionally, formerly incarcerated people are nearly 10 times more likely than others to experience homelessness. Housing instability, homelessness, and the criminalization of homelessness can also make recidivism more likely, perpetuating an endless cycle. Integral Care serves individuals with the most complex mental health needs and increased restrictions would further prevent their access to housing.

One person experiencing chronic homelessness can cost taxpayers as much as \$30,000 to \$50,000 per year. Those experiencing homelessness comprised 34% of all total emergency department visits, inpatient admissions, and EMS encounters for Integral Care clients during Fiscal Year 2019, despite only comprising 18% of the total Integral Care client population. Less restrictive barriers to housing saves public dollars in shelter stays, hospital stays, emergency room visits and nights in jail.

Integral Care recommends allowing property owners the flexibility to create individualized screening criteria and consideration of applicants with a criminal record, prior to making a decision on an application, to determine whether they will pose a risk to existing housing tenants. These could include evidence of rehabilitation, either during incarceration or in the community; the effect of denial on minor children and efforts to reunify families; and whether denial will render the applicant homeless. By allowing property owners this flexibility, the rate of homelessness will not see further increases across Texas. Integral Care partners with developers and utilizes tax credits to provide our community with opportunities for housing and adding provisions related to criminal history will only increase existing barriers to access.

For Questions please contact:

Muna Javaid, LMSW

Senior Planner

Integral Care

P: 512-445-7714

E: muna.javaid@integralcare.org

(119) True Casa Consulting

TRUE CASA CONSULTING, LLC

October 9, 2020

Texas Department of Housing and Community Affairs
Attn: Matthew Griego
QAP Public Comment
P.O. Box 13941
Austin, TX 78711-3941
Submitted Via Email : htc.public-comment@tdhca.state.tx.us

Re: Comments to the Staff Draft of the 2021 Qualified Allocation Plan

Dear Mr. Griego –

Thank you for the opportunity to comment on the DRAFT 2021 Qualified Allocation Plan. I want to begin by commending staff for their heroic effort to make the 2020 HTC and MFDL cycle appear undeterred from the impacts of the pandemic. I know the dedication to achieve such an effort was enormous, so praise is deserved!

My comments this year are only focused on two sections of the Staff Draft of the 2021 Qualified Allocation Plan.

Section 11.1(d)(122)(B)(v) – Definition of “Supportive Housing”:

I have personally dedicated my entire career to the development of Supportive Housing communities in Texas. I consider the 879 units in eight TDHCA-financed Supportive Housing Developments that I helped create as one of my life’s most meaningful contributions. With that experience, comes a deep understanding of this type of housing and the transformational impact it has on lives who have been shut out of conventional housing. Lives that have been given a second chance.

The new language added to Section 11.1(d)(122)(B)(v) – which provides overly restrictive requirements for screening out potential Supportive Housing residents – is of great concern.

It is now my understanding that the criteria have been put in place as a response to one specific proposed Supportive Housing Development in one specific location. The negative impact of this new criteria will be widespread – impacting all major Cities in Texas – and the undercurrents of this policy direction are devastating – undermining the efforts of Federal, State and Locally funded systems to address homelessness. This is a policy step backward when we need to be running forward.

I firmly believe that owners of Supportive Housing – like any TDHCA-financed housing – need to have very clear tenant selection criteria in place. Having a set of Tenant Selection Criteria, including criminal history criteria, that can be unilaterally applied to a Development is paramount to operating a successful Supportive Housing community and a condition that is a non-negotiable for any Applicant applying for funding from TDHCA (or any public funding source for that matter.) However, mandating specific criteria that is counterproductive to best practices of supportive housing development is creating a bureaucratic web that will tangle the Department and our most vulnerable Texans.

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Just last year TDHCA added language to Section 11.1(d)(122)(E)(ii)(VI) ensuring that Supportive Housing Developments that met the requirements of Section 11.1(d)(122)(E)(ii) would have clear Tenant Selection Criteria with a box on Tab 17 – Development Narrative of the Application certifying as such:

(VI) the **Development's Tenant Selection Criteria** will include a clear description of any credit, criminal conviction, or prior eviction history that may disqualify a potential resident. The disqualification cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation (i.e. the Development must have an appeal process for non-federally required criteria);

To my understanding, no Supportive Housing Development current or proposed, was or would be in violation of this requirement.

Another issue with the criteria is compliance and enforcement. It is common practice for all housing owners to modify their Tenant Selection Criteria to meet changes in local, State and Federal initiatives and priorities, as well to best meet the needs of their residents. To require such a rigid set of criteria in the Qualified Allocation Plan will be unmanageable for TDHCA staff to oversee with an assured constant approach for amendment.

Additionally, I am concerned about the inclusion of this new criteria for the following reasons:

- 1) Just last year, a Continuum of Care set-aside was added to the QAP as Section 11.9(c)(6)(B). The majority of persons that experience homelessness who are coordinated through a City or State COC would be challenged to meet the new criminal history criteria suggested in the Supportive Housing definition. This means that general population projects are expected to house persons experiencing homeless from local COCs, but yet projects meeting the Supportive Housing definition are not? This is an example of the disconnect caused by the inclusion of the new criteria.
- 2) Inserting criminal history criteria into the largest affordable housing program in the State just exasperates unfounded stereotypes of affordable housing and makes the challenge of NIMBY even harder.
- 3) It is unprecedented for a State to include specific criminal history criteria in their QAP. This is a practice that will no-doubt put a lot of public eyes on TDHCA policy and open up the Department to preventable scrutiny.
- 4) As mentioned, a majority of persons experiencing homelessness will be challenged to meet the strict criteria added to the Supportive Housing definition which directly impedes both local and Statewide efforts to reduce homelessness. The QAP states that Supportive Housing is meant to have “supportive services tailored for members of a household with specific needs”, such as: “homeless or persons at-risk of homelessness” and “persons unable to secure permanent housing elsewhere due to specific, non-medical, or other high barriers to access and maintain housing”. The population intended to be served by the Supportive Housing is in direct conflict with the new criteria being proposed.

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With these concerns, I respectfully offer up the following solutions in order of priority:

- 1) Please remove Section 11.1(d)(122)(B)(v) in its entirety.
- 2) Please replace the current criteria with a simpler rule:

11.1 (d)122(B)(v): have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of criminal history screening criteria.

Section 11.306 Scope and Cost Review Guidelines

There was a lot of confusion this year regarding the Scope and Cost Review Guidelines resulting in multiple re-submissions which took the time of both TDHCA staff and the third-party report providers. I offer up these recommended changes provided after consult by Ross Doctoroff of Phase Engineering – a Scope and Cost Review provider - that might help staff curate these guidelines and provide clarification and specificity that will make next year's process a bit smoother. I am hopeful Staff finds the recommendations from the actual provider helpful for consideration.

- 1) Phase support Staff's deletion of required photographs in Section 11.306 (c).
- 2) In regards to Section (d)(1), historical significance of the buildings does not relate to evaluating the condition of the buildings and should not also be relied upon the provider to mitigate the renovation of related historic features. Historical designation is already being evaluated under other application items that the applicant has assembled their team to conduct. I think that if any historical features or buildings are identified during the course of the application process, then the cost/scope should be provided to the provider and an opinion of the adequacy of the cost/scope should be included in the SCR. This should be made clear in the section pertaining to historical significance. Also, a definition or factors that qualify a building as historic should be included in the QAP.
- 3) Description of scope of work as indicated in Section (d)(2) should be detailed as it pertains to what the TDHCA is actually expecting. How detailed does it need to be? Who is responsible for providing the narrative that goes into the report? Does the narrative that goes into the report need to match the developer's scope of work if the provider is required to derive the narrative independently of the developer? The responsibility of the narrative should be identified in the QAP.
- 4) Section (d)(5) has caused a significant amount of uncertainty. What does the TDHCA want in regards to which "Department" this is referring to and what Uniform Physical Condition Standards it is actually referring to. What scoring criteria? What does the TDHCA actually want?
- 5) Section (d)(6) has caused the most uncertainty and inconsistency. What actual statements does the TDHCA want? Can the TDHCA just list what requirements they want referred to in this Section instead of refer the reader to a

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completely different portion of the QAP that is related to some other application requirement? The TDHCA also wants the provider to address that they met and addressed these requirements. What is actually needed to address this? Why can't this section just be direct and related to accessibility requirements and specifically spell out what requirements are necessary? The edited SCR indicates "relating to Site and Development Requirements and Restrictions", but what does that actually mean to any person that is not significantly experienced in doing this kind of work for the TDHCA?

- 6) Why does the Development Cost Schedule need to go into the SCR? It is already being submitted to the TDHCA in the application. If there are variations in the Cost Development Schedule versus the provider's SCR, then I agree that those variations should be addressed (although it seems that the TDHCA is unwilling to accept SCRs that have a variation and a good explanation)?
- 7) Section (8)(A) identifies Immediately Necessary Repairs and Replacement, Section (8)(B) identifies Proposed Repair, Replacement, or New Construction, Section (8)(C) identifies Reconciliation of Costs and Section (8)(D) identifies Expected Repair and Replacement Over Time. Can the supplement sheet be revised to include the same header names to be consistent with the rule, or can the QAP include these column headers in the actual text to be referred to?
- 8) Why does the TDHCA allow the reports listed under Section (8)(D)(f)(1-4)? None of these reports address narrative required under the SCR in regard to the provider's opinion of agreement in the scope and costs.

This appears to create a fair amount of inconsistency in comparison of different projects that are both seeking funding under the TDHCA. If the TDHCA is still going to accept these alternative types of reports, then the QAP should list the criteria upon what is required in these reports that will satisfy the TDHCA's reviewer. In a nut shell, a PCR is similar to a PNA that is similar to a CNA, but a PCR, PNA and CAN are not similar to an SCR.

- 9) Will the TDHCA specifically identify the actual verbiage that it is requesting and where in the report the verbiage need to be as identified in Section (8)(D)(i). The same goes for generic required language that needs to be in the reliance letter under Section (8)(D)(h).

I do respectfully ask for job counts and eligible population of applicable Places associated with the Proximity to Jobs scoring category and Cost per Square Foot be addressed in 2022 QAP Roundtables as I believe they justify deeper discussion.

My Best,

Jenn Hicks

(120) Christopher White

From: [Chris White](#)
To: [Matthew Griego](#)
Subject: Fwd: Public comment - 2021 CHAPTER 11, QUALIFIED ALLOCATION PLAN (QAP)
Date: Friday, October 09, 2020 1:26:45 PM

----- Forwarded message -----

From: **Chris White** <chris@mcminnwhite.com>
Date: Fri, Oct 9, 2020 at 1:13 PM
Subject: Public comment - 2021 CHAPTER 11, QUALIFIED ALLOCATION PLAN (QAP)
To: <htc.publiccomment@tdhca.state.tx.us>

Hello,

I'm writing today to provide comment to the 2021 Chapter 11 Qualified Allocation Plan (QAP), posted as a Staff Draft to the TDHCA Multifamily website [here](#).

Specifically, my comments relate to section (122)(B)(v) - relating to Tenant Selection Criteria.

While granting that selection criteria are important and may (I am not an expert in applicable federal or state statutes) be required in some way, the restrictions outlined in part (v) are specific to the point of being prohibitive for what I expect to be a significant portion of the intended community needing these housing services.

As I am a resident of the City of Houston, I am aware of the efforts being made here by local government and a network of homeless services agencies to take on a 'Housing First' model for people experiencing or at-risk for experiencing homelessness. As you are no doubt aware, this approach aims to stabilize housing first as a keystone to navigating these clients to other resources and assistance.

One of the key challenges for a 'housing first' model is the fact that individuals with criminal histories are often excluded from residential programs in many commercial leases. In fact - this is sometimes a key factor for their experience of homelessness in the first place. These people still need navigation and services, but historically their access to that has required them to remain homeless while attempting to use these services. Quite bluntly - research and experience has shown this simply doesn't work effectively to reduce the prevalence of the experience of homelessness in the community.

While commercial housing can and I expect will continue to exclude these types of individuals as qualified tenants, tax credited, public (even partially) funded housing intended to and need and should not replicate this model for tenant qualification. Doing so is, in fact, counter-intuitive to the purposes of the program in the first place - which is to serve these clients and help them stabilize and transition out of the experience of homelessness, not stay in it!

Housing credits have been a key factor in helping to make programs focused on 'Housing First' viable models - allowing private landlords the ability to participate in these important public programs, and perhaps more importantly to build a stock of available housing that can meet the demands of the community. Meeting this demand is a key reason why I want my tax

dollars used for these programs. Restricting the use of public dollars to a subset of the people that need that benefit for reasons unclear is not acceptable to me.

In reading the draft,. I was struck by two key things that need reconsideration. In short, The focus needs to be on how qualified individuals can access services, rather than on how they cannot.

1) The restrictions on eligibility based on criminal history, and specifically the timings for the bans on assistance, need to be revisited in their entirety, with a focus on how the rules can be balanced to both meet the needs of public safety with the needs of the community being served. The only community of stakeholders these rules seem built to help are the landlords participating in the program

2) The appeals and exception process should have as much or greater detail as the restrictions, and should include codification of something like an independent review, perhaps by a coalition of local agencies in the community, or a local administrative unit, rather than leaving that up to the judgment of the landlords themselves. This amounts to potential creation of a 'fox guarding the henhouse' situation (in my view).

I would encourage the Board to work collaboratively with public and non-profit stakeholders in the greater Houston area - specifically, with organizations like SEARCH Homeless Services, that have deep experience working with the served community in that area and can provide much more specifics and related suggestions to my broad generalizations, above.

Thank you for your consideration and time in reviewing my comment,

Christopher White
200 Archer St
Houston TX 77009
(281) 352-9542

(121) Magnificat Houses

From: [Casey Kelly](#)
To: [HTC Public Comment](#)
Cc: [Casey Kelly](#)
Subject: Magnificat Houses responds to QAP changes
Date: Friday, October 09, 2020 1:49:13 PM

ATTENTION: Matthew Griego 10-9-20

RE: TDHCA's proposed change to the Qualified Allocation Plan

Magnificat Houses, Inc., a faith-based housing provider for homeless persons (including ex-offenders) for over 50 years, strongly opposes the proposed change in Section 122, pp 14- for these reasons:

- The proposed change prejudicing housing against ex-offenders is counterproductive and could directly interfere with the mission of all faith-based initiatives dedicated to helping ex-prisoners jump-start their futures as good, productive citizens.
- The Housing First Model has proved the most effective way to reduce homelessness and its staggering costs. This change could impact new housing projects like ours--which will end homelessness for 149 people--now being developed with partner organizations at 3300 Caroline.
- For ex-offenders, this punitive change deters healing—it does not deter crime. Leaving more ex-offenders on the street cannot possibly make the streets safer. It can only make those barred from starting fresh more apt to become desperate. Deferring housing for one to two years misses their critical moment of utmost vulnerability.
- A significant number of the general homeless, as well as of the prison population, have mental health issues. Their symptoms and homelessness often beget involvement with the law and incarceration. Locking the mentally vulnerable out of the housing system is a lose-lose plan, leading to recidivism and clogged jails. Harris County Jail is often ironically referred to as the State's largest mental facility—expensive and ineffective treatment for those capable of healing in community based care.
- For 50 years, Magnificat Houses has welcomed ex-offenders into our community, given them housing, guidance and non-judgmental acceptance. (We receive some 500 letters per month, every month, from men and women ready for prison release literally begging for a foothold so they can make a fresh start in life.) We have learned: Kindness works in restoring self-esteem to those released without resources, hope, or a positive vision for their future. Real change can and does happen. We have faith in it.

We appreciate your invitation for comments on this important issue. Thank you!

John Boyles

Executive Director

Magnificat Houses, Inc.

jboyles@mhihouston.org

10-9-20

--

Casey Kelly
Director of Communication
Magnificat Houses, Inc.
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(122) Mary Rose

From: [Mary Rose](#)
To: [Matthew Griego](#)
Subject: QAP Chapter 11
Date: Friday, October 09, 2020 2:00:46 PM

I wish to register a public comment on the above proposal. Please do not further restrict housing options for people trying to move past the mistakes they have made. Otherwise, they just cycle through the system again and again because they lack basic supports like safe, stable housing. This is bad policy for our state.

Thank you.

Mary Rose
Austin, TX 78731

(123) Ashley Lucas

From: [Ashley Lucas](#)
To: [HTC Public Comment](#)
Subject: Texas Department of Housing & Community Affairs (TDHCA) 2021 Qualified Allocation Plan (QAP)
Date: Friday, October 09, 2020 2:01:06 PM

Dear Mr. Russell:

The Texas Department of Housing and Community Affairs (TDHCA) submitted its draft proposal for the 2021 Qualified Allocation Plan (QAP). Among the changes, the Plan would require supportive housing tax credit properties to refuse to house individuals with criminal backgrounds (temporarily or permanently, depending on the severity of the crime). **Please register my opposition to the changes proposed on page 15 of the document (listed at the end of this letter).**

Research repeatedly shows **Housing** is the key to successful reentry for justice-involved individuals (Shriver Center on Poverty Law, Texas Criminal Justice Coalition, Justice Policy Center, Brennan Center for Justice Study and many more). Home is the cornerstone from which people build healthy, productive lives for themselves and their families.

Entire families and communities suffer when people with records are unable to secure housing. The collateral penalties of a criminal record are not limited to justice-involved individuals. For example, nearly half of all U.S. children have a parent with a record; housing instability can significantly undercut these kids' ability to graduate high school, enroll in, and finish college. These blows to upward mobility do not just harm individuals and their families — in the end, they ultimately harm us all.

Anyone facing homelessness or housing instability is likely to experience significant physical and financial turmoil, but the stakes are even higher for people with records. Barriers to housing can layer on top of and exacerbate other collateral consequences associated with a criminal record — like barriers to employment — further undermining one's ability to reenter the community. Moreover, people who are homeless are more likely to face incarceration, making it more likely that justice-involved people without stable housing will recidivate.

According to the Urban Institute, offering stable and safe housing is the only proven strategy for addressing the reactionary incarceration strategy of those who suffer from homelessness.

This proposal will disproportionately affect the African American community who is overrepresented in the incarcerated population as well as in our homeless population.

This change to the QAP would severely and adversely impact the ability of homeless response systems across the state to secure supportive housing for their clients, which in turn would lead to increased recidivism and increased homelessness.

Involvement with the criminal justice system should not result in a lifetime sentence to homelessness or financial insecurity. Ensuring access to housing is beneficial for justice-involved individuals, their families, their communities, and our State. People with records, like everyone else, deserve a place to call home.

I am opposed to the changes cited below. Please contact me if I can provide additional information.

Respectfully,

Ashley Lucas
Associate Professor

Draft 2021 Chapter 11, Qualified Allocation Plan (QAP) – page 15

(v) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident.

(l) The criminal screening criteria must not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(-a-) Permanent denial based on criminal history at application or recertification of any conviction for murder related offense, sexual assault, kidnapping, or arson;

(-b-) Temporary denial for a minimum of three years based on criminal history at application or recertification of any felony conviction for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;

(-c-) Temporary denial for a minimum of two years for non-violent felonies; and

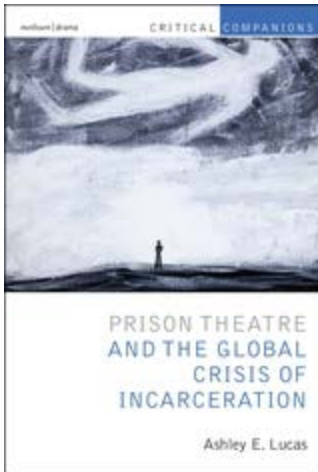
(-d-) Temporary denial for a minimum of one year for Class A misdemeanors

(ll) The criminal screening criteria may include provisions for mitigation of temporary denials including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years

(lll) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

Ashley Lucas (she/her/hers)
Associate Professor
Former Director of the Prison Creative Arts Project
Co-PI of the Carceral State Project

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Theatre & Drama Department
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<http://razorwirewomen.wordpress.com>
<http://www.lsa.umich.edu/pcap>
pcap



(124) Austin Housing Coalition



October 8, 2020

Agency Members

Austin Habitat for Humanity
BCL of Texas
Blackshear Neighborhood Development Corporation
Capital Impact Partners
Casa Marianella
Chestnut Neighborhood Revitalization Corporation
Choices Interlinking Alliance
College Houses
Community Powered Workshop
Ending Community Homelessness Coalition (ECHO)
Family Eldercare
Foundation Communities
Guadalupe Neighborhood Development Corporation
Heimsath Architects
Housing Authority of Travis County
HousingWorks Austin
ICC Austin
Meals on Wheels Central Texas
Neighbors United for Progress
O-SDA Industries
Southwest Key
True Casa Consulting
Wayfinder Real Estate

Mr. Griego,

The Austin Housing Coalition is a coalition of nonprofit agencies and other interested organizations, businesses, and residents who support the creation, improvement, and preservation of affordable housing for the Austin community.

We believe in providing safe, quality, affordable housing options to all types of people, including those who have been involved in the criminal justice system. When it comes to enacting tenant screening criteria that evaluates a prospective tenant's criminal history, we believe housing providers are best suited to create and implement criteria for the communities they build and manage.

That's why we're contacting you regarding the latest draft of the Qualified Allocation Plan (QAP). While we appreciate the efforts of staff at the Texas Department of Housing and Community Affairs in their attempt to create universal criminal screening criteria for supportive housing developments, we have concerns that the one size fits all approach is too restrictive and prevents housing providers from using their expertise to create criteria that is specific to the communities they build.

For these reasons, we recommend the following changes to the QAP.

1. Remove Section 11.1(d)(122)(B)(v) of the Draft QAP entirely.
2. If removal is not an option, replace Section 11.1(d)(122)(B)(v) with the following:

11.1 (d)122(B)(v): have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of criminal history screening criteria.

3. If either 1 or 2 are not acceptable to staff, we recommend the following changes to Section 11.1(d)(122)(B)(v) as reflected in the following red-lined version:

11.1 (d)122(B)(v): have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of criminal history ~~screening criteria credit, criminal conviction, and prior eviction history that may disqualify a potential resident.~~

(l) The criminal screening criteria must ~~, at minimum, include: not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have been convicted for the~~



Agency Members

- Austin Habitat for Humanity
- BCL of Texas
- Blackshear Neighborhood Development Corporation
- Capital Impact Partners
- Casa Marianella
- Chestnut Neighborhood Revitalization Corporation
- Choices Interlinking Alliance
- College Houses
- Community Powered Workshop
- Ending Community Homelessness Coalition (ECHO)
- Family Eldercare
- Foundation Communities
- Guadalupe Neighborhood Development Corporation
- Heimsath Architects
- Housing Authority of Travis County
- HousingWorks Austin
- ICC Austin
- Meals on Wheels Central Texas
- Neighbors United for Progress
- O-SDA Industries
- Southwest Key
- True Casa Consulting
- Wayfinder Real Estate

~~illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and~~

~~(-a-) Permanent denial based on criminal history at application or recertification for lifetime registered sex offenders, or any conviction for murder related offense, sexual assault, kidnapping, or arson or felony manufacture of methamphetamines; and~~

~~(-b-) Temporary denial for a minimum of three years two years from arrest based on criminal history at application or recertification of any for a violent or armed felony conviction, for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;~~

~~(-c-) Temporary denial for a minimum of two years for non-violent felonies; and~~

~~(-d-) Temporary denial for a minimum of one year for Class A misdemeanors~~

~~(II) The criminal screening criteria may include provisions for mitigation of that waive temporary or permanent denials, such as including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others, with personal knowledge of the tenant. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years.~~

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

Please feel free to reach out with any questions or comments you may have about the above changes. We thank you in advance for considering these changes.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rachel Stone'.

Rachel Stone
2020 Chair, Austin Housing Coalition
Rachel@guadalupendc.org
(203) 640 1678

(125) Austin Justice Coalition



October 9, 2020

Texas Department of Housing and Community Affairs
Multifamily Division

Attn: Matthew Griego
QAP Public Comment
P.O. Box 13941
Austin, Texas 78711-3941

Submitted Via Email: htc.public-comment@tdhca.state.tx.us

Re: Comments on the Draft of 10 TAC, Chapter 11, 2021 Qualified Allocation Plan (QAP)

Dear Mr. Griego,

On behalf of the Austin Justice Coalition, we appreciate the opportunity to submit recommendations on the Draft 2021 Qualified Allocation Plan (QAP) and please find our comments on specific provisions of the draft we would like the Texas Department of Housing and Community Affairs (TDHCA) to consider.

The Austin Justice Coalition (AJC) is a racial justice group that educates and builds community power for people of color. We serve people who are historically and systemically impacted by gentrification, segregation, over policing, a lack of educational and employment opportunities, and other institutional forms of racism. AJC strives to narrow the scope of the criminal justice system and to usher in transformative justice that no longer relies on criminalization and punitive excess, but instead has human dignity as its core organizing principle and defers to community-based initiatives to improve public safety.

In agreement with Supportive Housing developers and housing advocates, we strongly oppose the proposed Tenant Selection Criteria for Supportive Housing, Section 11.1(d)(122)(B)(v), on page 15 of the draft 2021 QAP. The proposed Tenant Selection Criteria imposes a single statewide proscriptive mandate that disqualifies tens or hundreds of thousands of tenants for supportive housing units – a core constituency for these particular projects - and far exceeds HUD guidance on criminal background checks. The Texas Department of Criminal Justice releases more than 60,000 people a year.¹ There are about 370,000 people on community supervision for violent or nonviolent felonies, all of whom would be temporarily excluded from supportive housing for two years under this proposal. The breadth of the language (“or similar offense involving harm to others”) ensures that

¹ Texas Department of Criminal Justice, *FY 2018 Statistical Report* (2019). Available at https://www.tdcj.texas.gov/documents/Statistical_Report_FY2018.pdf.

persons convicted of Class A misdemeanors and a range of Class B and C assaults or misdemeanor family offenses (specifically including violation of a protective order regardless of outcome) may also fail to qualify for housing.

The criminal justice system is not a singular entity – where a person commits a crime, enters a rehabilitation center, and reenters society with all of their full rights and responsibilities as a citizen. Its dehumanizing effects begin with police interaction and continues post release with significant barriers to rebuild their lives, such as a barrier to housing – the single most important fixture in any person’s life that creates individual and family stability. People with a criminal history, which disproportionately affects Black people and people of color, are 10 times more likely to experience homelessness than the general population.² The lack of affordable housing, coupled with legal and informal restrictions on housing for people with criminal records, make finding stable housing incredibly difficult for years after exiting from jail or prison. The proposed language will intentionally increase recidivism and perpetuate homelessness and second-class citizenry.

TDHCA administers and funds programs specifically for addressing homelessness and housing insecurity each year. In particular, through the Low-Income Housing Tax Credit (LIHTC) program, residents who have made past mistakes have the opportunity to get back on their feet and obtain housing with supportive services intended to help them lead successful lives. The goal of reducing homelessness and providing housing and community support using LIHTC is promoted by the Texas Governor’s addition to the 2020 QAP requiring LIHTC developments to align with local homeless continuums of care units by requiring a reservation of units.

With a key component of the LIHTC program is to prevent homelessness and housing insecurity by providing affordable housing to Texas residents, the Austin Justice Coalition recommends the following changes to the proposed language, in order of preference:

- (1) Remove Section 11.1(d)(122)(B)(v) entirety.
- (2) Replace the proposed addition at §11.1(d)(122)(B)(v) with a much simpler and clearer rule³:

As stated in the Austin/Travis County Reentry Roundtable public comment letter, two of the states include affirmative statements directing program applicants to enact non-discriminatory practices for tenants with backgrounds.

- a. Georgia: “[A] clearly defined screening policy that establishes criteria for renting to prospective residents that is not a violation of the Fair Housing Act. This criterion includes reasonable and non-discriminatory policies around applicant income,

² Prison Policy, *Nowhere to Go: Homelessness Among Formerly Incarcerated People*.

<https://www.prisonpolicy.org/reports/housing.html>

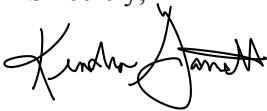
³ We also support Texas Housers’ and Foundation Communities/New Hope’s suggested language: “The Development’s Tenant Selection Criteria will include a clear description of any credit, criminal conviction, or prior eviction history that may disqualify a potential resident. The disqualification cannot be a total prohibition.” Or, alternatively, “Have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of criminal history screening criteria.”

employment requirements, and background checks.” (Citing 2016 HUD Guidance on Criminal Background Screening.)⁴

- b. Ohio: “Applicants must submit a Tenant Selection Plan (TSP) that explicitly prohibits the denial of admission, termination of assistance or eviction on the basis of arrest records alone. Applicants may create reasonable look-back periods for review of crimes in their TSP. The TSP must also include an individual assessment of each tenant applicant’s history and provide the tenant applicant an opportunity to provide mitigating information before denying housing based upon the result of criminal screening.”⁵

The mission of TDHCA is to “invest its resources strategically and develop high quality affordable housing which allows Texas communities to thrive.” The Department’s administration of the LIHTC program and specifically, the inclusion of the supportive housing model for developing affordable housing provides the greatly needed subsidized units each year and helps to reduce the barriers for individuals who need linked housing and critical services for successful reentry. Removing this language provides the opportunity for everyone to have access to safe, decent housing and to thrive.

Sincerely,



Kendra Garrett
Austin Justice Coalition

⁴ https://www.dca.ga.gov/sites/default/files/2021_qap_-_draft.pdf (Section M: Screening Criteria).

⁵

<https://ohiohome.org/search.aspx?cx=017147130776823599764%3Ahp0upwhsodu&cof=FORID%3A11&q=2020+Qualified+Action+Plan> (Section: Inclusive Tenant Selection).

(126) Houston Austin and Fort Worth PHAs



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October 9, 2020

Ms. Marni Holloway, Director of Multifamily Finance
TDHCA
221 East 11th Street
Austin, TX 78701

Re: 2021 Draft QAP – Public Comment

Dear Marni:

On behalf of the HHA, FWHS, and HACA, we offer you these comments on the tenant selection criteria proposed to be added to the Supportive Housing definition [11.1(d)(122)(B)(v). The proposed definition conflicts with HUD guidance on the housing choice voucher program, a critical financing tool for these developments, and will prevent us from continuing our important work ending homelessness in Houston, Austin, and Waco.

Requiring Us to Screen Out Non-Violent Felons and Class A Misdemeanants Serves No Security Purpose

As housing providers, we take very seriously our obligation to protect our residents and our properties from harm, and the security of our communities is a valid and important interest served by criminal history screening. Violent repeat offenders must be screened out, consistent with industry standards and HUD guidance. The proposed TDHCA rule goes far beyond what is required to ensure security at our properties, however, requiring those convicted of misdemeanors and non-violent felonies to be screened out of housing tax credit properties.

For example, possession of two ounces of marijuana is a Class A misdemeanor. While we recognize that possession of a couple of ounces of marijuana is illegal, at least in Texas, but not in a number of other states, the security of our residents and property is not at stake if we allow an applicant with a single marijuana conviction to live at our properties. Similarly, possession of three ounces of marijuana can be prosecuted as a felony with intent to distribute. If someone is caught driving back from Colorado with three ounces of marijuana for personal use, we strongly disagree that this person presents the same risk of danger as someone on the national or Texas Sex Offender website, which the proposed rule would require.

The Proposed Screening Requirements Conflict with the Housing Choice Voucher Program

The housing tax credit program in Texas has always worked well with the federal housing choice voucher program, as required by the Internal Revenue Section 42 prohibition on discrimination against applicants with vouchers because of their status as a holder of such voucher. Because the residents of

supportive housing developments often lack a source of income to pay the rent other than through the voucher program, it is critical to the financing of these developments for the housing tax credit program QAP not to conflict with HUD guidance on the voucher program. Unfortunately, the proposed TDHCA rule will conflict with HUD guidance on the voucher program at 24 CFR 982.553 (“Denial of admission and termination of assistance for criminals and alcohol abusers”).

For example, as mentioned above, the proposed TDHCA supportive housing definition does not distinguish between various illegal drugs, treating marijuana and methamphetamine as if they present the same level of danger. The HUD rule requires banning a family if any member of the household has even been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing. 24 CFR 982.553(a)(1)(ii)(C).

Similarly, the mitigation evidence allowed by federal law is different from the TDHCA proposed rule, and includes a certification that he or she is not currently engaged in criminal activity and has not engaged in it during a specified period of time and supporting documentation from such sources as a probation officer, landlord, neighbors, social service agency workers and criminal records. 24 CFR 982.553(a)(2)(ii)(4)(C)(1).

It will be very difficult, if not impossible, to provide housing choice vouchers to TDHCA supportive housing developments if the Department finalizes the 2021 QAP with the definition of supportive housing as currently drafted. Strict screening criteria will remove a critical source of operating subsidy for these developments, making this badly needed type of housing financially infeasible as long as the rule remains in effect.

The Proposed Screening Rule Is Especially Inappropriate During Covid-19

Houston has made great progress toward ending chronic homelessness, reducing the number of people living on the streets of our state’s largest city by 57%. Reentry after serving a debt to society is a critical group for us to house if we are to continue to reduce the level of homelessness in our streets, and the proposed rule will prevent us from doing that, and quite possibly could lead to more homeless people in Waco, Austin, and Houston and throughout Texas. During Covid-19, there are many people who are temporarily housing unstable, with job setbacks caused by governmental orders closing businesses throughout the state. We urge TDHCA not to create impediments to housing people who would otherwise end up on the streets, especially in the midst of a national pandemic.

We are also unaware of a crime problem in TDHCA-funded or housing tax credit financed supportive housing developments in Texas. If the problem relates to a single site near the University of Texas campus, we recommend TDHCA adopt a rule narrowly tailored to fixing that problem, not one that creates an impediment to financing critically needed supportive housing all over the great state of Texas.

The Proposed Rule May Violate the Fair Housing Act

After the U.S. Supreme Court in 2015 affirmed use of the disparate impact standard in *ICP v. TDHCA*, the HUD Office of General Counsel released in 2016 guidance on applying that standard to the use of criminal records in tenant selection criteria. In a memo dated April 4, 2016, HUD cautioned against blanket prohibitions, stating, “A housing provider must show that its policy accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and/or property and

criminal conduct that does not.” As stated above, the proposed rule does not carefully make those distinctions.

The screening criteria proposed by TDHCA are significantly stricter than our own tenant selection criteria at our properties. We caution the TDHCA that this is an active area of litigation nationwide, and that the proposed rule could lead to liability exposure under the Fair Housing Act. For example, see *Allen v. Muriello*, 217 F. 3d 517 (7th Cir. 2000) (holding that in exercising discretion in review of criminal history, a rejected Black applicant presented a prima facie case that he was treated differently from two similarly situated white applicants).

For the reasons stated above, we recommend striking the screening criteria from the proposed definition of “Supportive Housing.” The state’s guidance on its programs should not conflict with federal guidance in the voucher regulations and on the Fair Housing Act. Housing people who would otherwise end up on the streets is one of our industry’s most important challenges, and we ask you to continue to work with us in tackling it together.

Sincerely,



Mark Thiele
Interim President & CEO
Houston Housing Authority



Michael Gerber
President and CEO
Housing Authority of the City of Austin



Mary-Margaret Lemons
President
Fort Worth Housing Solutions



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(127) City of Austin Housing and Planning Dept

City of Austin



Housing and Planning Department

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October 9, 2020

Texas Department of Housing and Community Affairs
Attn: Bobby Wilkinson, Executive Director
Marni Holloway, Director of Multifamily Finance
Brent Stewart, Director of Real Estate Analysis
Matthew Griego, Multifamily Policy Research Specialist
P.O. Box 13941
Austin, Texas 78711-3941

Dear Mr. Wilkinson, Ms. Holloway, Mr. Stewart, & Mr. Griego,

The City of Austin (City) would like to thank the staff at TDHCA, the executive director, and the Board for this opportunity to comment on the 2021 QAP. TDHCA and the City continue to be key partners in many of the new LIHTC developments constructed within the City. This partnership allows for the development of affordable housing that is **deeply** affordable with rents between 30% and 50% AMFI. These developments are accomplished because the LIHTC program provides much needed capital for affordable housing in our fast-growing city and the deployment of the City's Affordable Housing General Obligation Bonds, which voters overwhelmingly approved in 2018. We submit these comments with the goal of ensuring that our collective efforts are as impactful as possible, and we look forward to continuing to work with TDHCA.

10 TAC 11.1(d)(122)(B)(v), Supportive Housing Tenant Selection Criteria

The City does not dismiss the need for tenant selection criteria that take into account criminal histories. However, that need does not justify the Department's proposed Tenant Selection Criteria ("Criteria"). Having our own tenant selection criteria associated with gap financing the City provides, we have heard legitimate and reasonable feedback from these development partners about criminal histories. But the common thread from our advocacy and their concerns has been being reasonable—understanding that an owner/operator wishes to keep a community safe, but also understanding that many individuals and families, in order to be re-integrated into society, must be given second chances *when wrapped around in the appropriate support system from our local nonprofit partners*. We believe that the Criteria, as currently drafted in the QAP under Supportive Housing, is not reasonable and commits certain individuals and families to living on the street until "their record" clears, which could be many years down the road or never. Surely that is not TDHCA's desire.

The Criteria included in the proposed 2021 QAP conflicts with 10 TAC 11.6(c)(6)(B), which requires a Development to commit an additional 2% of the total units to individuals referred from the Continuum of Care. We believe that the Governor purposefully put this scoring item in the 2020 QAP to help address chronic homelessness across the state of Texas. As result, 10 TAC 11.6(c)(6)(B) leverages LIHTC development to house the chronically homeless. The Criteria undermines that result.

As you know, a local Continuum of Care Program (CoC Program) is a federally-led but also state- and locally-supported initiative to quickly rehouse homeless individuals and families. The CoC Program establishes a “coordinated entry system,” by which individuals and families are ranked according to a host of reasonable metrics. For good reason, those metrics typically push the chronically homeless¹ to the top of the coordinated entry system. As has been clearly shown by research, the chronically homeless, compared to the general population, disproportionately have criminal histories². Therefore, and inexplicably, including the Criteria under the definition of Supportive Housing creates a barrier to housing for the very people that certain items in the QAP purportedly intend to serve and house. For these reasons, the Criteria will severely hamper the ability of developers, nonprofits, and localities to meet the needs of the most-difficult-to-serve homeless population.

In addition to undermining the leverage provided through the LIHTC program, the Criteria may have the effect of violating the Fair Housing Act. More specifically, many of the individuals who meet the federal government’s definition of “chronically homeless” are individuals with a disability who are experiencing homelessness. This means that the Criteria may have the effect of denying housing to individuals with a disability. It is important to note that the “appeals process” found in subclauses (II) and (III) is not likely to mitigate the effects of the Criteria

Because of the City’s concerns, we provide the following suggestions:

1. Remove the proposed language from the QAP and work with your partners to develop a more reasonable tenant selection criteria related to criminal histories during the public engagement process for the 2022 QAP. We believe that we, and all of our partners (developers, counsel, nonprofits, community advocates, etc.) could be allies in working with TDHCA to develop statewide tenant selection criteria LIHTC-assisted developments.
2. If the Department will not remove the Criteria, then the City proposes the following changes:

¹ Chronically Homeless is a HUD defined term, and is defined as follows: (1) A “homeless individual with a disability,” as defined in Section 401(9) of the McKinney-Vento Homeless Assistance Act, who: i. Lives in a place not meant for human habitation, a Safe Haven, or an emergency shelter; AND ii. Has been homeless continuously for at least 12 months or on at least four separate occasions in the last 3 years, as long as the combined occasions equal at least 12 months and each break in homelessness separating the occasions included at least 7 consecutive nights of not living as described in (i) above.

² “Assessing Criminal History as a Predictor of Future Housing Success for Homeless Adults With Behavioral Health Disorders” by Daniel K. Malone M.P.H.

- a. Item (-a-) of subclause I be limited to only those offenses specifically identified by HUD regulations.
- b. Items (-b-), (-c-), and (-d-) be changed to set a “look back” period that is based on the date of conviction. This means that if an applicant has a conviction that occurred outside of the proscribed lookback periods, a denial would not be warranted based upon criminal history. If an offense fell within this lookback period, mitigation as defined by Subclause II would be available.
- c. Subclause II under the definition of Supportive Housing allow for a full exemption when the tenant has been referred by the local continuum of care or a nonprofit that has receives and expends local, state, or federal funding to address homelessness. Such an exemption would allow for on-the-ground case managers who best know their clients to make the determination as to whether or not the individual is fit for housing in a social setting.

10 TAC 11.1(d)(122)(E)(i), Supportive Housing with no Hard Debt

This provision of the definition of Supportive Housing allows for Developments to have soft debt, but no hard debt. TDHCA allows its own gap financing to count as soft debt under this provision, whereby TDHCA makes “deferred-forgivable or deferred-payable construction-to-permanent Direct Loan[s] from the Department [to the Development].”

The City of Austin respectfully asks that its gap financing also be allowed to be structured as TDHCA’s is for Supportive Housing Developments that qualify under 10 TAC 11.1(d)(122)(E)(i). As written, this rule mandates that the cities provide pass-through loan funds to nonprofit entities, who then repackage those funds into loans to the Developments themselves in order to meet valid debt requirements for tax credit eligible basis considerations. This “two-step process” unnecessarily complicates cities’ ability to provide gap financing directly to Supportive Housing Developments that wish to have no hard debt. The City can structure its loan to ensure that “foreclosure provisions are triggered only by default on non-monetary default provisions,” in order to meet the intent of the rule. We simply ask that we have the same flexibility that TDHCA grants itself when making these loans.

We propose the following revisions to the proposed definition (having first accepted all proposed revisions as seen in the draft QAP):

(i) not financed, except for construction financing; or a deferred-forgivable or deferred-payable construction-to-permanent loan from a local government (or an instrumentality of a local government) or Direct Loan from the Department, with any debt containing foreclosure provisions or debt that contains scheduled or periodic repayment provisions. For tax credit applications only, permanent foreclosable debt that contains scheduled or periodic repayment provisions (including payments subject to available cash-flow) is permissible if sourced by local or federal funds and otherwise structured to meet valid debt requirements for tax credit eligible basis considerations. In addition, permanent foreclosable, cash-flow debt provided by an Affiliate is permissible if originally sourced from charitable contributions or pass-through local government funds and the foreclosure provisions are triggered only by default on non-monetary default provisions. Developments meeting these requirements are not subject to §11.302(i)(4) & (5) of Subchapter D of this chapter (relating to Underwriting and Loan Policy). Any amendment to an Application or Underwriting Report resulting in the addition of debt

prohibited under this definition will result in the revocation of IRS Form(s) 8609, and may not be made for Developments that have Direct Loans after a LURA is executed, except as a part of an approved Asset Management Division work out arrangement; or

§11.3. Housing De-Concentration Factors. (b) Two Mile Same Year Rule.

The City of Austin agrees with comments made by the City of San Antonio regarding this rule. It is important cities can accommodate their rapidly growing population with an adequate supply of affordable units, and we are concerned the two-mile same year rule impedes this process. Newcomers of all incomes need to be able to live near jobs. The two-mile same year rule has limited the ability of large cities in Texas (with the exception of Houston) to support highly qualified developments that have the potential to significantly benefit the immediate area and the City as a whole.

In practice, this rule has caused developers to compete over the support and delay development, essentially negating the intent of the section. Having to wait two years between developments can create an unnecessary bottle neck in areas where there is a high demand for affordable housing and a concentration of jobs. We share TDHCA's desire not to concentrate poverty, but as developments increasingly tend towards mixed-income, we believe two developments can be in close proximity without concentrating poverty. Growing cities know their local landscape best and should be empowered to waive this rule if it is in the best interest of the city.

Proposed Amended Language:

Recommend additional language that any political subdivision subject to the Two-Mile rule (e.g. communities contained within counties with populations exceeding one million) have the ability to waive it if approved by local officials.

10 TAC 11.9(c)(7)(B), Proximity to Jobs

The City of Austin asks that the distances associated with the number of jobs remain the same. If the distances were to be increased, the number of jobs should therefore logically be increased. Increasing the distance without also increasing the number of jobs jeopardizes the careful calibration between distance and number of jobs. If TDHCA does consider increasing the distance, we ask that they do so during the public engagement process for the 2022 QAP.

§11.9(d)(2) (Commitment of Development Funding by Local Political Subdivision)

The City of Austin agrees with comments made by the City of Houston regarding this rule. When a county, municipality or other agency with jurisdiction provides a commitment of its HOME, CDBG or local funding to developments, it should be weighted more heavily compared to a transaction that secures \$500 of in-kind contributions that are not material to the overall financing of a transaction. The scoring component under §11.9(e)(4) (Leveraging of Private, State, and Federal Resources) to prioritize transactions leveraging other sources may work against transactions with higher development costs. Large urban cities will likely continue to prioritize transactions within the urban core which reflect higher costs and may not benefit from this scoring item. We request this scoring item reflect an amount that is material to the overall financing of a transaction.

Proposed amended language:

An Application may receive one (1) point for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located if levered with HOME, CDBG, CDBG-DR or other locally funded subsidy. The commitment of Development funding must be reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form and/or reflected in a lower cost in the Development Cost Schedule. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction.

§11.9(d)(7)(A)(i)(III) (Concerted Revitalization Plan and committed funding)

The City of Austin agrees with the City of Houston regarding this rule. The requirements outlined for CRP's are prescriptive and there is concern these prevent the municipality from determining what development plans are eligible, thus compromising local control. Many of the pending CRP plans identify the needs for an area to be funded with future Capital Improvement Projects cycles, however commitments for these items are not provided until each fiscal year. According, the City recommends that the agency provide some flexibility on this item to allow counties, municipalities and other agencies identify the potential sources within in the plan with commitments to be funded with identified sourced and to be committed in future years.

10 TAC 11.9(e)(2), Cost of Development per Square Foot

Previously whenever TDHCA has considered increasing the allowable cost per square foot to be allowed in eligible basis, staff at TDHCA have worked with the community to provide evidence for the cost increase. The City of Austin has not seen any such analysis provided in preparation for the 2021 QAP, as has been done previously. Increasing the allowable cost per square foot directly decreases the number of units that the 9% LIHTC program produces, as has been seen every year after which this change was made.

In order to continue to maximize the number of LIHTC units the 9% program produces, and until evidence is shared with stakeholders to support this change, the City asks that rules revert to the cost levels allowed for under the 2020 QAP.

Thank you for your consideration. Please contact me if you have any questions.

Sincerely,



Rosie Truelove
Director, Housing and Planning Department

(128) NAMI

October 9, 2020

Texas Department of Housing and Community Affairs
Attn: Matthew Griego, QAP Public Comment
P.O. Box 13941
Austin, TX 78711
htc.publiccomment@tdhca.state.tx.us

Dear TDHCA Governing Board:

I am writing to express concerns regarding the proposed supportive housing qualifications in the Texas Department of Housing and Affairs 2021 QAP, 10 TAC 11.1(d)(122)(B).

NAMI Texas is a nonprofit 501(c)3 organization founded by volunteers in 1984. We are part of the nation's largest grassroots mental health organizations and we exist to help improve the quality of life for individuals with mental illness and their families. Around the state, we have 27 local NAMI affiliate organizations and approximately 2,000 members.


The proposed changes will curtail the ability of individuals with criminal backgrounds due to mental health disabilities to find stable housing. People with disabilities are a protected class under the Fair Housing Act (FHA). The changes will hinder the recovery of those whose convictions stemmed from disabilities by making it harder for supportive housing providers to secure funding.

Approximately 40% of prisoners and jail inmates have experienced mental illness. The physical and psychological consequences of imprisonment often worsen mental health, prolong sentences, and increase rates of homelessness, emergency service utilization, substance use, and recidivism upon prison or jail exit. Supportive housing programs are essential for improving community functioning of individuals with serious mental illness experiencing housing instability or homelessness.

Structural barriers in obtaining personal identification, housing, transportation, and employment exacerbate disparities in the receipt of mental health and substance use services. Improving access and availability of stable housing for individuals living with serious mental illness provides opportunities for recovery and reduces the costs associated with the utilization of crisis and emergency services.

Stable housing and support services are instrumental in maintaining recovery for individuals with mental illness or substance use disorders exiting the criminal justice system. Mental illness can contribute to the onset and chronicity of housing instability and homelessness. Excluding individuals living with mental illness that do not meet the proposed requirements for supportive housing may not be able to maintain social, occupational, or treatment services. Furthermore, the proposed changes are inconsistent with Governor Abbott's support to address chronic homelessness. Ensuring access to supportive housing is imperative for recovery among individuals with a mental health condition with prior justice involvement, and already experience social, economic, financial, housing, and structural barriers that impede recovery.

Respectfully,



Chele Diamond, NAMI Texas Public Policy Intern
Intern@namitexas.org

(129) Daniel Mee

From: [Daniel Mee](#)
To: [HTC Public Comment](#)
Subject: Public comment on Department of Housing and Community Affairs supportive housing rules
Date: Friday, October 09, 2020 2:38:46 PM

Hi- I am a Texas homeowner residing in Austin, TX in the Foster Heights neighborhood. I would like to comment on the proposed rules for applicant eligibility in paragraphs 11.1 and 11.201 of the draft Qualification Plan, specifically the rules regarding criminal screening for supportive housing applicants.

I believe that the exclusion of people from the applicant pool by this proposed rule is likely to increase both the suffering of the excluded persons and the risk of criminal recidivism, while doing little to increase public safety. Both social science and common sense tell us that stable housing is a necessary condition for the reintegration of people with criminal records into society, and as no evidence is available that people in these categories present a hazard to the community around them, it seems to me that denying the opportunity to receive housing assistance represents little more than an attempt to apply a punishment over and above whatever sentence has been handed down by the justice system.

Please reject the proposed change barring applicants with criminal records from the applicant pool for supportive housing.

Regards,
Daniel Mee
1909 New York Ave
Austin, TX78702

(130) Recovery Coalition of Texas



October 9, 2020

Texas Department of Housing and Community Affairs
QAP Public Comment, P.O. Box 13941
Austin, TX 78711

Attn: Matthew Griego, htc.publiccomment@tdhca.state.tx.us

Dear TDHCA Governing Board:

The Recovery Coalition of Texas is concerned about the proposed rule changes draft *2021 QAP, 10 TAC 11.1(d)(122)(B)(v), Supportive Housing Tenant Selection Criteria*. Supportive housing is fundamentally important for justice involved individuals and individuals in or seeking recovery, who face the highest barriers to housing.

Concerns:

- The proposed rule change will dramatically impact access to supportive housing for a group that already faces significant barriers to housing, thereby increasing the rate of homelessness.
- The draft is also inconsistent with Governor Abbott's support of addressing chronic homelessness in Texas. Abbott supported changes to the 2020 QAP to leverage Low Income Housing Tax Credit developments to house those who are chronically homeless by aligning with local homeless continuums of care.
- The proposed tenant selection criteria far exceed existing Housing and Urban Development (HUD) criteria by including both the manufacturing and delivery of illegal drugs, beyond methamphetamines; and it includes a lifetime ban for anyone on a registry.

Relevant Research & Community Resources:

- Years of research and experience demonstrate that supportive housing can dramatically reduce recidivism and support recovery, especially for groups that have conviction histories for more serious offenses.
- Criminal offenses that occurred more than five years prior to move-in had no significant impact on housing outcomes.

We appreciate you considering these issues, and we ask, on behalf of all of our Affiliates, that you not approve the changes to the QAP. Instead, the Recovery Coalition of Texas asks that the Texas Department of Housing and Community Affairs work with stakeholders, including community organizations dedicated to promoting housing access for justice involved individuals and those in recovery, as well as those who would be impacted by changes to the QAP, in developing a solution that addresses the concerns of all parties.

Respectfully,

Robin L. Peyson, MHSA
Executive Director

Recovery Coalition of Texas – 1704 Wilson Street – Bastrop, Texas 78602

www.recoverycoalitionoftexas.org

(512) 507-3271



Recovery Coalition of Texas – 1704 Wilson Street – Bastrop, Texas 78602
www.recoverycoalitionoftexas.org
(512) 507-3271

(131) The American Conservative Union
Foundation



October 9, 2020

Via Electronic Delivery: htc.public-comment@tdhca.state.tx.us

Mr. Patrick Russell
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Re: *TDHCA 2021 Qualified Allocation Plan*

Dear Mr. Russell:

The American Conservative Union Foundation (“ACUF”) Nolan Center for Justice (“NCJ”) respectfully submits this comment regarding the Texas Department of Housing and Community Affairs (“TDHCA”) draft 2021 Qualified Allocation Plan (“QAP”) proposal.

Background

ACUF-NCJ supports criminal justice reforms that foster public safety, bolster government accountability and advance human dignity. We understand that TDHCA’s QAP would require owners of properties to exclude people having criminal records from TDHCA-supported housing. Failing to do so would jeopardize a property owner’s ability to qualify for certain tax credits. This approach to housing policy undermines all three of our core objectives for an impactful criminal justice system.

1. The QAP Would Undermine Community Safety in Texas

We believe this proposal would adversely impact community safety in Texas. This is the most critical consequence of the proposed QAP, if it is ultimately adopted.

After someone has been incarcerated and released, he/she re-enters the community with a number of burdens. Obviously, the impact of a criminal conviction carries the stigma of shame. But in addition, those who carry the onus of a conviction are often precluded from employment, education, and housing because of licensing and regulatory impediments.

The proposed QAP would obviously impact where an ex-offender can find housing. But it would also impact employability, given that many employers are hesitant to hire those without a fixed address. Taken together, such dynamics make it harder for ex-offenders to live crime-free lives.

When it becomes difficult to find a place to live or a job, it should surprise no one that nearly a quarter of those released from Texas’ prisons reoffend. While this is no excuse for illegal conduct, the gray market economy often becomes the only viable path open to ex-offenders. **If instead, we remove**

obstacles to housing and employment, ex-offenders are much less likely to recidivate, thereby making neighborhoods safer. This view is supported by considerable data and research.

2. *The QAP Would Undermine Government Accountability*

By making it more difficult to find housing and employment, the QAP will most certainly contribute to an increase in recidivism in Texas. Yet, it is the Texas Department of Criminal Justice that is held to account for recidivism rates in the Lone Star State.

This is precisely the type of policymaking that is an anathema to conservatives. **By wading into criminal justice policy, TDHCA precludes elected officials from holding the actual drivers of recidivism accountable via the oversight and budget processes.**

3. *The QAP Would Undermine Human Dignity*

People who violate the law must be held accountable. But the sanctions imposed for most criminal convictions should have an end date. Short of the most serious crimes, they cannot go on forever. **Once offenders pay their debts to society, they are entitled to try to rebuild their lives and become contributing citizens again.** These are central aspects of human dignity.

Yet, the QAP would, for all intents and purposes, continue punishment after an offender has completed his sentence. And in doing so, TDHCA would make the processes of re-entry much more difficult.

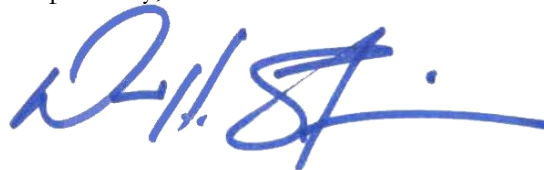
Conclusion

If we truly believe that we are all created in God's image, but with the ability to fail and redeem ourselves, we must accept the concept of human dignity. It is our view, grounded in faith, that we are obligated to do what we can to help those who have erred to re-enter society. But at a minimum, we should not be creating unnecessary barriers to entry, such as the QAP's exclusion policy.

We recognize that there may be circumstances where such a prohibition might be justified. But those determinations should be made by the property owners on a case-by-case basis. **We do not support a one-size-fits-all policy of exclusion that would be put in place by TDHCA.** Accordingly, the American Conservative Union Foundation Nolan Center for Justice opposes unequivocally the QAP's proposed requirement to exclude on a categorical basis those with criminal records.

Thank you for your consideration of this matter. Should you have any questions, please feel free to contact me at: (202) 347-9388 or dsafavian@conservative.org.

Respectfully,



David H. Safavian, Esq.
General Counsel
The American Conservative Union Foundation

(132) Travis County District Attorney



**OFFICE OF THE
DISTRICT ATTORNEY**

P.O. Box 1748, Austin, TX 78767
Telephone: 512/854-9400
Fax: 512/854-4206

MARGARET MOORE
DISTRICT ATTORNEY

MINDY MONTFORD
FIRST ASSISTANT

October 9, 2020

Texas Department of Housing and Community Affairs
Attn: Patrick Russell
P.O. Box 13941
Austin, Texas 78711-3941
Email: htc.public-comment@tdhca.state.tx.us

Re: Texas Department of Housing & Community Affairs (TDHCA) 2021 Qualified Allocation Plan (QAP)

Dear Mr. Russell:

The Texas Department of Housing and Community Affairs (TDHCA) submitted its draft proposal for the 2021 Qualified Allocation Plan (QAP). Please register my opposition to the changes proposed on page 15 of the document (listed at the end of this letter).

This Office has participated in re-entry programs here in Travis County. We know from direct experience that housing is key to successful reentry for justice-involved individuals. Research, such as that by the Shriver Center on Poverty Law, Texas Criminal Justice Coalition, Justice Policy Center, Brennan Center for Justice Study and many more, supports our direct observations.

As a District Attorney, I have a deep commitment to the safety of this community, which necessarily involves the successful reintegration into our community of those who've faced criminal justice sanctions. Homelessness greatly increases an individual's likelihood to recidivate. We need to ensure access to housing for those who want to return to society. Involvement with the criminal justice system should not result in a lifetime sentence to homelessness or financial insecurity.

Respectfully,

Margaret Moore

(v) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident.

(I) The criminal screening criteria must not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(-a-) Permanent denial based on criminal history at application or recertification of any conviction for murder related offense, sexual assault, kidnapping, or arson;

(-b-) Temporary denial for a minimum of three years based on criminal history at application or recertification of any felony conviction for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;

(-c-) Temporary denial for a minimum of two years for non-violent felonies; and

(-d-) Temporary denial for a minimum of one year for Class A misdemeanors

(II) The criminal screening criteria may include provisions for mitigation of temporary denials including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

(133) Unlocking Doors



Christina Melton Crain, Esq.
Founder and President/ CEO
(214) 215-8152 or (214) 296-9258
ccrain@unlockingdoors.org

www.unlockingdoors.org

Texas Department of Housing and Community Affairs
Attn: Patrick Russell
P.O. Box 13941
Austin, Texas 78711-3941
Email: HTCPC@tdhca.state.tx.us

Re: Texas Department of Housing & Community Affairs (TDHCA) 2021 Qualified Allocation Plan (QAP)

Dear Mr. Russell:

The Texas Department of Housing and Community Affairs (TDHCA) submitted its draft proposal for the 2021 Qualified Allocation Plan (QAP). Among the changes, the Plan would require supportive housing tax credit properties to refuse to house individuals with criminal backgrounds (temporarily or permanently, depending on the severity of the crime). **Please register me/us as being in opposition to the changes proposed on page 15 of the document (listed at the end of this letter).**

Research repeatedly shows **Housing** is the key to successful reentry for justice-involved individuals (Shriver Center on Poverty Law, Texas Criminal Justice Coalition, Justice Policy Center, Brennan Center for Justice Study and many more). Home is the cornerstone from which people build healthy, productive lives for themselves and their families.

Entire families and communities suffer when people with records are unable to secure housing. The collateral penalties of a criminal record are not limited to justice-involved individuals. For example, nearly half of all U.S. children have a parent with a record; housing instability can significantly undercut these kids' ability to graduate high school, enroll in, and finish college. These blows to upward mobility do not just harm individuals and their families — in the end, they ultimately harm us all.

Anyone facing homelessness or housing instability is likely to experience significant physical and financial turmoil, but the stakes are even higher for people with records. Barriers to housing can layer on top of and exacerbate other collateral consequences associated with a criminal record — like barriers to employment — further undermining one's ability to reenter the community. Moreover, people who are homeless are more likely to face incarceration, making it more likely that justice-involved people without stable housing will recidivate.

According to the Urban Institute, offering stable and safe housing is the only proven strategy for addressing the reactionary incarceration strategy of those who suffer from homelessness.

As a former Chairman of the Texas Board of Criminal Justice, and now the Founder and President/CEO of Unlocking DOORS® (a Texas-based reentry brokerage organization), I have witnessed first-hand what can happen to an individual upon release if they are not able to find suitable housing. This change to the QAP would severely and adversely impact

the ability of homeless response systems across the state to secure supportive housing for their clients, which in turn would lead to increased recidivism and increased homelessness.

Involvement with the criminal justice system should not result in a lifetime sentence to homelessness or financial insecurity. Ensuring access to housing is beneficial for justice-involved individuals, their families, their communities, and our State. People with records, like everyone else, deserve a place to call home.

The changes cited below will dramatically hamper our ability to assist individuals with criminal backgrounds find sustainable futures that are crime-free – something that will hurt us all. Therefore, we are opposed to the changes.

Please feel free to contact me if I can be of assistance and provide additional information to help in this area.

Sincerely,



Christina Melton Crain, Esq.

Draft 2021 Chapter 11, Qualified Allocation Plan (QAP) – page 15

(v) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident.

(I) The criminal screening criteria must not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(-a-) Permanent denial based on criminal history at application or recertification of any conviction for murder related offense, sexual assault, kidnapping, or arson;

(-b-) Temporary denial for a minimum of three years based on criminal history at application or recertification of any felony conviction for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;

(-c-) Temporary denial for a minimum of two years for non-violent felonies; and

(-d-) Temporary denial for a minimum of one year for Class A misdemeanors

(II) The criminal screening criteria may include provisions for mitigation of temporary denials including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

(134) Western Regional Advocacy Project



Western Regional Advocacy Project

2940 16TH STREET, SUITE 200-2, SAN FRANCISCO, CA 94103

TEL: 415.621.2533 / EMAIL: wrap@wraphome.org

WEB: www.wraphome.org

October 9, 2020

Texas Department of Housing and Community Affairs

Attn: Patrick Russell

P.O. Box 13941

Austin, Texas 78711-3941

Email: htc.public-comment@tdhca.state.tx.us

Re: Texas Department of Housing & Community Affairs (TDHCA) 2021 Qualified Allocation Plan (QAP)

Dear Mr. Russell:

We are deeply concerned with the draft proposal that The Texas Department of Housing and Community Affairs (TDHCA) submitted for the 2021 Qualified Allocation Plan (QAP). Among the changes, the Plan would require supportive housing tax credit properties to refuse to house individuals with criminal backgrounds (temporarily or permanently, depending on the severity of the crime). Please register our opposition to these changes proposed on page 15 of the document (pasted at the end of this letter).

Research repeatedly shows that housing is integral to successful reentry for returning citizens. Home is the cornerstone from which people build healthy, productive lives for themselves and their families. And these concerns are even more prevalent during the current deeply unsettling times of economic and public health crisis.

Entire families and communities suffer when previously justice involved people are unable to secure housing. And these collateral consequences are not limited to justice-involved individuals. For example, nearly half of all U.S. children have a parent who has a criminal conviction; housing instability can significantly undercut the ability of these young people to graduate high school, enroll in, and finish college and have a successful pathway forward. These blows to upward mobility do not just harm individuals and their families — in the end, they ultimately harm us all.

Anyone facing homelessness or housing instability is likely to experience significant physical and financial turmoil, but the stakes are even higher for people with a prior criminal conviction.

Barriers to housing can layer on top of and exacerbate other collateral consequences — including barriers to employment — further undermining an individual’s ability to reenter the community. Moreover, people who are homeless are more likely to face future arrest and incarceration given policing practices, making it more likely that justice-involved people without stable housing will find themselves back in the unfortunate cycling of the justice system.

This proposal will also disproportionately affect the communities of color who are already overrepresented in the incarcerated population, as well as in our nation’s homeless population.

Involvement with the criminal justice system should not result in a lifetime sentence to homelessness or financial insecurity. Ensuring access to housing is beneficial for justice-involved individuals, their families, their communities, and the State of Texas. People with prior criminal records, like everyone else in our nation, deserve a place to call home.

For all of these reasons, we are opposed to, and deeply troubled by, the changes cited below. Please contact me if I can provide additional information.

Respectfully,

Draft 2021 Chapter 11, Qualified Allocation Plan (QAP) – page 15

(v) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident.

(I) The criminal screening criteria must not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(-a-) Permanent denial based on criminal history at application or recertification of any conviction for murder related offense, sexual assault, kidnapping, or arson;

(-b-) Temporary denial for a minimum of three years based on criminal history at application or recertification of any felony conviction for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;


(-c-) Temporary denial for a minimum of two years for non-violent felonies; and

(-d-) Temporary denial for a minimum of one year for Class A misdemeanors

(II) The criminal screening criteria may include provisions for mitigation of temporary denials including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. The criteria may include provision for individual review of

permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

A handwritten signature in black ink that reads "Paul Boden". The signature is written in a cursive style with a large, looping initial "P".

Sincerely,

Paul Boden
Ex. Director

(135) Texas Tenants' Union

From: [Sandy Rollins](#)
To: [HTC Public Comment](#)
Subject: Comments Opposing Proposed Changes on page 15 of the QAP on Supportive Housing
Date: Friday, October 09, 2020 2:59:37 PM

I am writing on behalf of the Texas Tenants' Union to oppose the criminal screening requirements proposed to QAP Chapter 11 on supportive housing.

The Texas Tenants' Union is a non-profit organization based in Dallas that has been empowering tenants through education and organizing since the 1970's. **We are very concerned about homelessness and the lack of housing opportunities for all.** It can be very difficult for ex-offenders to qualify for housing and there are limited programs to assist. TDHCA should not create additional barriers to supportive housing for this vulnerable population.

We support the comments that have been submitted by the Inclusive Communities Project and the Texas Homeless Network. Please do not adopt the proposed changes.

Thank you for your consideration.

--

Sandy Rollins
Texas Tenants' Union
8035 East RL Thornton Fwy, Suite 535
Dallas, TX 75228
www.txtenants.org
www.facebook.com/texastenantsunion
twitter.com/TXTenantsUnion
214-823-2999

(136) National Homelessness Law Center



October 9, 2020

Texas Department of Housing and Community Affairs
Attn: Patrick Russell
P.O. Box 13941
Austin, Texas 78711-3941
Email: htc.public-comment@tdhca.state.tx.us

Dear Mr. Russell:

I write on behalf of the National Homelessness Law Center (“Law Center”) to express our deep concern with the draft proposal that The Texas Department of Housing and Community Affairs (TDHCA) submitted for the 2021 Qualified Allocation Plan (QAP). Among the changes, the Plan would require supportive housing tax credit properties to **refuse to house individuals with criminal backgrounds** (temporarily or permanently, depending on the severity of the crime). This approach is contrary to national best practices and will make Texas less, rather than more safe. **Please register our opposition to these changes proposed on page 15 of the document (pasted at the end of this letter).**

The Law Center is the nation’s only legal advocacy organization dedicated solely to ending and preventing homelessness. Since 1991, the Law Center has documented a dramatic increase in laws that criminally punish homeless people for performing harmless, life-sustaining activities in public places, as well as the negative consequences of these discriminatory measures nationwide. See National Law Center on Homelessness and Poverty, [HOUSING NOT HANDCUFFS: Ending THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES \(2019\)](#). In 2017, we also published *Tent City, USA: The Growth of America’s Homeless Encampments, and How Communities are Responding*, collecting data on 187 cities’ policy responses to encampments, and best practices, model policies, and case studies from across the country. See National Law Center on Homelessness and Poverty, [TENT CITY, USA: THE GROWTH OF AMERICA’S HOMELESS ENCAMPMENTS, AND HOW COMMUNITIES ARE RESPONDING \(2017\)](#).

Research repeatedly shows that **housing is integral to successful reentry** for returning citizens. Home is the cornerstone from which people build healthy, productive lives for themselves and their families. And these concerns are even more prevalent during the current deeply unsettling times of economic and public health crisis. Moreover, people experiencing homelessness are routinely criminalized for actions you or I may take for granted – sleeping, sheltering oneself from the elements, even simply standing outside may result in a conviction, which under the rule proposed here, would actually then result in an individual being on the streets longer. This harms homeless persons’ rights and wastes taxpayer resources by repeatedly cycling people through the costly criminal justice system only to have them return to the streets, now with criminal records that will make it more difficult for them to access needed housing, not to mention employment or public benefits.

Entire families and communities suffer when previously justice involved people are unable to secure housing. And these collateral consequences are not limited to justice-involved individuals. For example, nearly half of all U.S. children have a parent who has a criminal conviction; housing instability can significantly undercut the ability of these young people to graduate high school, enroll in, and finish college and have a successful pathway forward. These blows to upward mobility do not just harm individuals and their families — in the end, they ultimately harm

us all.

Anyone facing homelessness or housing instability is likely to experience significant physical and financial turmoil, but the stakes are even higher for people with a prior criminal conviction. Barriers to housing can layer on top of and exacerbate other collateral consequences — including barriers to employment — further undermining an individual’s ability to reenter the community. Moreover, people who are homeless are more likely to face future arrest and incarceration given policing practices, making it more likely that justice-involved people without stable housing will find themselves back in the unfortunate cycling of the justice system.

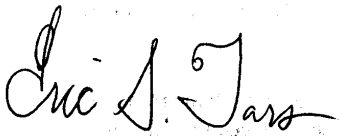
This proposal will also disproportionately affect the communities of color who are already overrepresented in the incarcerated population, as well as in our nation’s homeless population.

Involvement with the criminal justice system **should not result in a lifetime sentence** to homelessness or financial insecurity. Ensuring access to housing is beneficial for justice-involved individuals, their families, their communities, and the State of Texas. People with prior criminal records, like everyone else in our nation, deserve a place to call home.

It is particularly important during the COVID-19 pandemic to ensure all homeless individuals have access to adequate alternative housing, as it is literally a matter of life-or-death for both those on the streets and those in the community during the COVID-19 pandemic. Recent reports indicate that homeless individuals infected by COVID-19 would be twice as likely to be hospitalized, two to four times as likely to require critical care, and two to three times as likely to die than the general population. See https://endhomelessness.org/wp-content/uploads/2020/03/COVID-paper_clean-636pm.pdf. Every homeless person who gets sick as a result of being kept unnecessarily on the streets due to a criminal conviction may end up filling a hospital bed that might be needed by a housed resident of the community, so this harms both the housed and unhoused residents of Texas alike. We truly are all in this together.

We all share the goal of a safe Texas—but the best, most cost-effective, and permanent way to achieve that is to ensure that all who live on the streets are able to access adequate, alternative housing, not put more barriers to them getting into it. For all of these reasons, we are opposed to, and deeply troubled by, the changes cited below. Please feel free to contact me at etars@nlchp.org or 202-638-2535 x. 120 with any questions or concerns.

Sincerely,



Eric S. Tars
Legal Director

Draft 2021 Chapter 11, Qualified Allocation Plan (QAP) – page 15

(v) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of

prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident.

(I) The criminal screening criteria must not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(-a-) Permanent denial based on criminal history at application or recertification of any conviction for murder related offense, sexual assault, kidnapping, or arson;

(-b-) Temporary denial for a minimum of three years based on criminal history at application or recertification of any felony conviction for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;

(-c-) Temporary denial for a minimum of two years for non-violent felonies;
and

(-d-) Temporary denial for a minimum of one year for Class A misdemeanors

(II) The criminal screening criteria may include provisions for mitigation of temporary denials including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

(137) Katie Donovan

From: [Donovan, Katherine](#)
To: [HTC Public Comment](#)
Subject: Housing ban opposition
Date: Friday, October 09, 2020 3:19:46 PM

Hi there,

I appreciate TDHCA's latest efforts to promote the safety of the most vulnerable in our communities, but this newest proposed rule to limit the availability of housing for those with criminal convictions undermines that goal.

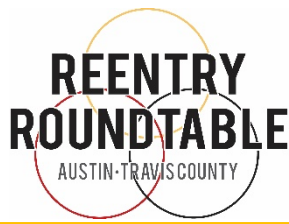
People who are fresh out of correctional facilities are most likely to commit more crime if they do not have stable supports to help them reintegrate and not reoffend. Denying them housing puts everyone in society at greater risk because an individual who had already shown a tendency for crime now has even fewer resources to help them make a different choice.

Individual housing authorities and organizations have successfully implemented policies that help their residents meet their parole requirements and begin to rebuild their lives as law-abiding citizens without such invasive and counterproductive policies. Please do not undermine their work and my safety by enacting this rule change.

Yours,
Katie Donovan
Spring TX

Sent from my iPhone, which thinks it knows English.

(138) Austin Travis County Reentry Roundtable



Austin-Travis County Reentry Roundtable

*Building Successful Strategies for
Reentry and Reintegration in Austin/Travis County, Texas*

PLANNING COUNCIL

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Community Representative

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Travis County Adult Probation

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Community Representative

Kaleigh Phelan

ECHO

Kimberly Pierce

Travis Co. Justice Planning

Joe Ramirez

Texas Veterans Commission

Jaime Rodriguez, RAC, FBOP

U.S. Bureau of Prisons

Louella Tate, Ph.D.

Community Representative

Peter Valdez, LMSW

City of Austin Community Court

www.reentryroundtable.org

October 9, 2020

Texas Department of Housing and Community Affairs

Attn: Matthew Griego

QAP Public Comment

P.O. Box 13941

Austin, Texas 78711-3941

Submitted Via Email: htc.public-comment@tdhca.state.tx.us

Re: Comments of Austin/Travis County Reentry Roundtable on the Staff Draft of 10 TAC, Chapter 11, 2021 Qualified Allocation Plan (QAP)

Dear Mr. Griego:

The Austin/Travis County Reentry Roundtable (the Roundtable) appreciates the opportunity to participate in the public rule-making process affecting the 2021 Qualified Allocation Plan (QAP).

The Roundtable is a collaboration of practitioners, community leaders, policy makers, advocates, academics, and formerly incarcerated individuals working to create pathways to effective reentry and reintegration of persons with criminal histories. A large part of the Roundtable's work is working to reduce the many barriers facing individuals who live with a criminal record history, including barriers to employment, education, health care, and housing, among other challenges.

Over the past four years, the Roundtable has devoted significant effort to finding ways to expand access to housing in the Austin metropolitan area for those with a criminal conviction and has achieved a degree of local consensus that should serve as a model for the state. In 2018, the Roundtable released the Texas Criminal Background Screening Guide for Rental Housing Providers and an accompanying criminal background screening template, documents created to assist landlords and property managers in complying with the U.S. Fair Housing Act and current U.S. Housing and Urban Development Office guidance on screening tenants with criminal backgrounds. The Guide provides clear instruction to housing providers on how best to comply with fair housing law and guidelines for implementing criminal background screenings for housing applicants, and is equally applicable to housing authorities, federally assisted housing providers and private sector housing providers.

The Guide and Template were the result of a year-long conversation between the Roundtable, the Austin Apartment Association, the Austin Tenants' Council, the Ending Community Homeless Coalition (ECHO), and The University of Texas Law School Community Development Clinic. In addition to these five parties who took on the task of drafting the Guide and Template, a larger advisory group of community housing entities, including local and county housing authorities, local affordable housing developers, and Austin's neighborhood housing and community development agency, provided ongoing input and feedback throughout the project's term.

Based on its expertise and knowledge of legally supportable criminal background screening practices, and drawing on the community consensus formed in the course of creating its Guide and Template, the Roundtable submits the following recommendations, in order of preference:

(1) Section 11.1(d)(122)(B)(v) should be removed in its entirety.

The Roundtable urges TDHCA to abstain from imposing a single statewide proscriptive mandate with regard to tenant screening. The fact is that developers and communities across Texas deserve the right to identify the scope and breadth of tenant screening policies that fit their individual needs and mission, while also adhering to federal fair housing law requirements. TDHCA has not inserted itself into this process previously and there exists no reason for doing so now.

Indeed, even a preliminary review of QAPs in other states indicates that including language such as proposed here is both highly unusual and inconsistent with other states' practices. Of thirteen state QAPs reviewed,¹ ten make no mention of tenant screening policies and two (Georgia and Ohio) include language in their compliance sections on non-discriminatory practices for tenants with backgrounds but leave it to the individual agencies/properties to set the specific terms. Of the states reviewed, only one (Oklahoma) proscribes specific terms for permanent supportive housing.

Finally, individuals who are in the process of reentry and community reintegration are disproportionately the same individuals most in need of permanent supportive housing. It is indisputable that individuals in reentry, including many Veterans and individuals with disabilities, face some of the highest risks of homelessness of any population. In making it even harder for these individuals to access housing and services critical for successful reentry, TDHCA's tenant screening policy will only serve to further exacerbate already acute statewide housing challenges, including rising rates of homelessness – all the more serious during a global pandemic - and a chronic shortage of affordable housing units.

(2) In the event TDHCA insists on including language relating to tenant screening, the language as currently proposed should be replaced, in its entirety, with a much simpler and clearer rule.

As noted above, the general practice is for states not to include any specific tenant screening language in the QAP. Two of the states reviewed, however, did include affirmative statements directing program applicants to enact non-discriminatory practices for tenants with backgrounds.

Georgia: “[A] clearly defined screening policy that establishes criteria for renting to prospective residents that is not a violation of the Fair Housing Act. This criterion includes reasonable and non-discriminatory policies around applicant income, employment requirements, and background checks.” (Citing 2016 HUD Guidance on Criminal Background Screening.)²

Ohio: “Applicants must submit a Tenant Selection Plan (TSP) that explicitly prohibits the denial of admission, termination of assistance or eviction on the basis of arrest records alone. Applicants may create reasonable look-back periods for review of crimes in their TSP. The TSP must also include an individual assessment of each tenant applicant’s history and provide the tenant applicant

¹ The following state QAPs were reviewed for tenant screening language: Alabama, Alaska, Arizona, Florida, Georgia, Illinois, Kansas, New Jersey, Ohio, Oklahoma, Pennsylvania, South Carolina, and Wisconsin.

² https://www.dca.ga.gov/sites/default/files/2021_qap_-_draft.pdf (Section M: Screening Criteria).

an opportunity to provide mitigating information before denying housing based upon the result of criminal screening.”³

In both instances the state’s housing agency avoids proscribing specific terms, instead focusing on more generally applicable requirements, namely complying with federal fair housing laws, and ensuring the application of reasonable and non-discriminatory screening practices with regard to criminal background screening. Ohio goes one step further to explicitly incorporate federal guidance mandating individualized assessments and providing tenant applicants the right to provide mitigating evidence. By including this sort of general mandate, TDHCA would assume responsibility for ensuring meaningful compliance by all applicants to the LIHTC program with the underlying mission of the PSH program while at the same time allowing the applicants the right to design specific screening criteria that best meets their individualized needs.

Insofar as TDHCA believes it essential to include some language relating to tenant screening policies, the Roundtable issues the strongest possible recommendation that any such provision be worded in the most broadly applicable terms, referencing Georgia and Ohio’s QAPs as examples. In crafting such language, it is imperative that the provision explicitly require individual applicant compliance with all federal fair housing law, including the need for reasonable and non-discriminatory policies, as well as proscribing the tenant applicant’s right to submit mitigating information and to a review of any negative determination.⁴

(3) In the event TDHCA insists on including a proscriptive tenant screening policy, the Roundtable urges adoption of the screening recommendations included in the [Roundtable’s Guide](#).

As proposed, TDHCA’s tenant selection criteria far exceed existing HUD criteria and includes look back periods, especially for more serious offenses, that have no basis in evidence or fact. The language is vague in its requirements and application, and overbroad in scope. According to a 2019 study sponsored by NeighborWorks America and the Otto Bremer Trust, criminal offenses that occurred more than five years prior to move-in have no significant impact on housing outcomes.⁵ A recent Koch Newsroom report lauds Texas’ “smart-on-crime, soft-on-taxpayers” approach to criminal justice reform and, while indicating that there are sometimes reasons to block people with criminal backgrounds from certain opportunities, cites the need to “eliminate one-size-fits-all prohibitions on access to jobs, housing, loans, education, voting rights, and licenses.”⁶

Accordingly, should TDHCA proceed with including proscriptive language in its QAP regarding tenant screening procedures, the Roundtable strongly recommends the following amendments to what is currently proposed:

³<https://ohiohome.org/search.aspx?cx=017147130776823599764%3Ahp0upwhsodu&cof=FORID%3A11&q=2020+Qualified+Action+Plan> (Section: Inclusive Tenant Selection).

⁴ While strongly preferring the more robust Ohio and Georgia provisions, the Roundtable does not oppose Texas Housers’ and Foundation Communities/New Hope’s suggested language: “The Development’s Tenant Selection Criteria will include a clear description of any credit, criminal conviction, or prior eviction history that may disqualify a potential resident. The disqualification cannot be a total prohibition.” Or, alternatively, “Have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of criminal history screening criteria.”

⁵ Success in Housing: How Much Does Criminal Background Matter? (Wilder Research, 2019).

⁶ Holden, Mark. The Evolution of Criminal Justice Reform. Koch Newsroom: Discovery (May 2019).

- a. That denials may be based only on criminal convictions, and deferred adjudications and community supervision shall not constitute a criminal conviction;
- b. That including a category of non-violent felonies is vague and overbroad, as is including Class A misdemeanors, which include a wide range of offenses and may unintentionally sweep into its scope individuals who are themselves victims, not perpetrators.
- c. Subclause I be changed from a total prohibition to a simply more rigorous screening criteria that requires mitigation outlined through subclause II. If a lookback period must be included, we recommend it be in accordance with the Texas Criminal Background Screening Guide for Rental Housing Providers.
- d. Similarly, that item (-a-) be changed from a total and permanent denial to a simply more rigorous screening criteria that also requires mitigation through subclause II. If a lookback period must be included, we recommend it be in accordance with the Texas Criminal Background Screening Guide for Rental Housing Providers.
- e. Subclause II under the definition of Supportive Housing allows for a full exemption from the proposed Tenant Selection Criteria when the tenant has been referred by the local continuum of care or a nonprofit that has received and expends local, state, or federal funding to address homelessness.
- f. That whenever a landlord denies someone whose conviction falls within the look-back period, including the permanent look-back periods, the landlord must still conduct an individual review to determine whether the person should be admitted. (e.g., if an individual has an 18-month old conviction for illegally displaying a weapon, the landlord may deny but may overrule the denial based upon the individual review, such outstanding letters of reference from employer, minister, etc.).

The Austin/Travis County Reentry Roundtable issues the strongest possible concern regarding proposed language in the draft 2021 QAP, 10 TAC 11.1(d)(122)(B)(v), Supportive Housing Tenant Selection Criteria. This language is in conflict with the federal Fair Housing Act and conflicts with Governor Abbott's own previous support in addressing chronic homelessness across the state of Texas by supporting changes to the 2020 QAP to leverage LIHTC developments to house the chronically homeless by aligning with local homeless continuums of care. For all of these reasons, the Roundtable urges the language be removed in its entirety or, in the alternative, that TDHCA either adopt a much simpler rule (see above examples) or adopts the Roundtable Guide and Template in their entirety.

Sincerely,



Jennifer Tucker, Chair
Austin/Travis County Reentry Roundtable

(139) City of Austin Mayor Steve Adler



City of Austin

P.O. Box 1088, Austin, TX 78767-1088

October 9, 2020

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street, Austin, TX 78701

Dear Director Wilkinson,

For years, ending homelessness has been a top priority for Austin. We are committed to addressing homelessness in a meaningful, comprehensive, and compassionate manner. We believe in housing policies that make homelessness rare; diversion and rapid re-housing programs that make homelessness brief; and significantly investing in permanent supportive housing that ensures that homelessness is non-recurring for all those that successfully rise above that experience. I am happy to share that we have been making positive strides. In 2018 alone, the City connected nearly 2,500 people experiencing homelessness with permanent housing. But this success may all come to an abrupt and tragic end if the Texas Department of Housing and Community Affairs (TDHCA), its Board, and the Governor move forward with TDHCA's proposed Tenant Selection Criteria, as set forth in the draft 2021 Qualified Allocation Plan (QAP), for housing that is designed and intended to assist individuals experiencing homelessness.

A new eligibility section in the draft QAP would effectively bar individuals with an overly broad set of criminal convictions, including non-violent felonies and Class A misdemeanors, from ever being housed in supportive housing developments. The proposed rule would require landlords to penalize a prospective tenant for a conviction regardless of when it occurred. Because eligibility for an individual with a prior conviction would be calculated until the *time of application* – not the conviction – the conviction would effectively deny housing permanently, not temporarily. For example, if someone who was convicted 20 years ago and received a 3-year sentence were to apply for supportive housing under these proposed rules, the denial period would begin at the time of application, thereby disqualifying the applicant for housing--even though this person had paid for their crime 17 years ago.

This draconian change in eligibility could not come at a more vulnerable time. COVID-19 has increased the likelihood of homelessness due to evictions across the State of Texas. This proposed rule will not help to ensure that their homelessness is rare, brief, or compassionate. To the contrary, the proposed rules will ensure that those who are trying to escape the streets are relegated to permanent homelessness.

The rules as proposed would also disproportionately impact Black/African American individuals, as they are already significantly overrepresented in the population experiencing homelessness. Roughly 1 in 10 people in Travis County are Black/African American, while about 1 in 3 people in the population experiencing homelessness are Black/African American. And as has been clearly shown by research, the chronically homeless, compared to the general population, disproportionately have criminal histories.¹

I urge the State to rethink this draconian plan. The TDHCA, its Board, and the Governor have the opportunity to disapprove of the proposed changes to eligibility. If they keep the plan as is, then they will have potentially sentenced a growing number of homeless Texans to a lifetime of living on the streets.

Respectfully,

A handwritten signature in blue ink, appearing to read "Steve Adler". The signature is fluid and cursive, with a large initial "S" and "A".

Steve Adler
Mayor, City of Austin

¹ "Assessing Criminal History as a Predictor of Future Housing Success for Homeless Adults With Behavioral Health Disorders" by Daniel K. Malone M.P.H.

(140) Purple Martin Real Estate

PURPLE  MARTIN
REAL ESTATE

October 9, 2020

Multifamily Finance Division
Texas Department of Housing and Community Affairs
Attn: Marni Holloway, Director of Multifamily Finance
221 East 11th Street
Austin, Texas 78701

Re: Public Comment, 2021 Official Draft Qualified Allocation Plan

Dear Ms. Holloway:

Thank you for the opportunity to provide public comment related the Texas Department of Housing and Community Affairs (“TDHCA”) 2021 Draft Qualified Allocation Plan (“QAP”). Please accept the following comments on behalf of Purple Martin Real Estate:

§11.9(c)(8) Readiness to Proceed in Disaster Impacted Counties (“RTP”) – While the following requested change will most likely have to come from the Governor’s office, this point category should be removed from the 2021 QAP entirely.

- The November 30th closing deadline concentrates the review and permitting of RTP developments in too short a window, placing undue burden on local jurisdictions and funding agencies. As seen in the Houston urban subregion in 2019, the City of Houston and the Texas GLO were unable to meet the November 30th deadline in virtually all cases. COVID-19 has since exacerbated these issues.
- The advanced closing date forces developers to spend significantly more design and pursuit dollars earlier in the process without any certainty of an award. That is a waste of resources that could be used to pursue other affordable developments.

§11.101(a)(3) and §11.101(b)(1)(C) School Ratings – The provisions related to school ratings should be deleted from the application threshold requirements entirely. In the absence of this change, there should be no category of school performance that causes complete ineligibility of an application without the ability to make a case that there are mitigating circumstances.

- Until recently, an applicant was eligible to provide mitigation in all cases, no matter the school rating. Based on the current language, there is a strict prohibition against building in areas with schools that failed to perform based on 2018 and 2019 TEA ratings. Considering the uncertainty as to how schools will be rated for the 2020-2021 school year, using outdated school ratings from the 2018 and 2019 academic years to determine eligibility for a development that will not be leasing until 2024 is inappropriate.
- Schools are not just important from an educational standpoint, but also from the standpoint of non-educational aspects that stabilize the lives of all children and families, including meal provision, socialization and a place where children can physically go while their parents go to work.

- Stable housing has been proven to increase school performance for those children in that stable housing. It is therefore inappropriate to completely deny certain communities affordable housing based on an outdated snapshot of school performance.

§11.204(15) – Feasibility Reports for Acquisition/Rehab Deals – The requirement for Acquisition/Rehab applications to provide Feasibility Reports should be removed. The information contained in Feasibility Reports are either not applicable to acquisition/rehabilitation developments or are covered in the Scope and Cost Review. The TDHCA board found it appropriate to waive this requirement for the 2020 program year, and it is unclear why this language has been included in the 2021 Draft QAP.

§11.9(b)(2) & §11.204(6)(A) – Experience Certificates – HUB Language – The newly added language of §11.204(6)(A) that reads “Serving only as the HUB for a Development does not meet this requirement” should be deleted. This language runs counter to the purpose of incentivizing HUB participation in the tax credit program, which is to build capacity and provide opportunities to gain experience. A HUB that is materially participating in the development, construction, or operation of a Development qualifies for having met the Experience Requirement set forth in §11.204(6) provided acceptable documentation is submitted as required under the rule.

§11.304(2) & §11.901(20) – Appraisal Reviews – The requirement for a second review of an appraisal, and its corresponding \$6,000 review fee should be eliminated. Instead, if the validity of appraisals is a concern, TDHCA can instead publish a list of approved appraisers to eliminate any previous providers that may have caused concern. This is a process already in place for market analysts. Requiring an appraisal review fee adds an unnecessary cost to an already expensive application and is not consistent with TDHCA’s practice of relying upon the other third-party reports (i.e. ESA, Scope & Cost Review, Feasibility Report, Market Study).

Please contact me at (512) 658-6386 or Audrey@purplemartinre.com with any questions.

Sincerely,



Audrey Martin
Principal, Purple Martin Real Estate, LLC

(141) Harris County Community Services
Department



Joshua Stuckey
Interim Director

HARRIS COUNTY, TEXAS

COMMUNITY SERVICES DEPARTMENT

8410 Lantern Point Drive
Houston, Texas 77054
Tel (832) 927-4770
Fax (713) 578-2090

October 9, 2020

Texas Department of Housing and Community Affairs
Attn: Matthew Griego
QAP Public Comment
P.O. Box 13941, Austin, Texas 78711-3941

Submitted electronically to: htc.public-comment@tdhca.state.tx.us

RE: 2021 QAP Staff Draft – Changes to the Supportive Housing Definition

Dear Mr. Griego:

Harris County Community Services Department (CSD) submits the following comments in response to the 2021 Qualified Allocation Plan (QAP) Staff Draft. Specifically, CSD's comments refer to the new tenant selection criteria for supportive housing proposed at Section 122 (B)(v) of the 2021 QAP Staff Draft. A robust supportive housing program is vital to Harris County's efforts to eliminate homelessness in the county. However, the new, highly prescriptive tenant selection criteria will have unintended negative consequences on both local as well as statewide efforts at rehousing the homeless because of the increased housing instability the proposed changes will cause for those persons with previous criminal convictions. Harris County leadership and CSD have serious concerns regarding these changes.

As a general comment Harris County CSD believes it is not a good time to implement changes to the QAP in light of the Coronavirus pandemic and its possible long-term effects on the economy and housing market, as well as its residual effects on the homeless population. CSD strongly encourages TDHCA to revise if not delay these changes, and further study the long-term implications of this prescriptive and restrictive tenant selection policy criteria.

Concerns

- I. The proposed change places an unnecessary burden on individuals with previous convictions and homeless response systems.** While there certainly exists an expectation for safety in our communities, broad bans on housing hurt those that intend to reenter society as productive adults. Additionally, data shows that people who have been incarcerated are 13 times more likely to experience homelessness when compared

to the general public. This is no coincidence; many people fall into homelessness *because* they are released from the criminal justice system and have nowhere to go. Increased housing insecurity and homelessness will place unnecessary barriers to reentry on people who have been convicted of Class A misdemeanors to felonies. This burden will not only be placed on the individual previously convicted of a crime, though. Homeless response systems across the state will have the added difficulty of finding supportive housing for their clients, adding unnecessary time and cost to an already overworked system. It is important to get people into stable housing quickly so they can obtain employment and begin giving back to their communities. However, this change to the QAP would severely, adversely impact the ability of homeless response systems across the state to secure supportive housing for their clients, which in turn would lead to INCREASED recidivism and homelessness.

- II. The proposed change occurs within the context of an already stressed housing market and lagging economy.** During a typical year, Harris County experiences rising home prices and stagnating wages for many workers. Affordability is already an issue statewide. The severity of such issues is multiplied with the economic fallout caused by the COVID-19 pandemic. Massive amounts of job loss or hour reduction claims are still being filed as people struggle to find work lost earlier in the year. Several housing organizations are warning of an eviction crisis, even with a federal moratorium on evictions. Having people experiencing homelessness in itself decreases the safety of the houseless individual and whole communities. Proposed changes by TDHCA will leave an already vulnerable group of people even more at risk of homelessness, adding to the county's already monumental demand for housing, which has only exacerbated due to acute effects of the pandemic. Housing options will be limited to other extremely scarce, and possibly nonexistent affordable housing resources or to market rate housing that is almost certainly out of reach for those with little to no support upon reentry.
- III. The proposed rule change may run afoul of the Fair Housing Act by adversely affecting access to supportive housing of persons under the protected classes of race and disability.** In the context of providing supportive housing to vulnerable populations, it should be noted that an unintended consequence of the rule change and its broad ban on housing access to potential tenants will disproportionately impact minorities and persons with disabilities. As common data shows, minorities are disproportionately affected by the criminal justice system which means that persons exiting incarceration are more likely to be a person of color; and thus, as stated earlier, are also more likely to experience homelessness. Furthermore, the proposed changes eliminate certain housing options for people with drug-related offenses, who may likely have a substance abuse disorder, which is a diagnosed mental health condition that is best treated when a person has a stable living environment. Consequently, such persons with a diagnosed disability would be disproportionately impacted by this proposed rule change which runs contrary to efforts to support vulnerable populations and decrease homelessness and recidivism.

Recommendations

Given the concerns raised above, CSD, supported by the Commissioner's Court of Harris County, opposes the proposed TDHCA changes to the QAP at Section 122 (B)(v). CSD and Commissioner's Court recommend either:

- Withdrawing plans to add the aforementioned changes to the QAP completely; OR
- Withdrawing plans to add the aforementioned changes to the QAP until after the COVID-19 pandemic has passed and a full review of the impact of these changes to homeless support systems has been conducted.

Conclusion

The safety of residents must remain a priority for landlords, developers, and policymakers, but stringent tenant selection criteria for affordable, supportive housing creates additional barriers to house our most vulnerable residents, and further contributes residential instability for persons with a criminal record in spite of any community re-entry efforts. The proposed new language in the 2021 QAP amendments regarding background check criteria is exceedingly punitive and prescriptive and will add further compliance burden to a program with complex reporting and documentation requirements. Furthermore, inclusion of the proposed QAP amendments creates substantially higher barriers for persons exiting homelessness, thus making it nearly impossible for said individuals to find affordable units.

Your consideration of our comments regarding the QAP is greatly appreciated. If you have any questions or need further clarification to discuss these recommendations, please do not hesitate to contact me or Daphne Lemelle, Community Development Director, at (832) 927-4770.

Respectfully Submitted,

DocuSigned by:

C19DA7B312F541B...

Joshua Stuckey
Interim Executive Director

(142) ECHO



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Matthew Mollica
860-287-2587
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October 9, 2020

Texas Department of Housing and Community Affairs

Attn: Matthew Griego

QAP Public Comment

P.O. Box 13941

Austin, Texas 78711-3941

Submitted Via Email: htc.public-comment@tdhca.state.tx.us

**Re: Comments and Opposition of page 15 of Staff Draft of 10 TAC, Chapter 11, 2021
Qualified Allocation Plan (QAP)**

Dear Mr. Griego:

The Ending Community Homelessness Coalition appreciates the opportunity to participate in the public rule-making process affecting the 2021 Qualified Allocation Plan (QAP).

The Ending Community Homelessness Coalition, or ECHO, is the lead Continuum of Care for Austin and Travis County. Our organization is charged with leading the homeless response system and creating a community wherein homelessness is rare, brief and nonrecurring. Proposed staff comments in page 15 of the draft QAP changes significantly and needlessly impede communities' ability to create effective homeless response systems.

During the 2020 Point In Time Count, ECHO alongside hundreds of dedicated community volunteers, counted 2,506 people experiencing homelessness. Of the 2,506 individuals counted, 1,574 were experiencing unsheltered homelessness. Our community leverages supportive housing developments financed through the Low Income Housing Tax Credit program to offer safe, deeply service enriched housing to the most vulnerable in our community. We strongly advocate that no policies be approved that create barriers to entry into supportive housing, including a mandate of minimum look back periods on criminal screening practices.

ECHO has devoted significant effort to finding ways to expand access to housing in the Austin metropolitan area for individuals experiencing homelessness. ECHO has partnered with other community advocates and experts to find a data driven and evidence-based path forward. In 2018, through strong collaboration with ECHO, the Austin Travis County Reentry Roundtable released the Texas Criminal Background Screening Guide for Rental Housing Providers and an accompanying criminal background screening template. These documents were created to assist landlords and property managers in complying with the U.S. Fair Housing Act and current U.S. Housing and Urban Development Office guidance on screening tenants with criminal backgrounds.



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The Guide provides clear instruction to housing providers on how best to comply with fair housing law and guidelines for implementing criminal background screenings for housing applicants. It is equally applicable to housing authorities, federally assisted housing providers, and private sector housing providers.

The Guide and Template were the result of a year-long conversation between the Austin Travis County Reentry Roundtable, the Austin Apartment Association, the Austin Tenants' Council, ECHO, and The University of Texas Law School Community Development Clinic. In addition to these five parties who took on the task of drafting the Guide and Template, a larger advisory group of community housing entities including local and county housing authorities, local affordable housing developers, and the City of Austin's Neighborhood Housing and Community Development department, provided ongoing input and feedback throughout the project's term.

Based on this collaborative's expertise and knowledge of legally supportable criminal background screening practices, and drawing on the community consensus formed while creating the Guide and Template, ECHO submits the following recommendations, in order of preference:

(1) Section 11.1(d)(122)(B)(v) should be removed in its entirety.

The Ending Community Homelessness Coalition urges TDHCA to abstain from imposing a single statewide proscriptive mandate regarding tenant screening. Developers and communities across Texas deserve the right to identify the scope and breadth of tenant screening policies that fit their individual needs and mission, while also adhering to federal fair housing law requirements. TDHCA has not inserted itself into this process previously and there exists no reason for doing so now.

Furthermore, such unprecedented and substantial changes warrant a statewide discussion prior to implementation and communities have not been afforded that opportunity.

(2) In the event TDHCA insists on including a proscriptive tenant screening policy, ECHO urges adoption of the screening recommendations included in the Roundtable's Guide.

As proposed, TDHCA's tenant selection criteria far exceeds existing HUD criteria and includes look back periods, especially for more serious offenses, that have no basis in evidence or fact. The language is vague in its requirements and application, and overbroad in scope.

Accordingly, should TDHCA proceed with including proscriptive language in its QAP regarding tenant screening procedures, ECHO recommends the following amendments to what is currently proposed:

- a. Denials may be based only on criminal convictions, and deferred adjudications and community supervision shall not constitute a criminal conviction;



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b. Including a category of non-violent felonies is vague and overbroad, as is including Class A misdemeanors, which include a wide range of offenses and may unintentionally sweep into its scope individuals who are themselves victims, not perpetrators.

c. Subclause I be changed from a total prohibition to a simply more rigorous screening criteria that requires mitigation outlined through subclause II. If a lookback period must be included, we recommend they be in accordance with the Texas Criminal Background Screening Guide for Rental Housing Providers.

d. Item (-a-) be changed from a total and permanent denial to a simply more rigorous screening criteria that also requires mitigation through subclause II. If a lookback period must be included, we recommend they be in accordance with the Texas Criminal Background Screening Guide for Rental Housing Providers.

e. Subclause II under the definition of Supportive Housing allow for a full exemption from the proposed Tenant Selection Criteria when the tenant has been referred by the local continuum of care or a nonprofit that has received and expends local, state, or federal funding to address homelessness.

f. When a landlord denies someone whose conviction falls within the look-back period, including the permanent look-back periods, the landlord must still conduct an individual review to determine whether the person should be admitted. (e.g., if an individual has an 18-month old conviction for illegally displaying a weapon, the landlord may deny but may overrule the denial based upon the individual review, such outstanding letters of reference from employer, minister, etc.).

ECHO issues the strongest possible concern regarding proposed language in the draft 2021 QAP, 10 TAC 11.1(d)(122)(B)(v), Supportive Housing Tenant Selection Criteria. This language is in conflict with the federal Fair Housing Act and conflicts with Governor Abbott's own previous support in addressing chronic homelessness across the state of Texas by supporting changes to the 2020 QAP to leverage LIHTC developments to house people experiencing chronic homeless by aligning with local homeless response systems. For all these reasons, ECHO urges the language be removed in its entirety or, in the alternative, that TDHCA either adopt a much simpler rule (see above examples) or adopts the Roundtable Guide and Template in their entirety.

Sincerely,

Matthew Mollica

Matthew Mollica (Oct 9, 2020 15:09 CDT)






ECHO QAP Comments

Final Audit Report

2020-10-09

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(143) Bradford White Corporation



October 9, 2020

Matthew Griego
QAP Public Comment
PO Box 13941
Austin, TX 78111-3941
htc.public-comment@tdhca.state.tx.us

Re: Proposed Rule 45 Texas Register 6476

Dear Mr. Griego:

On behalf of Bradford White Corporation (BWC), thank you for providing an opportunity to comment on Proposed Rule 45 Texas Register 6476, specifically Subchapter B, 11.101 Site and Development Requirements and Restrictions, VI (d) Green Building Features with reference to requirements of 2018 International Green Construction Code (IGCC), second printing, January 2019. We are pleased to be a part of this important conversation.

BWC is an American-owned, full-line manufacturer of residential, commercial, and industrial products for water heating, space heating, combination heating, and water storage products. In the State of Texas, a significant number of individuals, families, and job providers rely on our products for their hot water needs.

On July 11, 2014, the Department of Energy (DOE) published a new test procedure and efficiency metric for residential and certain commercial water heaters. Manufacturers were required to label the applicable products in terms of the new efficiency metric starting no later than June 12, 2017. These changes affect the following types of water heaters:

- Gas-fired storage water heaters with inputs less than or equal to 105,000 Btu/hr;
- Electric storage water heaters with inputs less than or equal to 12 kW;
- Oil-fired storage water heaters with inputs less than or equal to 140,000 Btu/hr;
- Gas-fired instantaneous water heaters with inputs less than or equal to 200,000 Btu/hr;
- Electric instantaneous water heaters with inputs less than or equal to 58.6 kW; and
- Oil-fired instantaneous water heaters with inputs less than or equal to 210,000 Btu/hr.

All residential products that are affected by these changes were previously labeled with an Energy Factor (EF) and a First Hour Rating (FHR). For those products that were previously considered commercial but have been determined by DOE to have a residential utility have transitioned away from being labeled in terms of Thermal Efficiency (TE) and Standby Loss (SBL). All of these products are labeled, as of June 12, 2017, in terms of a Uniform Energy Factor (UEF) and new First Hour Rating.

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BWC alerts the State of Texas to the aforementioned DOE efficiency metric changes (i.e. UEF and the new First Hour Rating), as the 2018 International Green Construction Code references the outdated efficiency metrics EF and TE in Table B101.8 Performance Requirements for Service Water Heating Equipment. This is detailed in Attachment A. BWC recommends corrections updating the DOE efficiency metrics in Table B101.8. BWC's edits are focused on products that we manufacture and are very familiar with. These include the following: gas-fired and electric resistance storage water heaters; electric resistance grid-enabled water heaters; heat pump water heaters; gas instantaneous water heaters; and oil-fired storage water heaters.

Manufacturers are prohibited from denominating the efficiency of federally regulated products, except in terms of the efficiency metrics that have been prescribed by DOE. Therefore, we recommend updating to the values and nomenclature detailed in Attachment B, which are available from the DOE, 10 CFR Part 430.32 and 10 CFR Part 431.110.

Given these concerns, BWC recommends the State of Texas to amend Proposed Rule 45 Texas Register 6476 with the corrections provided to the 2018 International Green Construction Code, prior to adoption. BWC recognizes the State of Texas' efforts for Green Building requirements and restrictions, but we respectfully request that improvements in energy efficiency are done in terms of current efficiency metrics required by the Department of Energy.

Thank you for continuing to include BWC and other stakeholders in the State of Texas codes and standards discussions. Bradford White Corporation thanks you for the opportunity to comment on Proposed Rule 45 Texas Register 6476. Please let me know if you have any questions.

Respectfully Submitted,

Bradford White Corporation

Eric Truskoski
Senior Director of Government and Regulatory Affairs

Cc: B. Wolfer; B. Ahee;

Attachments:

Attachment A – Efficiency metrics as published in Table B101.8 (Table B-8) 2018 International Green Construction Code, Second Printing, January 2019.

Attachment B - Corrections to efficiency metrics and errata Table 101.8 (Table B-8) 2018 International Green Construction Code, Second Printing, January 2019.

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ATTACHMENT A TABLE B101.8 (TABLE B-8)

(SUPERSEDES TABLE 7.8 IN ANSI/ASHRAE/IES STANDARD 90.1) PERFORMANCE REQUIREMENTS FOR SERVICE WATER HEATING EQUIPMENT (I-P)

EQUIPMENT TYPE	SIZE CATEGORY (INPUT)	RATED STORAGE VOLUME AND INPUT RATING (IF APPLICABLE)	DRAW PATTERN	PERFORMANCE REQUIRED(a)	TEST PROCEDURE(b)
Electric table-top water heaters(c)	≤ 12 kW	≥ 20 gal and ≤ 120 gal	Very small	UEF ≥ 0.6323 – 0.0058V	DOE 10 CFR Part 430
			Low	UEF ≥ 0.9188 – 0.0031V	
			Medium	UEF ≥ 0.9577 – 0.0023V	
			High	UEF ≥ 0.9844 – 0.0016V	
Electric resistance storage water heaters		≥ 20 gal and ≤ 55 gal	Very small	UEF ≥ 0.8808 – 0.0008V	DOE 10 CFR Part 430
			Low	UEF ≥ 0.9254 – 0.0003V	
			Medium	UEF ≥ 0.9307 – 0.0002V	
		> 55 gal	Must use heat-pump water heater		
Electric resistance grid-enabled water heaters		> 75 gal	Very small	UEF ≥ 1.0136 – 0.0028V	DOE 10 CFR Part 430
			Low	UEF ≥ 0.09984 – 0.0014V	
			Medium	UEF ≥ 0.9853 – 0.0010V	
			High	UEF ≥ 0.9720 – 0.0007V	
Heat-pump water heaters		≤ 55 gal	EF ≥ 2.00, FHR ≥ 50 gal	DOE 10 CFR Part 430	
		> 55 gal	EF ≥ 2.00, FHR ≥ 50 gal		
Gas-fired storage water heaters	≤ 75,000 Btu/h	≤ 55 gal		EF ≥ 0.67, FHR ≥ 67 gal	DOE 10 CFR Part 430
		> 55 gal		EF ≥ 0.77, FHR ≥ 67 gal	
	≤ 75,000 Btu/h	≤ 140 gal		E ≥ 0.94 or EF ≥ 0.93 and SL ≤ 0.84 × (Q/800 + 110vV), Btu/h	
Gas instantaneous water heaters	> 50,000 Btu/h and < 200,000 Btu/h(d)	≥ 4,000 (Btu/h)/gal and < 2 gal		EF ≥ 0.90 and GPM ≥ 2.5 over a 77°F rise	DOE 10 CFR Part 430
				E ≥ 0.94 or EF ≥ 0.93	
	≥ 75,000 Btu/h©	≤ 140 gal ≥ 4,000 (Btu/h)/gal		SL ≤ 0.84 × (Q/800 + 110vV), Btu/h	
Oil storage water heaters	≤ 105,000 Btu/h	≤ 50 gal	Very small	EF = 0.2509 – 0.0012V	DOE 10 CFR Part 430
			Low	EF = 0.5330 – 0.0016V	
		Medium	EF = 0.6078 – 0.0016V		
		High	EF = 0.6815 – 0.0014V		
	> 105,000 Btu/h	< 4,000 (Btu/h)/gal		E ≥ 80% and SL ≤ (Q/800 + 110vV), Btu/h	DOE 10 CFR Part 430
Oil instantaneous water heaters	≤ 210,000 Btu/h	≤ 50 gal		EF ≥ 0.59 – 0.0019V	DOE 10 CFR Part 430
	> 210,000 Btu/h	≥ 4,000 (Btu/h)/gal and < 10 gal		E(t) ≥ 80%	ANSI Z21.10.3
	> 210,000 Btu/h	≥ 4,000 (Btu/h)/gal and < 10 gal		E ≥ 78% and SL ≤ (Q/800 + 110vV), Btu/h	
Solar water heater		Electric backup Gas backup		SEF ≤ 1.8	ANSI Z21.10.3
				SEF ≤ 1.2	
Hot-water supply boilers, gas and oil	> 300,000 Btu/h and ≤ 12,500,000 Btu/h	≥ 4,000 (Btu/h)/gal and < 10 gal		E(t) ≥ 80%	ANSI Z21.10.3
Hot-water supply boilers, gas		≥ 4,000 (Btu/h)/gal and ≥ 10 gal		E ≥ 80% and SL ≤ (Q/800 + 110vV), Btu/h	ANSI Z21.10.3
Hot-water supply boilers, oil		≥ 4,000 (Btu/h)/gal and ≥ 10 gal		E ≥ 78% and SL ≤ (Q/800 + 110vV), Btu/h	ANSI Z21.10.3
Pool heaters, gas	All sizes			Et ≥ 82%	ASHRAE 148
Pool heaters, oil	All sizes			Et ≥ 78%	ASHRAE 148
Heat-pump pool heaters	All sizes	50°F db 44.2°F wb outdoor air 80.0°F entering water		≥ 4.0 COP	AHRI 1180
Unfired storage tanks	All sizes			≥ R-12.5	None

a. Energy factor (EF) and thermal efficiency (E) are minimum requirements, while standby loss (SL) is maximum Btu/h based on a 70°F temperature difference between stored water and ambient requirements. In the EF equation, V is the rated storage volume in gallons. In the SL equation, V is the rated volume in gallons and Q is the nameplate input rate in Btu/hr.

b. Chapter 11 (Section 11) contains details on the referenced test procedures, including the year/version of the referenced test procedure.

c. Section G.1 is titled "Test Method for Measuring Thermal Efficiency," and Section G.2 is titled "Test Method for Measuring Standby Loss."

d. UEF is the Uniform Energy Factor and is a dimensionless number that is calculated per DOE 10 CFR Part 430 test procedures.

ATTACHMENT B TABLE B101.8 (TABLE B-8) with Thermal Efficiency corrections in RED
 (SUPERSEDES TABLE 7.8 IN ANSI/ASHRAE/IES STANDARD 90.1) PERFORMANCE REQUIREMENTS FOR SERVICE WATER HEATING EQUIPMENT (I-P)

EQUIPMENT TYPE	SIZE CATEGORY (INPUT)	RATED STORAGE VOLUME AND INPUT RATING (IF APPLICABLE)	DRAW PATTERN	PERFORMANCE REQUIRED(a,e)	TEST PROCEDURE(b)
Electric table-top water heaters(c)	≤ 12 kW	≥ 20 gal and ≤ 120 gal	Very small Low Medium High	UEF ≥ 0.6323 – 0.0058V UEF ≥ 0.9188 – 0.0031V UEF ≥ 0.9577 – 0.0023V UEF ≥ 0.9844 – 0.0016V UEF ≥ 0.9884 – 0.0016V	DOE 10 CFR Part 430
Electric resistance storage water heaters		≥ 20 gal and ≤ 55 gal > 55 gal	Very small Low Medium High	UEF ≥ 0.8808 – 0.0008V UEF ≥ 0.9254 – 0.0003V UEF ≥ 0.9307 – 0.0002V UEF ≥ 0.9349 – 0.0001V	DOE 10 CFR Part 430
Electric resistance grid-enabled water heaters		> 75 gal	Very small Low Medium High	UEF ≥ 1.0136 – 0.0028V UEF ≥ 0.9984 – 0.0014V UEF ≥ 0.9853 – 0.0010V UEF ≥ 0.9720 – 0.0007V	DOE 10 CFR Part 430
Heat-pump water heaters		≤ 55 gal > 55 gal	Very small Low Medium High Very small Low Medium High	EF ≥ 2.00, FHR ≥ 50 gal UEF ≥ 0.8808 – 0.0008V UEF ≥ 0.9254 – 0.0003V UEF ≥ 0.9307 – 0.0002V UEF ≥ 0.9349 – 0.0001V EF ≥ 2.00, FHR ≥ 50 gal UEF ≥ 1.9236 – 0.0011V UEF ≥ 2.0440 – 0.0011V UEF ≥ 2.1171 – 0.0011V UEF ≥ 2.2418 – 0.0011V	DOE 10 CFR Part 430
Gas-fired storage water heaters	≤ 75,000 Btu/h	≤ 55 gal > 55 gal	Very small Low Medium High	EF ≥ 0.67, FHR ≥ 67 gal UEF ≥ 0.3456 – 0.0020V UEF ≥ 0.5982 – 0.0015V UEF ≥ 0.6483 – 0.0017V UEF ≥ 0.6920 – 0.0013V	DOE 10 CFR Part 430
	≥ 75,000 Btu/h and ≤ 105,000 Btu/h	≤ 140 gal ≤ 120 gal	Very small Low Medium High	EF ≥ 0.94 or EF ≥ 0.93 and SL ≤ 0.84 × (Q/800 + 110V), Btu/h UEF ≥ 0.2674 – 0.0009V UEF ≥ 0.5362 – 0.0012V UEF ≥ 0.6002 – 0.0011V UEF ≥ 0.6597 – 0.0009V	ANSI Z21.10.3-DOE 10 CFR Part 431
Gas instantaneous water heaters	≥ 50,000 Btu/h and ≤ 100,000 Btu/h(d) ≥ 75,000 Btu/h(c) ≥ 75,000 Btu/h(c)	≥ 4,000 (Btu/h)/gal and < 3 gal < 2 gal and > 50,000 Btu/h ≤ 140 gal ≥ 4,000 (Btu/h)/gal < 10 gal ≥ 10 gal	Very small Low Medium High	EF ≥ 0.90 and GPM ≥ 3.5 over a 77°F rise UEF ≥ 0.80 UEF ≥ 0.81 UEF ≥ 0.81 UEF ≥ 0.81 EF ≥ 0.94 or EF ≥ 0.93 SL ≤ 0.84 × (Q/800 + 110V), Btu/h E ≥ 80%	DOE 10 CFR Part 430 ANSI Z21.10.3 DOE 10 CFR Part 431
Oil storage water heaters	≤ 105,000 Btu/h > 105,000 Btu/h and ≤ 140,000 Btu/h	≤ 50 gal ≤ 4,000 (Btu/h)/gal ≤ 120 gal	Very small Low Medium High	UEF = 0.2509 – 0.0012V UEF = 0.5330 – 0.0016V UEF = 0.6078 – 0.0016V UEF = 0.6815 – 0.0014V E ≥ 80% and SL ≤ (Q/800 + 110V), Btu/h UEF ≥ 0.2932 – 0.0015V UEF ≥ 0.5596 – 0.0018V UEF ≥ 0.6194 – 0.0016V UEF ≥ 0.6740 – 0.0013V	DOE 10 CFR Part 430 ANSI Z21.10.3-DOE 10 CFR Part 431
Oil instantaneous water heaters	≤ 210,000 Btu/h > 210,000 Btu/h	≤ 50 gal ≥ 4,000 (Btu/h)/gal and < 10 gal ≥ 4,000 (Btu/h)/gal and ≥ 10 gal		EF ≥ 0.59 – 0.0019V E(t) ≥ 80% E ≥ 78% and SL ≤ (Q/800 + 110V), Btu/h	ANSI Z21.10.3 DOE 10 CFR Part 431
Solar water heater		Electric backup Gas backup		SEF ≥ 1.8 SEF ≥ 1.2	ANSI Z21.10.3
Hot-water supply boilers, gas and oil	> 300,000 Btu/h and ≤ 42,500,000 Btu/h	≥ 4,000 (Btu/h)/gal and < 10 gal		E(t) ≥ 80%	ANSI Z21.10.3 DOE 10 CFR Part 431
Hot-water supply boilers, gas		≥ 4,000 (Btu/h)/gal and ≥ 10 gal		E ≥ 80% and SL ≤ (Q/800 + 110V), Btu/h	ANSI Z21.10.3 DOE 10 CFR Part 431
Hot-water supply boilers, oil		≥ 4,000 (Btu/h)/gal and ≥ 10 gal		E ≥ 78% and SL ≤ (Q/800 + 110V), Btu/h	ANSI Z21.10.3 DOE 10 CFR Part 431
Pool heaters, gas	All sizes			Et ≥ 82%	ASHRAE 148
Pool heaters, oil	All sizes			Et ≥ 78%	ASHRAE 148
Heat-pump pool heaters	All sizes	50°F db 44.2°F wb outdoor air 80.0°F entering water		≥ 4.0 COP	AHRI 1180
Unfired storage tanks	All sizes			≥ R-12.5	None

a. Energy factor (EF) and thermal efficiency (E) are minimum requirements, while standby loss (SL) is maximum Btu/h based on a 70°F temperature difference between stored water and ambient requirements. In the EF equation, V is the rated volume in gallons. In the SL equation, V is the rated volume in gallons and Q is the nameplate input rate in Btu/hr.
 b. Chapter 11 (Section 11) contains details on the referenced test procedures, including the year/version of the referenced test procedure.
 c. Section G.1 is titled "Test Method for Measuring Thermal Efficiency," and Section G.2 is titled "Test Method for Measuring Standby Loss."
 d. UEF is the Uniform Energy Factor and is a dimensionless number that is calculated per DOE 10 CFR Part 430 test procedures.
 e. In the UEF equation, V is the DOE rated storage volume in gallons.

(144) Lone Star Legal Aid, representing a client

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October 9, 2020

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Texas Department of Housing and Community Affairs

Attn: Matthew Griego, QAP Public Comment

P.O. Box 13941, Austin, Texas 78711-394

RE: Comments on the Texas Department of Housing and Community Affairs (TDHCA)
Proposed Qualified Allocation Plan (QAP), 10 TAC Chapter 11

I. Introduction

Lone Star Legal Aid is submitting these comments on behalf of a client, who does not want the TDHCA to adopt the rule change as it may result in herself or other prospective renters from gaining entry into TDHCA's supportive housing. Lone Star Legal Aid is a non-profit legal services law firm that offers civil legal aid to eligible, low-income Texans. Lone Star Legal Aid serves 72 counties in Texas and four in Arkansas. Our service area has nearly 1.5 million income-eligible Texas residents.

The TDHCA proposes to enact new rules ("the rule") under its "Qualified Allocation Plan" for supportive housing. This rule, if enacted, will permanently and temporarily bar individuals based on their criminal history. We will address only specific parts of the proposed rule; that is, the temporary bar of individuals with non-violent felonies and Class A misdemeanors. The rule denies for a minimum of two years individuals with non-violent felonies and denies for a minimum of one-year individuals with Class A misdemeanors. If the rule is enacted, it will create barriers in accessing affordable rental housing for disabled individuals who need affordable and stable housing.

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Supportive housing serves some of the most vulnerable populations in the nation.¹ “A broad body of research shows that supportive housing effectively helps people with disabilities maintain stable housing. People in supportive housing use costly systems like emergency health services less frequently and are less likely to be incarcerated.”² Not only will TDHCA’s proposed criminal history rule require housing providers to screen out potential renters, it will have a discriminatory effect and disparate impact on African Americans and Hispanics in violation of the Fair Housing Act (“FHA”). TDHCA’s criminal record screening policy has to comply with all civil rights requirements.

For reasons listed below, the proposed TDHCA rule, as written, will have discriminatory effects and disparate impacts on African American and Hispanic renters and limit their supportive housing opportunities in violation of the FHA. Specifically, the comments below will show: 1) data that African Americans and Hispanics are convicted and incarcerated at disproportionate rates to their share of the general population, 2) TDHCA’s criminal history-based housing restrictions violate FHA, 3) the proposed rule is not necessary to achieve a “substantial, legitimate, nondiscriminatory interest,” and 4) resident and property safety interests can be served by another less discriminatory rule.

II. Background

Seventy million Americans—or 1 in 3 adults—have a criminal record.³ More than 70 million adults in the United States have an arrest or conviction record that can show up on a routine background check for employment.⁴ In 2016, African Americans comprised 27% of all individuals arrested in the United States—double their share of the total population.⁵ Nearly half (48%) of the 206,000 people serving life and “virtual life” prison sentences are African American and another 15% are Latino. Virtual life sentences are 50 years or more.⁶ Of the 277,000 people imprisoned nationwide for a drug offense, over half (56%) are African American or Latino.⁷ The racial disparities across the U.S. are significant and a criminal history-screening policy is likely to have a disparate impact on minority housing applicants. Some of the factors that contribute to the racial disparities in the criminal justice system are racial profiling and bias and unequal pre-adjudicatory decisions.

The racial disparities in the adult and juvenile justice systems stem in part from the policing and pretrial factors and are compounded by discretionary decisions and sentencing policies that disadvantage people of color because of their race or higher rates of socioeconomic

¹ Supportive Housing Helps Vulnerable People Live and Thrive in the Community, May 31, 2016, [Ehren Dohler](#), [Peggy Bailey](#), [Douglas Rice](#), and [Hannah Katch](#), Center on Budget & Policy Priorities.

² *Id.*

³ Aliah D. Wright, Meet the Convicts Who Code, <https://www.shrm.org> (Nov. 14, 2017); National Conference of State Legislators, Barriers to Work: People with Criminal Records, <https://www.ncsl.org/research/labor-and-employment/barriers-to-work-individuals-with-criminal-records.aspx> (Jul. 17, 2018)

⁴ National Employment Law Project, Fact Sheet, FAQ, <https://www.nelp.org/publication/faq-fair-chance-to-compete-for-jobs-act-of-2019/> (Dec. 17, 2019).

⁵ FBI Uniform Crime Reporting Program. Crime in the United States 2016.

⁶ Nellis, A. (2017). Still Life: America’s Increasing Use of Life and Long-Term Sentences. Washington, D.C.: The Sentencing Project.

⁷ U.S. Bureau of Justice Statistics, Prisoners in 2016, (Jan. 2018).

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disadvantage.⁸ African Americans—particularly African American men—are most exposed to the collateral consequences associated with a criminal record. In 2010, 8% of all adults in the United States had a felony conviction on their record. Among African-American men, the rate was one in three (33%).⁹ African Americans and whites use drugs at similar rates, but the imprisonment rate of African Americans for drug charges is almost 6 times that of whites.¹⁰ For example, in 2016, the Justice Department determined that San Francisco police officers stopped, searched, and arrested African American and Hispanic people at greater rates than white people even though they were less likely to be found carrying contraband.¹¹

African Americans were incarcerated in local jails at a rate 3.5 times that of non-Hispanic whites in 2016.¹² Although African Americans and Latinos comprise 29% of the U.S. population, they make up 57% of the U.S. prison population.¹³ Prosecutors are more likely to charge people of color with crimes that carry heavier sentences than whites. Federal prosecutors are twice as likely to charge African Americans with offenses that carry a mandatory minimum sentence than similarly situated whites.¹⁴ Unfortunately, people with criminal convictions also face discrimination in the private rental market and those with felony drug convictions face restrictions in accessing government-assisted housing.¹⁵

III. Racial Disparities in Texas

The same is true for Texas: African Americans and Hispanics are arrested, convicted and incarcerated at rates disproportionate to their share of the general population. Consequently, TDHCA’s new rule will limit their supportive housing opportunities, specifically those with prior non-felony and Class A misdemeanors. For example, African American residents are 5 times more likely to be charged with public-order offenses than white residents in Houston. African American residents are 2.4 times more likely to be charged with theft, and 3.3 times more likely to be brought up on drug-related charges.¹⁶ “All but a handful of misdemeanor cases are resolved by plea deals, and recent studies have found that racial disparities in plea agreements were even greater in misdemeanor cases than in felony cases. White people facing misdemeanor charges were nearly 75 percent more likely than African American people to have all charges carrying potential imprisonment dropped, dismissed, or reduced to lesser charges.”¹⁷

⁸ Ghandnoosh, N. (2014). *Black Lives Matter: Eliminating Racial Inequity in the Criminal Justice System*. Washington, D.C.: The Sentencing Project.

⁹ Shannon, S. K. S., et al. (2017). *The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948–2010*. *Demography*, 54:1795–1818.

¹⁰ NAACP, *Criminal Justice Fact Sheet*, <https://www.naacp.org/criminal-justice-fact-sheet/>

¹¹ Community Oriented Policing Services (COPS), Collaborative Reform Initiative: An Assessment of the San Francisco Police Department, Department of Justice, October 2016, xi, <https://www.sfdph.org/dph/files/jrp/DOJ-Report.pdf>.

¹² U.S. Bureau of Justice Statistics, *Prisoners in 2016*, (Feb. 2018).

¹³ U.S. Bureau of Justice Statistics, *Prisoners in 2016*, (Jan. 2018); Rastogi, S. et al. (2011). *The Black Population: 2010*. U.S. Census; Ennis, S. R., Ríos-Vargas, M., & Albert, N. G. (2011). *The Hispanic Population: 2010*. U.S. Census.

¹⁴ Starr, S. B. & Rehavi, M. M. (2013). *Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of*. *The Yale Law Journal*, 123(2), 2-80.

¹⁵ Pinard, M. (2013). *Criminal Records, Race and Redemption*. *New York University Journal of Legislation & Public Policy*, 16: 963-997; Navarro, M. (2014). *Lawsuit Says Rental Complex in Queens Excludes Ex-Offenders*. *The New York Times*.

¹⁶ Houston misdemeanor data extracted from figure 6, p. 1006, Mayson and Stevenson, 2020. see attached visualization. Mayson, Sandra, and Megan Stevenson. “Misdemeanors by the Numbers.” *Boston College Law Review* 61, no. 3 (March 30, 2020): 971.

¹⁷ <https://eji.org/news/americas-massive-misdemeanor-system-deepens-inequality/> (review of new book by former federal public defender and legal scholar Alexandra Natapoff).

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This evidence proves that TDHCA’s criminal history-screening policy will actually or predictable result in a disparate impact in Texas.

“As of April [2020], the Texas Department of Criminal Justice, which oversees the Texas prison system, held 42,103 black men in prison. Though black people represent only 12 percent of the state’s total population, they account for 34 percent of our state’s prison population.”¹⁸ Yet, under TDHCA’s rule many formerly incarcerated individuals as well as individuals who were convicted but not incarcerated will be barred from affordable housing. Hispanics and African Americans in the state’s justice system are overrepresented, particularly the overrepresentation of African Americans and Hispanic among the state’s drug prisoner population.¹⁹ African Americans are incarcerated at 5 times the rate of Whites in Texas (3,734 per 100,000, compared to 694 per 100,000 Whites).²⁰ “In Fiscal year 2002, the Texas Department of Criminal Justice Reported that African Americans and Latinos composed about 70% of the total inmates admitted to Texas prisons. While 4 in 10 Texans are African American or Latino, 7 in 10 Texas prisoners are African American or Latino.”²¹ “Additionally, prison related spending by the state has had a profound and damaging impact on state spending and on the economic vitality of Texas’s communities of color.”²²

There are significant barriers to securing housing for African American and Hispanic renters based on the local statistics explained above. Further, the graph below shows that people of certain races and ethnicities are disproportionately represented in the criminal justice system in Texas.



¹⁸ Commentary: Racism pervades the justice system, By Mike Ware, For the Express-News June 17, 2020.

¹⁹ RACE AND IMPRISONMENT IN TEXAS, JUSTICE POLICY INSTITUTE, Jason Ziedenberg and Vincent Schiraldi.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

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Under TDHCA’s rule, Texas housing providers will be permitted to exclude applicants based on their previous criminal record. The impact of this policy will adversely affect the availability of housing to minorities, particularly those who are disabled. “There are more than three million Texans with a disability (11.6% of the total non-institutionalized state population) and a significant number of persons with disabilities face extreme housing needs. The 2011-2015 ACS data show that 17.5% of individuals who live below the poverty level in Texas have a disability, while 8.8% of individuals who live at or above the poverty level have a disability. Seniors are much more likely to have a disability than non-seniors. For non-seniors, ambulatory and cognitive disabilities are the most common type of disability. Persons with disabilities face challenges finding housing that is affordable, accessible, and located near transit and supportive services.”²³

IV. The Fair Housing Act’s Applicability to TDHCA’s Proposed Criminal History Policy

The proposed TDHCA policy will have a discriminatory effect and disparate impact on African American and Hispanic renters and limit their supportive housing opportunities in violation of the FHA. The FHA prohibits discrimination in the sale, rental, or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status or national origin.²⁴ “A housing provider violates the Fair Housing Act when the provider’s policy or practice has an unjustified discriminatory effect, even when the provider had no intent to discriminate. Under this standard, a facially neutral policy or practice that has a discriminatory effect violates the Act if it is not supported by a legally sufficient justification. Thus, where a policy or practice that restricts access to housing on the basis of criminal history has a disparate impact on individuals of a particular race, national origin, or other protected class, such policy or practice is unlawful under the Fair Housing Act if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the housing provider, or if such interest could be served by another practice that has a less discriminatory effect.”²⁵

In 2016, the U.S. Department of Housing and Urban Development (“HUD”) issued guidance on the application of FHA standards to the use of criminal records by housing providers. The guidance concluded that while housing providers are not prohibited from using criminal history as a factor in housing admission, liability is possible under the FHA if a criminal history policy, without justification, has a disparate impact on minority applicants. For example, in *Jackson v. Tryon Park Apartments, Inc. et al*, the court refused to dismiss a lawsuit filed by an African American applicant who claimed that a community discriminated against him on the basis of race when it denied his rental application based on a policy of automatically rejecting anyone with a felony conviction. The court stated that the statistical racial disparity the plaintiff cited was directly related to the property’s alleged policy of excluding persons with a felony

²³ 2019 Analysis of Impediments. Accessed October 7, 2020. <https://www.tdhca.state.tx.us/fair-housing/analysis-impediments.htm>.

²⁴ 42 U.S.C. § 3601 et seq.

²⁵ Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions, HUD, April 4, 2016

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conviction.²⁶ It is clear from this case that housing providers who fail to implement criminal screening policies that comply with the FHA can be found liable under a disparate impact standard.

TDHCA's criminal records-based barriers to housing are likely to have a disproportionate impact on minority renters. TDHCA's criminal screening policy seems to run afoul of the 2016 HUD guidance. Based on the national and local evidence explained above, TDHCA's criminal history policy has a discriminatory effect, that is, the policy will result in a disparate impact on a group of persons because of their race or national origin. Reviewing the criminal history of applicants to determine whether to offer housing imposes a blanket prohibition on any person with any conviction record, no matter when the offense occurred. TDHCA's criminal screening policy for supportive housing needs to comply with the FHA and HUD guidance on the use of criminal records. TDHCA's policy lists non-violent felonies and Class A misdemeanors as reasons to temporarily bar housing. The policy does not take into consideration specific offenses that fall in non-violent felonies and Class A misdemeanors nor how long ago it occurred. This also further calls into question its compliance with FHA.

V. TDHCA's Proposed Criminal History Policy or Practice is Not Necessary to Achieve a Substantial, Legitimate, Nondiscriminatory Interest.

The TDCHA rule or policy will have an unjustified discriminatory effects and disparate impacts on African American and Hispanic renters in need of supportive housing. Supportive housing projects are intended to serve vulnerable populations who may have criminal history. If the proposed rule is established, housing providers would be permitted to exclude applicant renters who need access to supportive housing the most.

As previously stated, the FHA prohibits discrimination in the rental of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status or national origin.²⁷ A housing provider's policy or practice violates the FHA if the policy has an unjustified discriminatory effect, even when the provider had no intent to discriminate.²⁸ Criminal history is not a protected class under the FHA. A substantial, legitimate, non-discriminatory interest supporting a restrictive housing policy must exist.

The proposed policy appears facially neutral with the intent to provide a basic level of minimum consideration as it relates to renter admission policies. However, the proposed policy will unjustifiably exclude more African American and Hispanic renters from supportive housing opportunities than white renters.

Criminal history-based housing restrictions violates the FHA if the policy unjustifiably falls more often on renters in one race or national origin over another. The proposed policy will restrict access to housing for African Americans and Hispanics on the basis of criminal history. However, the proposed rule will exclude African American and Hispanic renters more than white

²⁶ Jackson v. Tryon Park Apartments, No. 6:18-cv-06238 EAW, 2019 WL 331635 (W.D.N.Y. Jan. 25, 2019).

²⁷ 42 U.S.C. § 3601 et seq.

²⁸ 24 C.F.R. § 100.500; *accord Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 529 U.S. 519, 544 (2015).

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renters. Throughout the U.S. and Texas, African Americans and Hispanics are convicted and incarcerated at disproportionate rates to their share of the general population.²⁹ As noted above, this policy violates the FHA because protected classes of persons will be excluded more often than others.

A justifiable reason must exist to restrict access to housing based on criminal history. The policy must distinguish between *the prohibited criminal history that indicates a risk and criminal conduct that does not indicate a risk*. In this instance, the proposed rule permits a temporary denial for a minimum of two years for non-violent felonies and a temporary denial for a minimum of one year for Class A misdemeanors. TDHCA does not justify the restriction for non-violent offenses and Class A misdemeanors.

The proposed restriction for individuals with non-violent felonies and Class A misdemeanors is not necessary to achieve a substantial, legitimate, nondiscriminatory interest. A recent research study found that the previous criminal history of renters is not indicative of success in meeting renter obligations and safe environments.³⁰ The study found the policies and practices that deny housing to renters with criminal records are unnecessarily restrictive. This study found no clear empirical basis for restrictive housing policies based on criminal history.³¹ Non-violent criminal history and potential recidivism does not unquestionably determine the inability of an applicant to meet renter obligations or to maintain resident and property safety. No justifiable reason exists to implement the proposed policy restricting access to housing for individuals with non-violent felonies and Class A misdemeanors.³²

The FHA prohibits tailored restrictive housing policies that excludes individuals with only certain types of convictions that do not serve a substantial, legitimate, nondiscriminatory interest. Tailored restrictive housing policies must accurately distinguish between criminal conduct that indicates a risk to a resident and property safety and criminal conduct that does not.³³

The exclusion of certain criminal contact, even for a temporary basis, does not show that a policy is tailored to prevent risks to residents or property. The FHA and federal law prohibit unreasonable “lookback periods” to evaluate applicant renter’s criminal records. A look back into an individuals’ criminal history should be within a reasonable time.

²⁹RACE AND IMPRISONMENT IN TEXAS, JUSTICE POLICY INSTITUTE, Jason Ziedenis and Vincent Schiraldi; <https://eji.org/news/americas-massive-misdemeanor-system-deepens-inequality/> (review of new book by former federal public defender and legal scholar Alexandra Natapoff); *see also* supra notes 3-8.

³⁰ Daniel K. Malone, *Assessing Criminal History as a Predictor of Future Housing Success for Homeless Adults with Behavioral Health Disorders*, *Psychiatric Services*, Vol. 60, No. 2 (2009).

³¹ Daniel K. Malone, *Assessing Criminal History as a Predictor of Future Housing Success for Homeless Adults with Behavioral Health Disorders*, *Psychiatric Services*, Vol. 60, No. 2 (2009).

³² These comments do not seek to challenge the proposed housing restrictions for violent offenses.

³³ *El v. Southeastern Pennsylvania Transportation Authority*, 479 F.3d 232, 246 (3d Cir. 2007). (stating that “Title VII ... require[s] that the [criminal conviction] policy under review accurately distinguish[es] between applicants that pose an unacceptable level or risk and those that do not”).

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The TDHCA policy does not justifiably consider the recency or the amount of time since the criminal conduct occurred.³⁴ Criminology research has determined that after six or seven years without reoffending, the risk of an individual committing a new offense is about the same as an individual with no criminal record.³⁵

TDHCA's proposed policy excluding individuals with non-violent and Class A misdemeanors convictions is unnecessary and does not serve substantial, legitimate, nondiscriminatory interest. It fails to consider the nature, severity, and recency of non-violent felonies and Class A misdemeanors. The policy creates a hard, non-negotiable restriction on individuals with non-violent felonies and Class A misdemeanors. The non-violent felony and Class A misdemeanor restrictions reach beyond excluding individuals that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or anyone residing in the immediate vicinity

As written, the policy does not serve a substantial, legitimate, non-discriminatory interest because the restriction will have a discriminatory impact on African American and Hispanic renters. For this reason, the TDHCA should not confirm the policy as written because it violates the FHA.

VI. A Less Discriminatory Alternative: Resident and Property Safety Interests Could be Better Served by Another Policy that has a Less Discriminatory Effect.

TDHCA's proposed policy is an overly broad criminal record restriction that will prevent individuals with criminal records from safe and stable housing. The TDHCA's interest in establishing a new policy to provide safer, clear housing standard could be achieved by another policy that has a less discriminatory effect.

TDHCA is best positioned to adopt fair housing policies from the start, to adopt an objective and non-discriminatory basis for a practice that helps deter overly broad policies that could achieve legitimate aims in less discriminatory, more narrowly tailored ways.

If the goal is to reduce relevant crimes and create safer environments, restricting housing for individuals with non-violent felonies and Class A misdemeanors is unjustifiable when better, more inclusive policy alternatives exist. We recommend the TDHCA amend the proposed policy to adopt policies that could achieve its legitimate aims in less discriminatory, more narrowly tailored ways.

We recommend the TDHCA adopt a policy making it mandatory that housing providers consider mitigating circumstances. The alternative criminal history screening policy rooted in the concept of conducting individualized renter reviews. Individualized reviews are less discriminatory and more humane way of screening applicants. An individualized review system

³⁴ *Green v. Missouri Pac. R. Co.*, 523 F.2d 1290, 1298 (8th Cir. 1975) (The court held to automatically deny housing opportunities to African Americans and Hispanics "because of some conduct which may be remote in time or does not significantly bear upon the particular job requirements is an unnecessarily harsh and unjust burden.")

³⁵ See Megan C. Kurlychek et al., *Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?*, 5 *Criminology and Pub. Pol'y* 483 (2006) (After six or seven years without reoffending, the risk of new offenses by persons with a prior criminal history begins to approximate the risk of new offenses among persons with no criminal record).

would consider the context and circumstances of criminal offenses, the age of the individual at the time of the offense, the recency of the offense, and evidence of rehabilitation. Yes, the current policy permits criminal screening criteria. However, we encourage the TDHCA to adopt a policy that requires case-by-case screening criteria in lieu of the temporary denial period for non-violent felonies and Class A misdemeanors.

We encourage the TDHCA to adopt a policy that provides mechanisms for applicants to present mitigating circumstances to show they do not pose a risk to the community and will be good renters. The policy should also require providers to inform applicants in writing of their right to present evidence of mitigating circumstances.

VII. Conclusion

The proposed TDHCA policy will have discriminatory effects and disparate impacts on African American and Hispanic renters and limit their supportive housing opportunities in violation of the FHA.

For these reasons, and on behalf of our client who is directly impacted by this TDHCA proposed rule, we submit the comments and suggestions above. Thank you for the opportunity to comment. Please feel free to contact the undersigned counsels with any questions regarding these comments.

Respectfully Submitted,

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(145) Rachel McCallister

From: [Rachel McCallister](#)
To: [HTC Public Comment](#)
Subject: Commenting on and opposing the proposed inclusion of criminal screening requirements as described on page 15 of the 2021 QAP Staff Draft Supportive Housing definition section
Date: Friday, October 09, 2020 3:56:30 PM

Dear TDHCA Governing Board,

As a resident of Austin, I strongly urge you to reject the proposed changes to the Supportive Housing Definition on page 15 of the Draft QAP.

These proposed changes would establish additional barriers limiting opportunity for people experiencing homelessness to escape that condition and further tie the hands of homeless response systems that seek to help individuals and households out of homelessness.

This would, in turn, lead to increased recidivism and increased homelessness. According to a report by [Prisonpolicy.org](#), formerly incarcerated people are already 10 times more likely to experience homelessness than the general population. In fact, women (and particularly Black women) are the most at risk for experiencing homelessness after incarceration. Adding in these additional barriers will only exacerbate this issue. Stable housing is key to a successful re-entry and a lack of it can mean reduced access to healthcare, make it harder to get a job, and prevent access to various educational programs. By placing these barriers that will also disproportionately affect Black and Latino Texans who already experience other barriers due to systemic racism, individuals are essentially being given another punishment after already serving their time. Supportive housing programs are one of the most important ways for homeless crisis response teams to offer a second chance to these vulnerable Texans.

All of this would be concerning at any time but is especially concerning during a global pandemic.

Thank you for the opportunity to comment on these proposed changes. Again, I strongly urge you to reject these changes to the Draft QAP.

Thank you,

Rachel McCallister

--

Rachel McCallister

(146) Central Houston Inc



October 9, 2020

Matthew Griego
QAP Public Comment
P.O. Box 13941
Austin, TX 78711-3941

Dear Matthew,

On behalf of Central Houston, Inc., I write to urge reconsideration of the newly drawn burdens placed on both developments and upon tenants seeking supportive housing as proposed in the 2021 Qualified Action Plan (QAP). Central Houston is the preeminent membership organization representing business and commercial entities in the downtown core of Houston, convened to implement a long-term vision in the service of addressing challenges and opportunities in Downtown Houston.

The Downtown Houston business and development community has long participated in and benefitted from, the robust supportive housing scheme championed by the Texas Department of Housing and Community Affairs (TDHCA) and enunciated in the current, still operative, language of Chapter 11. Central Houston recommends the TDHCA retain that language without the introduction of the proposed Tenant Selection Criteria.

Working with the City and the State, the Houston retail, office and development community – the spine of Central Houston’s membership base -- has gained immensely from the successful long-term application of the requirements of Chapter 11 without the further imposition of the suggested Tenant Selection Criteria. In so benefitting, the City of Houston and its partners in commerce have witnessed the permanent housing of 18,000 individuals and families since 2012, reducing homelessness more than 50% since 2011. This reduction in homelessness has been good for the City of Houston and serves to enhance the rhythm of commerce upon which the Downtown Houston business and development community so relies to attract those who seek to work, live and play in the urban core.

The reduction in homelessness means that business will more easily thrive on the streets of Houston, that clients and customers will engage with business during extended hours of the night and day, that streets and sidewalks are passable and cleaner, and that law enforcement may better focus on law and order rather than upon social services. These are the terms of a business climate that relies upon successfully housing the homeless. Moreover, and unarguably, sensitivity to the success of such commerce here in Houston

is now ever more acute under the nearly crippling weight imposed by the incidence of the novel coronavirus.

Central Houston, and the business community it represents, are concerned that the proposed changes to the QAP, limiting or entirely prohibiting tenant selection predicated on a loose array of criminal convictions, will serve to upend the successful implementation of Low-Income Housing Tax Credits used in Houston as a means of reducing the homeless population. Those Tax Credits are leveraged by funding from local partners covering additional capital development costs, rent and supportive services that provides the essential catalyst for addressing homelessness. Permanently preventing or delaying supportive housing under the circumstances currently proposed in the draft Chapter 11 will inarguably elevate the number of homeless on the streets of Houston, injuring the business community and weakening the real progress Houston has exhibited in housing the homeless.

Central Houston requests the TDHCA engage with the City of Houston and other local partners in a review of the proposed language, to modify the proposed Selection Criteria as a means of ensuring a coherent, supportive housing policy adaptive to the successes experienced in Houston under the current Chapter 11 language.

Kind regards,

A handwritten signature in black ink, appearing to read 'R. Eury', with a stylized flourish at the end.

Robert M. Eury
President & CEO

(147) Harris County Public Defender's Office



Harris County Public Defender's Office
Criminal Justice Center
1201 Franklin St. 13th floor
Houston, TX 77002
Tel (713) 274-6700
Fax (713) 368-9278

October 9, 2020

Attn: Matthew Griego,
TDHCA Multifamily Policy Research Specialist
QAP Public Comment
P.O. Box 13941, Austin, Texas 78711-3941
October 9, 2020

Dear Matthew Griego,

As the Chief of Holistic Services of the Harris County Public Defender's Office and an advocate for low income residents of Texas, I am writing to express my strongest opposition to the Texas Department of Housing and Community Affairs' proposed change to the Qualified Allocation Plan that would require that supportive housing tax credit properties refuse to house individuals with criminal records.

Access to stable housing is one of the most crucial resources in attempting to lead a safe and stable life. At the Harris County Public Defender's Office, we not only provide our clients with zealous legal representation but work to connect them with resources and wraparound services that address their underlying needs—housing is by far one of the largest areas of support our clients require. Already, our clients face numerous barriers to obtaining stable housing and the proposed change to the QAP would make this significantly harder, thereby increasing homeless and recidivism rates in Texas.

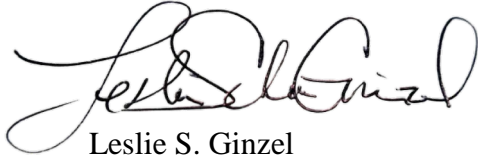
According to a 2018 study by the Prison Policy Institute, people who have been incarcerated are 13x more likely to experience homelessness than the general public. The proposed changes would further hinder this population's ability to access stable housing, increasing homelessness. Since the criminal legal system disproportionately targets people of color, the proposed changes would disproportionately exclude people of color from affordable housing. Lack of housing is always a public health crisis, and in the midst of the COVID-19 pandemic, it is even more lethal.

Stable housing is essential for staying out of prison and successfully reentering after serving a prison sentence. Due to numerous policies that criminalize homelessness, lack of stable housing pushes people into a vicious cycle of legal system involvement and incarceration. Without access to stable housing, it is challenging to obtain employment and access public benefits. By stripping people of the opportunity to gain stability, the proposed changes will increase recidivism rates,

harming entire families and communities, and wasting taxpayer dollars on preventable incarceration.

The proposed changes to the QAP are a serious step backwards from the strides Texas has made in both criminal justice reform and solving issues of homelessness. We urge you to oppose the changes for our clients, their families, and the state overall.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie S. Ginzel". The signature is written in a cursive, flowing style with large loops and a prominent initial "L".

Leslie S. Ginzel

(148) BETCO Housing Lab



October 9, 2020

Marni Holloway, Director of Multifamily Finance
Texas Department of Housing & Community Affairs
221 East 11th Street
Austin, Texas 78701
Marni.Holloway@tdhca.state.tx.us

Dear Ms. Holloway,

On behalf of the staff at BETCO Housing Lab, we appreciate the opportunity to submit recommendations for modifications to the 2021 Qualified Allocation Plan (QAP) and Uniform Multifamily Rules. BETCO Housing Lab is an affordable housing consulting firm, which provides multifamily development services to a wide range of clients who develop affordable housing across the state of Texas. Please consider the following recommendations to specific provisions of the draft 2021 Qualified Allocation Plan & Uniform Multifamily Rules.

Comments related to the Qualified Allocation Plan 2021 Draft

1. Subchapter A – Pre-Application, Definitions, Threshold Requirements & Competitive Scoring, Section 11.1(d) (108) Rehabilitation

Comment: Move “Reconstructed Units will be considered New Construction for purposes of calculating the Replacement Reserves under 10TAC 11.302(d)(2)(l).” to the Reconstruction definition, Section 11.1(d)(107)

Justification: We would like to inquire the reason for the proposed language. Also, we believe this language would be best included under the “Reconstruction” definition, as opposed to the “Rehabilitation” definition since it pertains to Reconstructed Units and Adaptive Reuse qualifies under this language, which is specifically excluded in the preceding language.

2. Subchapter A – Pre-Application, Definitions, Threshold Requirements & Competitive Scoring, Section 11.1(d)(122)(B)(v) Supportive Housing, Tenant Selection Criteria

Comment: First Preference - (1) Remove the proposed tenant selection criteria language

Second Preference - (2) Have Tenant Selection Criteria that fully complies with Section 10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of criminal history screening criteria.

Lora Myrick (512) 785-3710

lora@betcohousinglab.com | 2201 Northland Drive Austin, Texas 78756 | 812 San Antonio Street, Suite L-14, Austin, Texas 78701



Third Preference - (3) If TDHCA staff believe that a more refined rule is required, we respectfully request that TDHCA consider replacing it with this revision, which more closely reflects the criteria of certain HUD programs:

11.1 (d)122(B)(v): have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of criminal history screening criteria credit, criminal conviction, and prior eviction history that may disqualify a potential resident.

(I) The criminal screening criteria must, at minimum, include: not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(-a-) Permanent denial based on criminal history at application or recertification for lifetime registered sex offenders, or any conviction for murder related offense, sexual assault, kidnapping, or arson or felony manufacture of methamphetamines; and

(-b-) Temporary denial for a minimum of three years two years from conviction based on criminal history at application or recertification of any for a violent or armed felony conviction, for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;

(-c-) Temporary denial for a minimum of two years for non-violent felonies;
and

(-d-) Temporary denial for a minimum of one year for Class A misdemeanors

(II) The criminal screening criteria may include provisions for mitigation of that waive temporary or permanent denials, such as including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others, with personal knowledge of the tenant. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years.

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third-party database is incorrect.



Justification: We have been in communication with Supportive Housing Developers and concur with their recommendations to changes to the proposed language. We agree that requiring owners to have a clear, publicly available tenant selection criterion is a needed component to a rental housing screening process. However, we feel strongly that determination of the most appropriate criteria is best left to the individual owners, based on the specifics of their developments and communities. Additionally, we are concerned that this proposed language creates a burden on property owners who may have to adhere to this criterion for the full affordability period or go through the process to request a waiver to the requirement. Criminal screening criteria continues to evolve and it would be a mistake to have detailed requirements fixed into the program.

3. Subchapter A – Pre-Application, Definitions, Threshold Requirements & Competitive Scoring, Section 11.8(c) Pre-Application Results

Comment: Modify language to: “Applicants that may be requesting a Multifamily Direct Loan from the Department may submit a Request for Preliminary Determination with the Pre-Application and up to Full Application, as applicable.”

Justification: At Pre-Application, applicants are still working through unit mix selection and determining equity pricing, so it is uncertain if there would be a need to apply for MFDL. We are recommending to request preliminary determination up to full application, when more information would be known.

4. Subchapter A – Pre-Application, Definitions, Threshold Requirements & Competitive Scoring, Section 11.9(e)(2) Cost of Development per Square Foot

Comment: We would like to thank the Department for increases to the cost per square foot.

5. Subchapter B – Site and Development Requirements and Restrictions, Section 11.101(a)(2) Undesirable Site Features

Comment: We are interested in the purpose for submitting Requests for pre-determinations of Site eligibility re: Undesirable Site Features prior to pre-application, particularly if under review, the pre-determination is not binding. Additionally, does the pre-determination hold under peer review?

6. Subchapter B – Site and Development Requirements and Restrictions, Section 11.101(a)(3)(iv) Neighborhood Risk Factors

Comment: Modify language to: “Elderly Developments, Developments encumbered by a TDHCA LURA on the first day of the Application Acceptance Period or date the pre-



*application is submitted (if applicable), and Supportive Housing SRO Developments or Supportive Housing Developments where all Units are Efficiency Units **and/or one bedroom** are exempt and are not required to provide mitigation for this subparagraph, but are still required to provide rating information in the Application and disclose the presence of the Neighborhood Risk Factor.*

Justification: The need for affordable housing with supportive services are in high need in order to continue reducing homelessness across the state. Not only individuals but also people with a spouse/partner are also in need of supportive housing to be able to access needed services and the current language limit the ability for couples to receive the best housing option for them.

7. Subchapter C – Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waivers of Rules, Section 11.204(8)(E)(ii) Development Costs

Comment: We recommend removing the proposed language, “and the source of their cost estimate” or provide examples what is acceptable.

Justification: Every LIHTC application is slightly different and a preliminary cost estimate may not be accurate to true costs in the construction phase, particularly if there are large market changes between application and the construction phase. Obtaining construction costs is difficult – we want to ensure the estimate provided is (1) correct per the Department’s request, and (2) indicate that the estimate is merely an estimate and is subject to change once real costs are available during the construction phase.

8. Subchapter C – Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waivers of Rules, Section 11.204(8)(F) Rental Assistance/Subsidy

Comment: Typo – add back “must be provided” from the strikethrough language.

9. Subchapter D – Underwriting and Loan Policy, Section 11.302 (d)(4)(D)(i)

Comment: We like the thank the Department for the ability to change priority for reduction to debt service in the event the DCR is less than the required minimum.

10. Table of Contents

Comment: Please could staff provide a Table of Contents.

Justification: It is helpful to navigate the rules and it streamlines the document for both the Department and the Applicant.



Comments related to the Qualified Allocation Plan 2021 Draft - Multifamily Housing Revenue Bonds

11. Section 12.9(b), Federal Set Aside Requirements

Comment: The proposed language restricts market rate units to 140% of the area median income. If the rents are capped, are they officially considered income restricted units? And if they are income restricted units, are they now considered apart of eligible basis?

Comments related to the Qualified Allocation Plan 2021 Draft - Multifamily Housing Direct Loan Rule

12. Section 13.5(g)(2)(A), Eligibility Criteria and Determinations

Comment: Please provide clarification between the difference between "funds or resources from the Department". It seems like they would be one in the same.

13. Section 13.8(e), Criteria for Permanent Refinance Loans

Comment: The proposed language is not very clear. It is unclear when the 90% will be funded - 30 days after TDHCA loan closing or will it be funded at the table if it is paying off another loan. Also, it is unclear when the Department will release the remaining 10% of the loan to repay existing debt.

Thank you for the opportunity to provide public comment to the draft 2021 Qualified Allocation Plan and Uniform Multifamily Rules, Multifamily Housing Revenue Bonds and Direct Loan Rules. If you have any questions or would like to discuss these items further, please do not hesitate to contact me directly at (512) 785-3710 or via email at lora@betcohousinglab.com.

Sincerely,

Lora Myrick, President
BETCO Housing Lab

(149) Latino Justice

From: [Jorge Renaud](#)
To: [HTC Public Comment](#)
Cc: [Juan Cartagena](#); [Jerónimo Saldaña](#)
Subject: Formal protest against 2021 Qualified Allocation Plan draft proposal
Date: Friday, October 09, 2020 4:07:03 PM
Attachments: [image930467.png](#)
[image457311.png](#)
[image339749.png](#)
[image980841.png](#)
[image031534.png](#)

Re: Texas Department of Housing & Community Affairs (TDHCA) 2021 Qualified Allocation Plan (QAP)

Dear Mr. Russell:

I, along with my colleagues at LatinoJustice PRLDEF, along with the hundreds of thousands of individuals living in Texas with criminal backgrounds, wish to express our dismay with the draft proposal that the Texas Department of Housing and Community Affairs (TDHCA) submitted for the 2021 Qualified Allocation Plan (QAP). The Plan would require supportive housing tax credit properties to **refuse to house individuals with criminal backgrounds** (temporarily or permanently, depending on the severity of the crime). **Please register our opposition to these changes proposed on page 15 of the document (pasted at the end of this letter).**

As someone who was released from prison in 2008, I was blessed to have friends who offered me housing. However, twice since then I've had to seek housing on my own, and even with a prestigious job and stable income, it was only until I was on the cusp of homelessness that, again, friends stepped up to offer me a place to stay. This Plan is a travesty and takes direct aim at the communities of color that have been targeted by our criminal justice system.

Research repeatedly shows that **housing is integral to successful reentry** for returning citizens. Home is the cornerstone from which people build healthy, productive lives for themselves and their families. And these concerns are even more prevalent during the current deeply unsettling times of economic and public health crisis.

Involvement with the criminal justice system **should not result in a lifetime sentence** to homelessness or financial insecurity. Ensuring access to housing is beneficial for justice-involved individuals, their families, their communities, and the State of Texas. People with prior criminal records, like everyone else in our nation, deserve a place to call home.

For all of these reasons, we are opposed to, and deeply troubled by, the changes cited below. Please contact me if I can provide additional information.

Respectfully,

Jorge Antonio Renaud
Southwest Region Director
LatinoJustice PRLDEF
jrenaud@latinojustice.org
(512) 825-9052

(v) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident.

(I) The criminal screening criteria must not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(-a-) Permanent denial based on criminal history at application or recertification of any conviction for murder related offense, sexual assault, kidnapping, or arson;

(-b-) Temporary denial for a minimum of three years based on criminal history at application or recertification of any felony conviction for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;

(-c-) Temporary denial for a minimum of two years for non-violent felonies; and

(-d-) Temporary denial for a minimum of one year for Class A misdemeanors

(II) The criminal screening criteria may include provisions for mitigation of temporary denials including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

Jorge Renaud

Regional Director of Policy and Advocacy

D: 512.649.9129



9901 Brodie Lane, Suite 160

Austin, TX 78748



(150) State Rep Armando Walle



ARMANDO L. WALLE

STATE REPRESENTATIVE

HOUSE DISTRICT 140

October 9, 2020

To the Honorable Members of the TDHCA Governing Board
C/O Texas Department of Housing and Community Affairs
Attn: Matthew Griego, QAP Public Comment
P.O. Box 13941
Austin, Texas 78711-3941

Re: Comment on 2021 QAP Staff Draft registering opposition to changes in the Supportive Housing definition adding unnecessary and counterproductive criminal screening requirements

Dear Vice Chair Bingham and Members of the TDHCA Governing Board:

Thank you for your service to the state of Texas. I write today to express my deep concern regarding the proposed changes to the definition of "Supportive Housing" in Chapter 11 of the 2021 Staff Draft of the Texas Qualified Allocation Plan ("Draft QAP") for the awarding and allocation by the Texas Department of Housing and Affairs ("TDHCA") of Competitive and non-Competitive Housing Tax Credits. Specifically, the Draft QAP adds unnecessary and counterproductive criminal screening requirements to the definition of "Supportive Housing." If these changes are adopted, they will curtail the ability of formerly incarcerated Texans to find stable housing after completing their sentences by essentially prohibiting supportive housing providers serving this vulnerable population to use Housing Tax Credits to fund their work. I strongly advise TDHCA to remove these changes from the Draft QAP.

The proposed changes will have several negative consequences for our state while providing negligible, if any, benefit. First, these changes will make it harder for formerly incarcerated Texans to secure stable housing when reentering, harming them and the communities they call home by contributing to chronic homelessness and increasing the likelihood of recidivism. A report from the Prison Policy Initiative found that formerly incarcerated people are almost 10 times more likely to be homeless than the general public.¹ The same report found that this creates a "revolving door" back into incarceration because of policies that criminalize homelessness. While increased housing instability leads to increased rates of recidivism, there is ample evidence that permanent supportive housing leads to successful reentry outcomes. For example, a 2013 HUD-sponsored report titled "The Role of Supportive Housing in Successful Reentry Outcomes for Disabled Prisoners" found that a permanent supportive housing program funded by the State of Ohio significantly reduced recidivism rates for participants.² The study concluded that providing permanent supportive housing for formerly incarcerated people increases public safety by reducing recidivism and

¹Couloute, Lucius, "Nowhere to Go: Homelessness among formerly incarcerated people," Prison Policy Initiative (August 2018). Retrieved from: <https://www.prisonpolicy.org/reports/housing.html>

² Fontaine, Jocelyn, "The Role of Supportive Housing in Successful Reentry Outcomes for Disabled Prisoners," Cityscape: A Journal of Policy Development and Research, HUD (2013). Retrieved from: <https://www.huduser.gov/portal/periodicals/cityscape/vol15num3/ch3.pdf>

creating increased cost-savings for the taxpayer - providing supportive housing is much cheaper than paying for prisons. It is bad public policy for the TDHCA to essentially prohibit Housing Tax Credits, the most state's most important source of financing for affordable housing, from funding this important work.

Second, the changes will have a disparate impact upon Texans who are protected under the Fair Housing Act ("FHA"). African-Americans, a protected class under the FHA, are disproportionately represented in our state's criminal justice system because of systemic racism and will be disproportionately harmed by these changes. In Texas, African-Americans are more than four times more likely to be incarcerated than Caucasians.³ HUD guidance cautions that because of these disparities, blanket criminal background checks used to deny housing to applicants can have an illegal discriminatory effect and cautions providers and jurisdictions to ensure that such policies be narrowly tailored and "necessary to achieve a substantial, legitimate, and nondiscriminatory interest."⁴ The guidance states that while protecting public safety can be a legitimate interest, housing providers must "be able to prove through reliable evidence that its policy or practice of making housing decisions based on criminal history actually assists in protecting resident safety."⁵ TDHCA has not provided any evidence to back up its decision for the inclusion of the proposed changes.

People with disabilities are also protected under the FHA, over-represented in the criminal justice system, and disproportionately harmed by these changes. The changes will hinder the recovery of those whose convictions stemmed from disabilities such as mental illness or substance abuse by making it harder for supportive housing providers to secure funding. According to the TDHCA's own definition, supportive housing is supposed to "be intended for and targeting occupancy for households in need of specialized and specific non-medical services in order to maintain housing or transition into independent living." These proposed changes will lock out this most vulnerable population out of TDHCA-sponsored supportive housing, adding yet one more obstacle in the way of reentering society safely and successfully. As cited above, several studies have shown that supportive housing can reduce recidivism, especially for those whose primary disability was mental illness. The evidence shows that these proposed changes fly in the face of positive, evidenced-based public policy and do more harm than good.

Third, the changes will add to the already significant administrative burden faced by supportive housing providers. Although many providers already use their own screening criteria to meet their own programmatic needs, the proposed changes would force providers to adopt this severe new regimen and subject them to additional audit requirements from TDHCA. And because these rules will be included in the LURA, they will be locked into new projects for the life of the agreement and difficult to revise at a later date. TDHCA too will have an increased administrative burden of enforcing this policy and may also be forced to defend against future legal challenges from individuals or advocacy groups. Adding this administrative burden is wholly unnecessary. Supportive housing projects using Housing Tax Credits already have many controls in place to ensure that residents and neighbors are safe while giving them the freedom to provide services to the most vulnerable Texans. The existing system works well - there are no reports of crime or drug problems at TDHCA's supportive housing projects. The proposed rules are trying to solve a problem which does not exist. I fear that the reason behind these changes is not based on much more than animus against formerly incarcerated Texans.

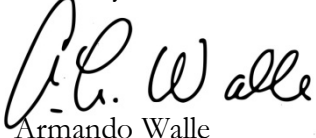
³ Nellis, Ashley, "The Color of Justice: Racial and Ethnic Disparity in State Prisons," The Sentencing Project (June 14, 2016). Retrieved from: <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>

⁴ U.S. Department of Housing and Urban Development, "Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions," (April 4, 2016). Retrieved from: https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF

⁵ Id. at 5. See also: *The Fortune Society, Inc. v. Sandcastle Towers Housing Development Fund, Inc.*, No. 1:14-cv-6410 (E.D.N.Y.); 388 F. Supp. 3d 145 (E.D.N.Y. 2019).

Thank you for the opportunity to comment on these proposed changes. Again, I strongly urge you to reject these changes to the Draft QAP. I believe my fellow Texans feel formerly incarcerated Texans deserve a second chance and a helping hand when they reenter society after serving their sentence. Our laws should not create punitive and discriminatory obstacles to reentry that will come down hardest on the most vulnerable. I can be reached by mobile phone at (281) 513-9242 or by e-mail at Armando.Walle@house.texas.gov.

Sincerely,

A handwritten signature in black ink that reads "Armando Walle". The signature is written in a cursive style with a large initial "A" and "W".

Armando Walle

State Representative, House District 140

(151) Greg Buffone

From: [Greg Buffone](#)
To: [HTC Public Comment](#)
Subject: Re Qualified Allocation Plan Changes
Date: Friday, October 09, 2020 4:17:22 PM

I am aware of the proposed change to the Qualified Allocation plan. The changes proposed would negatively impact the ability of ex-offenders to secure housing, and will exacerbate the long-standing issue of homelessness in urban areas. The loss of work and income secondary to the pandemic, has already increased the number of homeless in Texas cities. Adopting this change will further add to the burden of those agencies attempting to address homelessness and further strain city services and finances. The proposed changes are also likely to result in an increase in recidivism which will add to the public cost of housing offenders. The proposed change to Qualified Allocation is just not a wise way to address the perceived problem.

Greg Buffone
4203 University Blvd
Houston TX 77005

(152) Texas Smart on Crime Coalition



October 9, 2020



Texas Department of Housing and Community Affairs
QAP Public Comment, P.O. Box 13941
Austin, TX 78711



Attn: Matthew Griego

Dear TDHCA Governing Board:

The Texas Smart-On-Crime Coalition is writing to express concerns related to draft *2021 QAP, 10 TAC 11.1(d)(122)(B)(v), Supportive Housing Tenant Selection Criteria*.



The Coalition brings together businesses, faith organizations, and nonprofit organizations in a statewide effort to make the criminal justice system smarter, safer, and more cost effective. We recognize the vital role that supportive housing plays in helping to successfully reintegrate people with the highest housing barriers back into the community. Those with the highest barriers include survivors of family violence and other abuse who have criminal records stemming from the violence committed against them.



Importantly, under the status quo, housing developers can largely make their own choices with their own property; whereas, this proposed change would impose a government mandate to exclude certain individuals. While groups across the spectrum share different views on the extent of the government's role in funding housing, the issue here is avoiding government overreach that interferes with private developers who wish to use existing resources to serve individuals who have had a brush with the law.



Please consider the following issues related to the proposed rule changes:



Concerns:

- The proposed rule would increase barriers to supportive housing for people with criminal records, which can actually make survivors of crime less safe and perpetuate the cycle of crime and incarceration. Additionally, some survivors of domestic violence and human trafficking who need to escape an abusive environment have themselves previously been convicted of a crime. A growing body of research demonstrates that housing instability is one of many factors that can lead to further victimization or crime itself.¹



- The proposed rule change will dramatically impact access to supportive housing for a group that already faces significant barriers to housing. Additional changes of this nature exacerbate the challenges of this population, thereby increasing the rate of homelessness.
- The draft is inconsistent with Governor Greg Abbott's support for private property rights and his efforts to address chronic homelessness in Texas. Governor Abbott supported changes to the 2020 QAP to leverage Low-Income Housing Tax Credit developments to house those who are chronically homeless by aligning with local homeless continuums of care.
- The proposed tenant selection criteria far exceed existing Housing and Urban Development (HUD) criteria by including both the manufacturing and delivery of illegal drugs, beyond methamphetamines; and it includes a lifetime ban for anyone on a registry.

Relevant Research & Community Resources:

- Years of research and experience demonstrate that supportive housing can dramatically reduce recidivism, especially for groups that have conviction histories for more serious offenses.²
- Criminal offenses that occurred more than five years prior to supportive housing move-in had no significant impact on housing outcomes.³

We appreciate you considering these issues, and we ask that you not approve the changes to the QAP. Rather, we ask that the Texas Department of Housing & Community Affairs work with stakeholders — including community organizations dedicated to promoting housing access for people with criminal records, as well as those who would be impacted by changes to the QAP — in developing a solution that addresses the concerns of all parties, including housing developers who choose to use their private property to offer stability to those seeking a second chance.

If you have questions, please contact Doug Smith, Senior Policy Analyst, Texas Criminal Justice Coalition, at dsmith@texascjc.org.

Respectfully,

The Texas Smart-On-Crime Coalition

Citations

¹ Tesfai, A., & Gilhuly, K. (2016). The Long Road Home: Decreasing Barriers to Public Housing for People with Criminal Records. Human Impact Partners. Retrieved from <https://humanimpact.org/wp-content/uploads/OHA-HIA-Final-Report.pdf>; Justice Policy Institute. (2007). Housing and Public Safety. Retrieved from

http://www.justicepolicy.org/images/upload/07-11_rep_housingpublicsafety_ac-ps.pdf

² Matt Bruce et al. "Community DSPD Pilot Services in South London: Rates of Reconviction and Impact of Supportive Housing on Reducing Recidivism, Criminal Behavior and Mental Health," 2014.

³ Wilder Research. "Success in Housing: How Much Does Criminal Background Matter?" 2019.

(153) Brook Holland

From: [Brook Holland](#)
To: [HTC Public Comment](#)
Subject: State Housing Proposed Changes
Date: Friday, October 09, 2020 4:23:27 PM

Attn: Matthew Griego
QAP Public Comment
P.O. Box 13941
Austin, Texas 78711-3941

This letter is to voice my very strong and passionate opposition, to any changes to state housing rules, that would make qualifying for state housing more difficult than it already is for people with criminal convictions.

Let me share a bit about myself. I am a resident of the city of Austin. I spend a tremendous amount of personal time and resources getting to know our residents experiencing homeless and figuring out ways to help them both in their most immediate crisis needs and with long term needs like obtaining medical care and housing. A great many of these people struggle to find any type of housing due to the perfect storm of poverty and criminal convictions. Further penalty of restricting these people from obtaining safe housing is both cruel to the individual and wrong for our community. I am very aware of the already difficult process of finding housing for those that have a criminal history.

It would be a tragic error to make obtaining housing more difficult and push even more people on the edge into homelessness.

Please reconsider all proposed changes that would make obtaining housing more strict and difficult for those with criminal records.

Thank you for your consideration and time.

Regards,
Brook Holland

(154) Hogg Foundation for Mental Health



Hogg Foundation for Mental Health

**Texas Department of Health and Community Agency
Governing Board
Public Comment on Proposed Qualified Allocation Plan (QAP), 10 TAC Chapter 11
October 09, 2020**

Thank you for allowing the Hogg Foundation for Mental Health to offer comments on the 2021 Qualified Allocation Plan (QAP). These comments will address the inclusion of substance use-related criminal history as exclusionary criteria for supportive housing tenant selection under *10 TAC 11.1(d)(122)(B)(v), Supportive Housing Tenant Selection Criteria*. This will further limit access to supportive housing for low-income individuals with substance use conditions, who already face significant barriers to housing.¹

An April 2018 report revealed that 70 percent of women and 58 percent of men within the Texas Criminal Justice Department system were diagnosed with a substance use disorder.² Further, the most recent Point in Time (PIT) count in Texas found that almost 16 percent of individuals experiencing homelessness have a chronic substance use condition.³ As identified by The Texas Statewide Behavioral Health Strategic Plan as a major gap (Gap #12) in our public mental health system, access to housing is critical and is especially pronounced for individuals seeking recovery from substance abuse.

Individuals with substance use conditions who experience chronic homelessness frequently access services in expensive and inappropriate settings, such as emergency departments, criminal justice systems, and inpatient hospitals.⁴ Those costs often disproportionately fall on municipal and state governments.⁵ One promising approach is expanding the availability of supportive housing. Research shows that supportive housing is related to reduced re-arrest and re-incarceration, reduction in the use of more costly and inappropriate settings for services, and increased residential stability for individuals with behavioral health needs.⁶ This draft rule will severely limit access to critically needed supportive housing.

It is important to highlight that this proposed rule change is contradictory to TDHCA's *2020 State of Texas Low Income Housing Plan and Annual Report* which states: "There are approaches to housing, such as Housing First or Permanent Supportive Housing, that are tailored for hard-to-serve populations such as persons with substance use issues.... Better recovery results may be obtained by placing individuals in stable living environments."⁷

We appreciate you considering our comments. Further changes are needed to protect housing opportunities for those with criminal justice involvement, but discussions with stakeholders are needed before additional changes are made. To develop solutions that address the concerns of all parties, we encourage you to convene and work with interested stakeholders including community organizations, justice-involved individuals, individuals in recovery, and others impacted by changes to the QAP.

Submitted by The Hogg Foundation for Mental Health. For more information, please contact Shannon Hoffman, MSW, LCDC, Policy Specialist, shannon.hoffman@austin.utexas.edu, or Sean Walker, MPaff, Policy Fellow, sean.walker@austin.utexas.edu, 3001 Lake Austin Blvd., Austin, TX 78703

¹Center on Budget and Policy Priorities. (2019). *Meeting the housing needs of people with substance use disorders*. Retrieved from <https://www.cbpp.org/research/housing/meeting-the-housing-needs-of-people-with-substance-use-disorders>

²Linder, L. (2018). *An unsupported Population: The treatment of women in Texas' criminal justice system*. Texas Criminal Justice Coalition. Retrieved from <https://www.texascjc.org/sites/default/files/publications/TCJC-Womens-Part-2.pdf>.

³U.S. Department of Housing and Urban Development. (2019). *HUD 2019 continuum of care homeless assistance programs homeless populations and subpopulations*. Retrieved from https://files.hudexchange.info/reports/published/CoC_PopSub_NatITerrDC_2019.pdf

⁴Martinez, T.E., & Burt, M.R. (2006). Impact of permanent supportive housing on the use of acute care health services by homeless adults, *Psychiatric Services*, 57 (7), 992-999. Retrieved from <https://ps.psychiatryonline.org/doi/full/10.1176/ps.2006.57.7.992>

⁵ibid.

⁶Fontaine, J. (2013). The role of supportive housing in successful reentry outcome for disabled prisoners. *Cityscape: A Journal for Policy Development and Research*, 15 (3), 53-75. U.S. Department of Housing and Urban Development, Office of Policy Development and Research. Retrieved from <https://www.huduser.gov/portal/periodicals/cityscape/vol15num3/ch3.pdf>

⁷Texas Department of Housing and Urban Development. (2020). *2020 State of Texas low income housing plan and annual report*. Retrieved from <https://www.tdhca.state.tx.us/board/docs/books/Item-1i-20-LIHP-AnnualReport.pdf>

(155) Teresa Bowyer

CITRINE DEVELOPMENT, LLC

October 9, 2020

Attn: Matthew Griego
Texas Department of Housing and Community Affairs (TDHCA)
P.O. Box 13941
Austin, Texas 78711-3941

RE: 2021 QAP Draft - Public Comment

Dear Mr. Griego:

Please see the following comments to the staff draft of TDHCA's 2021 Qualified Allocation Plan and Multifamily Rules:

§11.204 (6) Experience Requirement– The staff draft adds in the language: “Serving only as the HUB for a Development does not meet this requirement.” As a HUB with 10 years of experience participating in the Housing Tax Credit (HTC) program in Texas, I strongly oppose the added language. I urge you to remove the language for a variety of reasons:

1. A primary goal and intent of HUB participation under §11.9 (b)(2) Sponsor Characteristics is to provide a route for capacity building to business owners that might not otherwise have an opportunity, particularly women and people of color. Without this option, women and minorities face high barriers to entry for experience.
2. The existing phrases “with control of the Development” and “Principal” with “authority to act” already perpetuate and limit the experience to majority partners/owners with large amounts of capital and previous experience. Minority partners (HUBs and others that do not have the accumulated capital to be the majority partner) and employees who actively participate in the program but are not Principals or owners of a corporation, are typically *not* authorized to execute or demonstrate “control” on behalf of the development. In this way, control is not a good measure of experience. There needs to be a route to experience that does not require large amounts of capital and majority ownership.
3. The requirements under §11.9 (b)(2) Sponsor Characteristics include housing experience and ongoing participation throughout Compliance which should be a clear demonstration of eligibility. The reciprocal benefit of participation should be the ability to gain an Experience Certificate.
4. Lastly, there are currently several successful entities participating in the HTC program that achieved their Experience Certificates through HUB participation. Many of these are consultants that have overseen hundreds of applications and participated in dozens of developments over the years. Arguably, these are entities with considerable amount of experience in tax credit development that have contributed greatly to the HTC program in Texas. There should be an equal opportunity for newer HUBs that have not yet received an Experience Certificate to do so.

I urge you to consider revising this paragraph to align with the true objectives of the experience requirement, and/or revisit the HUB requirements under §11.9 (b)(2) Sponsor Characteristics if the qualifications of a HUB need to be clarified. We are in an era that calls for increasing opportunities for historically disadvantaged groups. As such the Department should be finding more, not fewer, ways to achieve equity through the HTC program.

§11.101 (3) Neighborhood Risk Factors – Given the ever-changing nature of schooling during the pandemic and the burden already placed on school districts and their administrations at this time, I support the language added into the staff draft related to TEA school ratings and mitigation plans for 2021 Applications: “Due to school closures as a result of COVID-19, mitigation for schools as described in subparagraphs (C) and (D) of this paragraph is not required for Applications submitted in 2021.”

Thank you in advance for your consideration of the above comments. If you have any questions, please don't hesitate to reach to me at 806/543-8645 or citrinedev@gmail.com.



Teresa Bowyer
Owner
Citrine Development, LLC

(156) City of San Antonio Mayor Ron Nirenberg



CITY OF SAN ANTONIO

RON NIRENBERG
MAYOR

October 9, 2020

Mr. Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street,
Austin, TX 78701

Dear Director Wilkinson:

I am writing to express my concerns about the proposed changes to the definition of Supportive Housing in the staff draft of the 2021 QAP. The 2020 QAP required applicants seeking to develop supportive housing to have a Tenant Selection Criteria which was to "include a clear description of any credit, criminal conviction, or prior eviction history that may disqualify a potential resident." These requirements were in line with the Texas Administrative Code §10.802 - Written Policies and Procedures and provided applicants with the freedom to develop policies and procedures they felt reasonable for their proposed developments.

The 2021 QAP proposed language is overly specific and restrictive in its addition of specific tenant criteria requirements. The proposed requirements include:

- Permanent denial if convicted of illegal manufacture or distribution of a controlled substance
- Permanent denial based on criminal history of sexual assault, kidnapping, or arson
- At least a three-year denial for any felony conviction for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense
- At least a two-year denial for non-violent felonies
- At least a one-year denial for Class A misdemeanors

These requirements undermine the ability for supportive housing providers to serve vulnerable populations experiencing or at risk of experiencing homelessness. These providers should be trusted to develop appropriate policies for their future residents rather than requiring them to reject the populations they exist to serve.

Mr. Bobby Wilkinson
October 9, 2020
Page 2


By limiting the ability of supportive housing developers, this proposal prevents housing for a large number of San Antonians experiencing homelessness, the intended beneficiaries of supportive housing. This proposal will exasperate the economic disparities found in San Antonio, will reinforce multigenerational poverty, and will disproportionately harm our residents of color.

Further, we know that people with records still need housing and in fact can be good tenants. Since September 2019, the City of San Antonio and our local Continuum of Care, the South Alamo Regional Alliance for the Homeless (SARAH) have partnered on a program to help vulnerable groups access housing. The PLACE program provides additional supports to landlords who are willing to waive screening criteria and fees to house applicants with poor rental histories, evictions, or previous criminal convictions. Through PLACE, 20 people households have been successfully rehoused at reduced cost to service providers. Only one landlord has ever requested reimbursement from the program. With limited access to supportive housing in San Antonio, we hope that any future projects would not be off limits to our PLACE participants.

The unintended consequence of this draft plan will be to ensure that people with a troubled criminal history will be unable to find adequate, safe housing. This is particularly troubling as we continue to grapple with the effects of COVID-19 and the impending eviction crisis. The three-year denial of residents with evictions means it will be even more difficult for families evicted, as a result of job loss during the COVID-19 pandemic, to find housing again.

We must acknowledge that secure housing is the most foundational support to restitution and rehabilitation. But instead of assisting the vulnerable, the proposed change erects new barriers and potentially sentence them to a lifetime of living on the streets. I strongly urge you to rethink this misguided plan.

Sincerely,



Ron Nirenberg
MAYOR

(157) City of Houston Housing and Community
Development



CITY OF HOUSTON

Housing & Community Development Department

Sylvester Turner

Mayor

Tom McCasland
Director
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October 9, 2020

Marni Holloway, Director Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701
Marni.holloway@tdhca.state.tx.us

Re: Preliminary Comments Regarding 2021 Qualified Allocation Plan and Uniform Multifamily Rules

Dear Ms. Holloway,

The City of Houston appreciates the opportunity to provide feedback on the Draft of the 2021 Qualified Allocation Plan (QAP). We appreciate the agency's consideration in regards to several changes in the QAP in relation to promoting hi-frequency mass transportation, access to trails and site features. In addition, we applaud the agency's efforts to further define the nature of permanent supportive housing and promoting extended affordability periods.

Recommended Changes for 2021 QAP

1. §11.1(d)(122) (Definition of Supportive Housing)

HCDD understands the concern to ensure management plans provided by Supportive Housing providers are mindful to ensure the safety of its tenants and its neighbors. However, HCDD encourages Supportive Housing providers subscribe to a housing model which people experiencing homelessness are connected to permanent housing swiftly and with few to no treatment preconditions, behavioral contingencies, or other barriers. It is based on evidence that people experiencing homelessness can achieve stability in permanent housing if provided with the appropriate level of services. This includes removing requirements that says access to housing and services programs is not contingent on a lack of a criminal record and other preexisting conditions that indicate a lack of "housing readiness".

HCDD's preference is to have Section 11.1(d)(122)(B)(v) removed in its entirety.

If the language is not removed the following amendments are meant to provide some guidance to provide the least amount of impact to those experiencing homelessness and other populations.

Proposed Amended Language:

122 (B) (v) (I) – have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of criminal history screening criteria. ~~credit, criminal conviction, and prior eviction history that may disqualify a potential resident.~~

(I) The criminal screening criteria must include: ~~not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and~~

(-a-) Permanent denial based on criminal history at application ~~or recertification of~~ for lifetime registered sex offenders, or any conviction for felony manufacture of methamphetamines, murder related offense, sexual assault, kidnapping, or arson;

(-b-) ~~Temporary denial for a minimum of three years based on criminal history at application or recertification of any felony conviction for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;~~

(-c-) ~~Temporary denial for a minimum of two years for non-violent felonies; and~~

(-d-) ~~Temporary denial for a minimum of one year for Class A misdemeanors~~

(II) The criminal screening criteria ~~shall may~~ include provisions for mitigation ~~of that waive~~ temporary or permanent denials, such as including documented drug/alcohol treatment, participation in a housing program providing case management, participation in a housing program providing supportive services, and letters of recommendation from mental health professionals, employers, case managers, or others. ~~with personal knowledge of the tenant. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years.~~

2. §11.9(c)(8) (Readiness to Proceed in Disaster Impacted Counties)

HCDD recognizes the urgency to replace lost affordable housing immediately after disaster events. However, the 2019 required a three-month period and 2020 allocations required a four-month period to close all financing and fully execute the construction contract. Several 9% applications are located within regions often impacted by natural disasters with other forms of financing, including CDBG disaster recovery financing. Currently HCDD is administering a \$1.3 billion CDBG recovery grant.

This shortened period required an accelerated timeline which burdened not only HCDD but also the office of Planning and Public Works prioritize the affordable transactions for permitting approvals. These departments are already dealing with dealing with strain of rebuilding efforts. If Houston were to face a similar disaster and eligible for this criteria in future years, HCDD recommends sufficient time for staff to adequate underwrite funded transactions and developers to secure permitting approval.

Proposed Amended Language:

HCDD recommends a minimum six-month period for the time of securing the credits (January 31 of the following year of allocation).

3. §11.9(d)(7)(A)(i)(III) (Concerted Revitalization Plan and committed funding)

The requirements outlined or CRP's are prescriptive and there is concern these prevent the municipality from determining what development plans are eligible, thus compromising local control. Many of the pending CRP plans identify the needs for an area to be funded with future Capital Improvement Projects cycles, however commitments for these items are not provided until each fiscal year. HCDD recommends that the agency provide some flexibility on this item to allow counties, municipalities and other agencies identify the potential

sources within in the plan with commitments to be funded with identified sourced and to be committed in future years.

Proposed Amended Language:

The adopted plan must have sufficient and documented and committed funding to accomplish its purposes on its established timetable. This funding must be flowing in accordance with the plan, such that the problems identified within the plan are currently being or have been sufficiently addressed.

4. §11.9(d)(2) (Commitment of Development Funding by Local Political Subdivision.)

When a county, municipality or other agency with jurisdiction provides a commitment of its HOME, CDBG or local funding to developments, it should be weighted more heavily compared to a transaction that secures \$500 of in-kind contributions that are not material to the overall financing of a transaction. The scoring component under §11.9(e)(4) (Leveraging of Private, State, and Federal Resources) to prioritize transactions leveraging other sources may work against transactions with higher development costs. Large urban cities will likely continue to prioritize transactions within the urban core which reflect higher costs and may not benefit from this scoring item. We request this scoring item reflect an amount that is material to the overall financing of a transaction.

Proposed Amended Language:

An Application may receive one (1) point for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located if levered with HOME, CDBG, CDBG-DR or other locally funded subsidy. The commitment of Development funding must be reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form and/or reflected in a lower cost in the Development Cost Schedule. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction.

5. Section 11.101(a) (3) (B) (iv). Neighborhood Risk Factors- Schools

Per the Staff Draft, if the "Development Site is located within the attendance zone of an elementary school, a middle school or a high school that has a TEA Accountability Rating of D for the most recent year available prior to Application and a an Improvement Required Rating for the most recent available year preceding or a TEA Accountability Rating of F for the most recent year available prior to Application and a Met Standard Rating by the Texas Education Agency for the most recent available year preceding." Any school in the attendance zone that is rated F by the Texas Education Agency will be considered ineligible with no opportunity for mitigation. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required."

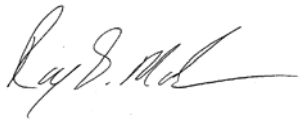
Proposed Amended Language:

We request that the Applicant have the ability to mitigate this neighborhood risk factor if the school district has district-wide or open enrollment, even if the closest school has received an F rating from the Texas Education Agency if the Applicant provides an adequate plan for transporting students to and from a school within the district with a passing rating. Additionally, provide the Applicant with the ability to mitigate this neighborhood risk factor regardless of if it does or does not have district-wide or open enrollment if there is a passing open

enrollment charter school the Applicant is able to provide an adequate plan for transporting students to and from.

We thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Ray S. Miller". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ray S. Miller
Assistant Director

(158) Fair and Just Prosecution



Texas Department of Housing and Community Affairs
Attn: Patrick Russell
P.O. Box 13941
Austin, Texas 78711-3941
Sent via email: htc.public-comment@tdhca.state.tx.us

Re: Texas Department of Housing & Community Affairs (TDHCA) 2021 Qualified Allocation Plan (QAP)

Dear Mr. Russell:

I am the Executive Director of Fair and Just Prosecution (FJP), an organization that brings together elected prosecutors from around the country as part of a network of leaders committed to promoting a justice system grounded in fairness, equity, compassion, and fiscal responsibility. We are deeply concerned with the draft proposal that The Texas Department of Housing and Community Affairs (TDHCA) submitted for the 2021 Qualified Allocation Plan (QAP) and respectfully request that you *not* move forward with those provisions.

Prosecutors have an obligation to promote and foster public safety in their communities, but this Plan stands to put the safety of the community at risk by forcing many individuals with prior criminal records into housing instability. This Plan would, among other changes, require supportive housing tax credit properties to **refuse to house individuals with criminal backgrounds** (temporarily or permanently, depending on the severity of the crime). We cannot stand silent in the face of this deeply disturbing scenario. As such, please register our **opposition to these changes proposed on page 15 of the document (pasted at the end of this letter)**.

This Plan proposes to exclude a wide range of individuals who are involved in the criminal justice system from accessing supportive housing. It excludes not only individuals convicted of serious felony offenses but also those convicted of certain misdemeanors. Practically, this means that even anyone who has been convicted of possessing less than 4 ounces of marijuana could be temporarily barred from accessing supportive housing. This misguided and draconian proposal would unnecessarily lock people out of much-needed housing and impose unduly harsh additional punishment on individuals who have been involved in the justice system. Such a policy would also undermine public safety in the process.

Home is the foundation from which people can build healthy, meaningful lives for themselves, their families, and their communities. Families and communities suffer when those involved in the criminal justice system are unable to secure stable and safe housing. The vast collateral consequences caused by housing instability extend to the nearly half of all U.S. children who have a parent with a criminal conviction. By denying their parents access to supportive housing, we deny these children housing stability as well. Housing instability can significantly hinder a young person's potential to have a successful pathway forward. These blows to basic stability

and upward mobility do not just harm individuals and their families — they ultimately harm us all.

The impact of this proposal would be particularly pernicious to individuals returning to the community from incarceration. Research shows that **housing is integral to successful reentry** for returning citizens. People reentering society face significant structural, legal, and social barriers in finding housing, employment, and accessing vital social services: formerly incarcerated individuals are ten times more likely to be homeless than the general population, and nearly 75 percent of formerly incarcerated individuals are unemployed a year after being released. Barriers to housing add another complicated, unnecessary, and onerous layer to the collateral consequences associated with a criminal record, which hinder successful reentry to the community. Additionally, unhoused individuals are more likely to face incarceration than individuals with stable housing, in part due to over-policing of these individuals. This dynamic exacerbates the vicious cycle of recidivism and undermines public safety.

These concerns are even more prevalent amid the ongoing COVID-19 pandemic and the resulting economic downturn. In this crisis, there are already limited options for housing, employment, and social services, elevating the critical need to strengthen, not undermine resources for stable housing to promote the safety and wellbeing of those released from custody and returning to our community.¹ Failing to do so puts all of us at risk as those facing housing instability are unlikely to be able to comply with the necessary social distancing measures required to prevent the spread of this deadly disease. Indeed, this proposal would create an entire population of people unable to access supportive housing and put Texas communities at great risk.

This proposal also rejects and disregards prevailing public opinion. A recent poll found that 56 percent of likely voters believe that those reentering society should be provided 12 months of housing after the pandemic ends.² Underscoring the broad base of support for reform, 70 percent of Democrats and 51 percent of Republicans are in favor of such a policy.³ In stark contrast, this proposal would limit the ability of individuals who have faced even minor charges in the past to access often vital supportive housing.

Critically, this proposal will disproportionately affect communities of color, who are already overrepresented in both the incarcerated population and our nation's homeless population. In the face of recent civil unrest surrounding the tragic deaths of many people of color at the hands of police, our communities are demanding reform and thoughtful leadership to redress the wrongs of the past. Instead, this proposal ignores systemic inequities inherent in our justice system and our social welfare system — it will only serve to perpetuate and exacerbate their disproportionate impact on communities of color.

¹ Council of State Governments Justice Center (2020), *Survey Shows Reentry Services Halting Across U.S.*, https://csgjusticecenter.org/survey-shows-reentry-services-halting-across-u-s/?mc_cid=13c23b1fd9&mc_eid=473a1156e3.

² Johnson, S. and Beletsky, L. (2020), *Helping People Transition From Incarceration to Society During a Pandemic*, Health in Justice Action Lab, Data for Progress, and the Justice Collaborative Institute, <https://tjcinstitute.com/wp-content/uploads/2020/05/challenges-of-reentry-during-coronavirus.pdf>.

³ *Ibid.*

Involvement with the criminal justice system **should not result in a lifetime sentence** to homelessness or financial insecurity. Ensuring access to housing is beneficial for individuals involved in the criminal justice system, their families, their communities, and the State of Texas. People with prior criminal records, like everyone else in our nation, deserve a place to call home.

For all of these reasons, we are opposed to, and deeply troubled by, the changes cited below. Please contact me if I can provide additional information.

Respectfully,



Miriam Aroni Krinsky
Executive Director
Fair and Just Prosecution
mkrinsky@fairandjustprosecution.org

Draft 2021 Chapter 11, Qualified Allocation Plan (QAP) – page 15

(v) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident.

(I) The criminal screening criteria must not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(-a-) Permanent denial based on criminal history at application or recertification of any conviction for murder related offense, sexual assault, kidnapping, or arson;

(-b-) Temporary denial for a minimum of three years based on criminal history at application or recertification of any felony conviction for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;

(-c-) Temporary denial for a minimum of two years for non-violent felonies; and

(-d-) Temporary denial for a minimum of one year for Class A misdemeanors

(II) The criminal screening criteria may include provisions for mitigation of temporary denials including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

(159) Houston Health Department



CITY OF HOUSTON

Houston Health Department

Sylvester Turner

Mayor

Stephen L. Williams, M.Ed., MPA
Director
Houston Health Department
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October 9, 2020

Attn: Matthew Griego, QAP
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Dear Mr. Griego:

As the Director of the Houston Health Department, I strongly oppose the proposed TDHCA Qualified Allocation Plan Changes. I understand that this shift will require supportive housing tax credit properties to refuse to house individuals with criminal backgrounds (temporarily or permanently, depending on the severity of the crime).

It is the sole mission of the Houston Health Department to work in partnership with the community to promote and protect the **health** and social well-being of Houstonians and the environment in which they live. This proposed change will place an undue burden on an already underserved, vulnerable population, individuals with criminal backgrounds. This population is identified as most vulnerable and at risk for homelessness like people with physical, intellectual, or developmental disabilities. According to the U.S. Interagency Council on Homelessness, nearly 50,000 people a year enter homeless shelters directly following release from correctional facilities. Formerly incarcerated individuals desperately require support to transition to more stable, long term housing. The key to supporting this successful transition requires options including supportive housing tax credit properties that are inclusive of individuals with criminal backgrounds.

Supportive housing is a both fiscally responsible and a measure of public safety and social well-being. Harris County estimates its costs to provide permanent supportive housing at \$17,000. While as of 2014, it costed taxpayers \$18,538 per year to house an inmate in prison and each new state prison bed costed more than \$60,000 to build. With supportive housing measures in place, formerly incarcerated individuals would be able to receive intensive coordinated, wraparound services that fully address the holistic needs of the person.

Without adequate housing options, there will be a continuous revolving door of incarceration and homelessness. With more than 12,000 individuals released from the Texas Department of Criminal Justice alone back into the Houston community, it is clear that this measure will, in fact, cause undue hardship and continued housing insecurity further destabilizing the reentry process for returning Houstonians and others across the Texas landscape. Safe, stable and affordable housing options are crucial to the successful reentry process.

Thank you for the opportunity to provide input on this matter. Please feel free to contact my office for further information.

Sincerely,


Stephen L. Williams, MEd, MPA
Director

(160) Coastal Bend Center for Independent Living

From: [Judy Telge](#)
To: [HTC Public Comment](#)
Cc: [Linda Fallwell-Stover](#); [David Ramos](#); [Angela Leach](#)
Subject: Supporting Public Comment on Chapter 11
Date: Friday, October 09, 2020 4:50:41 PM

I am registering my support of Disability Rights Texas public comment on Chapter 11 2021 Draft of QAP rejecting the criminal screening criteria to the requirements for the development of “Supportive Housing”. We agree that the TDHCA proposed changes will add discriminatory effects on individuals with disabilities and negate the provision of affordable housing so desperately needed by individuals with disabilities. Please do not include the proposed changes under Chapter 11.

Thank you.

Judy Telge, submitting these comments on behalf of:

Coastal Bend Center for Independent Living

Coastal Bend AAA-ADRC Housing Navigator

Accessible Housing Resources, Inc.

(161) Texas Inmate Families Association



Texas Inmate Families Association
Strengthening families through support, education and advocacy

Texas Department of Housing and Community Affairs
Attn: Patrick Russell
P.O. Box 13941
Austin, Texas 78711-3941
Email: htc.public-comment@tdhca.state.tx.us

Re: Texas Department of Housing & Community Affairs (TDHCA) 2021 Qualified Allocation Plan (QAP)

Dear Mr. Russell:

We are deeply concerned with the draft proposal that The Texas Department of Housing and Community Affairs (TDHCA) submitted for the 2021 Qualified Allocation Plan (QAP). Among the changes, the Plan would require supportive housing tax credit properties to **refuse to house individuals with criminal backgrounds** (temporarily or permanently, depending on the severity of the crime). **Please register our opposition to these changes proposed on page 15 of the document (pasted at the end of this letter).**

Research repeatedly shows that **housing is integral to successful reentry** for returning citizens. Home is the cornerstone from which people build healthy, productive lives for themselves and their families. And these concerns are even more prevalent during the current deeply unsettling times of economic and public health crisis.

Entire families and communities suffer when previously justice involved people are unable to secure housing. And these collateral consequences are not limited to justice-involved individuals. For example, nearly half of all U.S. children have a parent who has a criminal conviction; housing instability can significantly undercut the ability of these young people to graduate high school, enroll in, and finish college and have a successful pathway forward. These blows to upward mobility do not just harm individuals and their families — in the end, they ultimately harm us all.

Anyone facing homelessness or housing instability is likely to experience significant physical and financial turmoil, but the stakes are even higher for people with a prior criminal conviction. Barriers to housing can layer on top of and exacerbate other collateral consequences — including barriers to employment — further undermining an individual's ability to reenter the community. Moreover, people who are homeless are more likely to face future arrest and incarceration given policing practices, making it more likely that justice-involved people without stable housing will find themselves back in the unfortunate cycling of the justice system.

This proposal will also disproportionately affect the communities of color who are already overrepresented in the incarcerated population, as well as in our nation's homeless population.

Involvement with the criminal justice system **should not result in a lifetime sentence** to homelessness or financial insecurity. Ensuring access to housing is beneficial for justice-involved
P.O. Box 300220, Austin, TX ~ www.tifa.org and Facebook ~ tel: 512.371.0900 ~ email: tifa@tifa.org



Texas Inmate Families Association

Strengthening families through support, education and advocacy

individuals, their families, their communities, and the State of Texas. People with prior criminal records, like everyone else in our nation, deserve a place to call home.

For all of these reasons, we are opposed to, and deeply troubled by, the changes cited below. Please contact me if I can provide additional information.

Respectfully,

Sharon McKinney
Director of Programs
Texas Inmate Families Association

Draft 2021 Chapter 11, Qualified Allocation Plan (QAP) – page 15

(v) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident.

(I) The criminal screening criteria must not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(-a-) Permanent denial based on criminal history at application or recertification of any conviction for murder related offense, sexual assault, kidnapping, or arson;

(-b-) Temporary denial for a minimum of three years based on criminal history at application or recertification of any felony conviction for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;

(-c-) Temporary denial for a minimum of two years for non-violent felonies; and

(-d-) Temporary denial for a minimum of one year for Class A misdemeanors

(II) The criminal screening criteria may include provisions for mitigation of temporary denials including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

(162) Coalition for the Homeless



Texas Department of Housing and Community Affairs
ATTN: Matthew Griego, TDHCA Multifamily Policy Research Specialist
QAP Public Comment
P.O. Box 13941
Austin, Texas 78711-3941

October 9, 2020

Re: 2021 QAP Staff Draft

Dear Mr. Griego,

On behalf of the Coalition for the Homeless, the lead agency to The Way Home Continuum of Care — the collective effort to end homelessness in Harris, Fort Bend, and Montgomery counties, Texas — we offer the following comments regarding the 2021 QAP Staff Draft:

In short, we strongly recommend against proceeding with any of the new language regarding tenant selection criteria as it relates to supportive housing; however, if the QAP must be amended, then we suggest amending it as suggested in ATTACHMENT A.

Additional context:

1

The Way Home Continuum of Care (the local homeless response system, made up of 100+ agencies and led by the Coalition) has made great progress in solving homelessness in Harris, Fort Bend and Montgomery counties. Since 2011, we have placed more than 19,000 people in permanent supportive housing. This represents a 53% decrease in overall homelessness since 2011.¹ This has made the Houston area a national model.

This progress would not have been possible had rules such as the one proposed in the draft QAP been in place. TDHCA's proposed change to the QAP would require that supportive housing tax credit properties refuse to house individuals with criminal backgrounds (temporarily or permanently, depending on the severity of the crime).

The proposed change to the QAP changes the definition of supportive housing to exclude people with criminal backgrounds. People who need supportive housing are our most vulnerable, e.g., people experiencing or at-risk of homelessness, and people with physical, intellectual, or developmental disabilities, which means this change affects the most vulnerable Texans.

¹ Source: The Way Home CoC Point-in-Time Count. (View [fact sheet](#) or [full report](#).)



A disproportionate number of people experiencing homelessness have criminal backgrounds. This is no coincidence; many people fall into homelessness *because* they are released from the criminal justice system and have nowhere to go. The data:

- More than 50,000 people enter shelters directly from correctional facilities each year
- People who have been incarcerated are 13 times more likely to experience homelessness when compared to the general public²

This change to the QAP would disproportionately affect Black / African American people experiencing homelessness and their ability to be housed at tax credit properties.

- People who identify as Black or African American are disproportionately represented in both the homeless and criminal justice systems due to systemic and structural racism.
- Context: Black/African American people represent 19.9% of the population of Harris County.
- Homeless system numbers:
 - Black/African American people represent 56.2% of people in the CoC area experiencing homelessness³
- According to Harris County’s jail population dashboard, as of 10/9/20:
 - 49% (~4,150) of the total jail population is Black.
 - 12% (~1,010) of the jail population self-reported as homeless.
 - Using the expanded Possible Homeless criteria, 24% (~2034) of the jail population could possibly be homeless.
 - Of those that identified as homeless 68% (~685) are Black.
 - It is also notable that of those that reported as homeless, 89% (~894) have a mental health indicator. That compares to 67% (~5,699) of the total jail population.

The change to the QAP would mean that people experiencing homelessness with certain criminal backgrounds would remain unhoused for longer periods of time, which is a particular concern during a global pandemic.

- It would take us longer to house clients with criminal backgrounds because we wouldn’t be able to find them units for which they would be eligible. People would remain on the streets longer while we tried to find private landlords who could accommodate them.
- During COVID, it’s especially important to get people into housing where they can “stay home, stay safe.” Any policy that creates delays could adversely affect public health.

² <https://www.urban.org/features/five-charts-explain-homelessness-jail-cycle-and-how-break-it>

³ Source: The Way Home CoC Point-in-Time Count. (View [fact sheet](#) or [full report](#).)



Moreover, providing permanent housing is cheaper than sending someone back to prison, and it's also cheaper than allowing someone to remain on the streets.

- Cost of incarceration in Harris County = \$90 per day if the inmate receives no medications (which is rare for the population in jail). With psych meds, cost is approximately \$300 a day or more. (Note: the current average length of stay is 212 days, but this has increased due to the pandemic.)
- Cost of someone living unsheltered in Harris County = recently estimated to cost \$91,000/year
- Cost of providing permanent housing to someone in Harris County = \$17,000

Almost every one of our PSH/supportive housing developments would be affected by this rule, i.e., all future developments that will apply for tax credits.

In our capacity as Lead Agency to the CoC in one of the most populous areas on our state, we request that we included in any further conversations about the QAP.

We also request that any changes to the QAP be delayed for a year to allow time for TDHCA to produce a fiscal impact statement for the proposed changes, as would be required if this were legislation going before our state legislature.

In closing, we feel strongly that the proposed changes to the QAP selection criteria could have disastrous unintended consequences for people experiencing homelessness — and communities throughout Texas. We are grateful to the TDHCA to have given us this opportunity to suggest a different path that will produce better outcomes for our great state.

Sincerely,

Michael Nichols
President and CEO
Coalition for the Homeless

ATTACHMENT A
Coalition for the Homeless of Houston/Harris County
Markup of TDHCA's 2021 QAP Staff Draft (Chapter 11)

(122) Supportive Housing--A residential rental Development and Target Population meeting the requirements of subparagraphs (A) ~~through~~ (E) of this paragraph.

(A) Be intended for and targeting occupancy for households in need of specialized and specific non- medical services in order to maintain housing or transition into independent living;

(B) Be owned and operated by an Applicant or General Partner that must:

(i) have supportive services provided by the Applicant, an Affiliate of the Applicant, or a Third Party provider if the service provider is able to demonstrate a record of providing substantive services similar to those proposed in the Application in residential settings for at least three years prior to the beginning of the Application Acceptance Period, or Application Submission Date for Multifamily Direct Loan Applications;

(ii) secure sufficient funds necessary to maintain the Supportive Housing Development's operations throughout the entire Affordability Period; ~~and~~

(iii) provide evidence of a history of fundraising activities reasonably deemed to be sufficient to address any unanticipated operating losses; ~~and~~

(iv) provide a fully executed guaranty agreement whereby the Applicant or its Affiliate assume financial responsibility of any outstanding operating deficits, as they arise, and throughout the entire Affordability Period; and

(v) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of ~~credit, criminal conviction, and prior eviction~~ history that may disqualify a potential resident.

(I) The criminal screening criteria must not allow residents to reside in the Development that are ~~on the National or Texas Sex Offender website-lifetime registered sex offenders~~ or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

~~(-a-) Permanent denial based on criminal history at application or recertification of any conviction of for murder related offense, sexual assault, kidnapping, or arson for lifetime registered sex offenders;~~

~~(-b-) Temporary denial for a maximum of 3 years for a minimum of three years based on criminal history at application or recertification of any felony conviction for discharge/display or firearm or illegal/deadly weapon, or armed offense; ~~stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;~~~~

~~(-c-) Temporary denial for a minimum of two years for non-violent felonies; and~~

~~(-d-) Temporary denial for a minimum of one year for Class A misdemeanors~~

(II) The criminal screening criteria may include provisions for mitigation of temporary denials including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with

ATTACHMENT A
Coalition for the Homeless of Houston/Harris County
Markup of TDHCA's 2021 QAP Staff Draft (Chapter 11)

personal knowledge of the tenant, or when tenants are participating in a housing program providing supportive services -assisted through Permanent Supportive Housing paired with subsidy and case management services. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years

(III) When property units are assisted through the Housing Choice Voucher Program, the Public Housing Authority's Criminal Background Criteria may apply, including mitigation of temporary denials.

(IV~~H~~) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

(C) Where supportive services are tailored for members of a household with specific needs, such as:

- (i) homeless or persons at-risk of homelessness;
- (ii) persons with physical, intellectual, ~~and~~ or developmental disabilities;
- (iii) youth aging out of foster care;
- (iv) persons eligible to receive primarily non-medical home or community-based services;
- (v) persons transitioning out of institutionalized care;
- (vi) persons unable to secure permanent housing elsewhere due to specific, non-medical, or other high barriers to access and maintain housing;
- (vii) Persons with Special Housing Needs including households where one or more individuals have alcohol and/or drug addictions, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), HIV/AIDS, or is a veteran with a disability; or
- (viii) other target populations that are served by a federal or state housing program in need of the type and frequency of supportive services characterized herein, as represented in the Application and determined by the Department on a case-by-case basis.

(D) Supportive services must meet the minimum requirements provided in clauses (i) -- (iv) of this subparagraph:

- (i) regularly and frequently offered to all residents, primarily on-site;
- (ii) easily accessible and offered at times that residents are able to use them;
- (iii) must include readily available resident services and/or service coordination that either aid in addressing debilitating conditions, or assist residents in securing the skills, assets, and connections needed for independent living; and

ATTACHMENT A
Coalition for the Homeless of Houston/Harris County
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(iv) a resident may not be required to access supportive services in order to qualify for or maintain tenancy in a rent restricted Unit that the household otherwise qualifies for; and,

(163) Harris County Public Defender's Office



Harris County Public Defender's Office
Criminal Justice Center
1201 Franklin St. 13th floor
Houston, TX 77002
Tel (713) 274-6700
Fax (713) 368-9278

10/09/2020

Attn: Matthew Griego, TDHCA Multifamily Policy Research Specialist
QAP Public Comment
P.O. Box 13941, Austin, Texas 78711-3941
October 9, 2020

Dear Matthew Griego,

As client advocates at the Harris County Public Defender's Office, we are writing to express our firm opposition to the Texas Department of Housing and Community Affairs' proposed change to the Qualified Allocation Plan that would require that supportive housing tax credit properties refuse to house individuals with criminal records.

Access to stable housing is one of the most crucial resources in attempting to lead a safe and stable life. At the Harris County Public Defender's Office, we not only provide our clients with zealous legal representation but work to connect them with resources and wraparound services that address their underlying needs—housing is by far one of the largest areas of support our clients require. Already, our clients face numerous barriers to obtaining stable housing and the proposed change to the QAP would make this significantly harder, thereby increasing homeless and recidivism rates in Texas.

According to a 2018 study by the Prison Policy Institute, people who have been incarcerated are 13x more likely to experience homelessness than the general public. The proposed changes would further hinder this population's ability to access stable housing, increasing homelessness. Since the criminal legal system disproportionately targets people of color, the proposed changes would disproportionately exclude people of color from affordable housing. Lack of housing is always a public health crisis, and in the midst of the COVID-19 pandemic, it is even more lethal.

Stable housing is essential for staying out of prison and successfully reentering after serving a prison sentence. Due to numerous policies that criminalize homelessness, lack of stable housing pushes people into a vicious cycle of legal system involvement and incarceration. Without access to stable housing, it is challenging to obtain employment and access public benefits. By stripping people of the opportunity to gain stability, the proposed changes will increase recidivism rates, harming entire families and communities, and wasting taxpayer dollars on preventable incarceration.



Harris County Public Defender's Office
Criminal Justice Center
1201 Franklin St. 13th floor
Houston, TX 77002

Tel (713) 274-6700
Fax (713) 368-9278

The proposed changes to the QAP are a serious step backwards from the strides Texas has made in both criminal justice reform and solving issues of homelessness. We urge you to oppose the changes for our clients, their families, and the state overall.

Signed,

Client Advocates at the Harris County Public Defender's Office

Sophie Kupetz
Rahmel Robinson
Priyanka Shetty
Guadalupe Tello
Daniel Moreno
Eli Mensing
Ashley Nguyen
Ginikachi Okeke

(164) Texas Senators and House Members



October 9, 2020

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street, Austin, TX 78701

Dear Director Wilkinson,

We are writing you today to share our deep concerns regarding the criminal screening requirements set forth in the draft 2021 Qualified Allocation Plan (QAP) recently released by the Texas Department of Housing and Community Affairs (TDHCA). We believe that the proposed [Tenant Selection Criteria](#) will undermine the positive strides the City of Austin has made in addressing homelessness and create barriers that most certainly ensure that more people experiencing homelessness will be relegated to permanent homelessness.

The City of Austin is committed to ensuring that homelessness is a rare, brief and non-recurring experience. Unfortunately, over 7,000 people experience homelessness in the City of Austin and Travis County each year, most of whom face multiple barriers to accessing permanent housing, including behavioral health challenges, lack of stable income, and criminal and/or eviction histories. Despite this challenge, the City has made great strides in addressing homelessness. In 2018 alone, the City connected nearly 2,500 people experiencing homelessness with permanent housing.

We join the City of Austin in its opposition to the proposed Tenant Selection Criteria in the draft 2021 Qualified Allocation Plan (QAP) because it would effectively bar individuals with an overly broad set of criminal convictions from being housed in supportive housing projects. Currently, in the City of Austin, criminal background screenings are calculated from the date of conviction. The proposed rule would require landlords to penalize a prospective tenant for a conviction regardless of when it occurred. Further, because denial of eligibility would not begin to be calculated until the *time of application* – not the conviction - the denial would be effectively permanent, not temporary. For example, if someone was convicted 20 years ago applied for supportive housing today, the denial period begins at application.

Additionally, the proposed regulations will undermine the requirement that a development provide additional units to persons referred from the Continuum of Care (CoC) program,¹ a federally-led but also state- and locally-supported initiative to quickly rehouse homeless individuals and families. The CoC Program establishes a “coordinated entry system,” by which individuals and families are ranked according to a host of reasonable metrics. For good reason, those metrics typically push the chronically

¹ The proposal conflicts with the change directly made by the Governor in the 2020 QAP, at 10 TAC 11.6(c)(6)(B), whereby a Development commits an additional 2% of the total Units to Persons referred from the Continuum of Care.

homeless² to the top of the coordinated entry system. As has been clearly shown by research, the chronically homeless, compared to the general population, disproportionately have criminal histories.³ Therefore, and inexplicably, the proposed Tenant Selection Criteria under the definition of Supportive Housing creates a barrier to housing for the very people that certain items in the QAP purportedly intend to serve and house.

We appreciate the role that TDHCA plays in our community's efforts to end homelessness and value the impact of the Low Income Housing Tax Credit program. However, ending homelessness will require ensuring access to – and increasing opportunities for – low-barrier housing and supportive services, not erecting new impenetrable barriers. Therefore, we strongly urge you to remove the proposed changes to the Tenant Selection Criteria in the TDCHA draft 2021 Qualified Allocation Plan (QAP).

Sincerely,



Senator Judith Zaffirini
Texas Senate



Representative Eddie Rodriguez
Texas House of Representatives



Representative Celia Israel
Texas House of Representatives



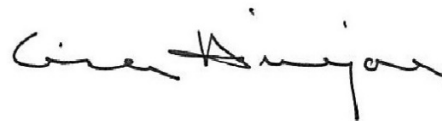
Representative Vikki Goodwin
Texas House of Representatives



Senator Sarah Eckhardt
Texas Senate



Representative Donna Howard
Texas House of Representatives



Representative Gina Hinojosa
Texas House of Representatives



Representative John Bucy, III
Texas House of Representatives

² Chronically Homeless is a HUD defined term, and is defined as follows: (1) A “homeless individual with a disability,” as defined in Section 401(9) of the McKinney-Vento Homeless Assistance Act, who:

- i. Lives in a place not meant for human habitation, a Safe Haven, or an emergency shelter; AND
- ii. Has been homeless continuously for at least 12 months or on at least four separate occasions in the last 3 years, as long as the combined occasions equal at least 12 months and each break in homelessness separating the occasions included at least 7 consecutive nights of not living as described in (i) above.

³ “Assessing Criminal History as a Predictor of Future Housing Success for Homeless Adults With Behavioral Health Disorders” by Daniel K. Malone M.P.H.

(165) Texas RioGrande Legal Aid (TRLA)



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Mercedes, TX 78570
Phone: (956) 447-4800
Fax: (956) 825-7035
Intake: (888) 988-9996
www.trla.org

October 9, 2020

Texas Department of Housing and Community Affairs
Attn: Patrick Russell
P.O. Box 13941
Austin, TX 78711

Sent via email to htc.public-comment@tdhca.state.tx.us

Re: Comments in Opposition to TDHCA's Draft 2021 Qualified Allocation Plan Changes

Dear Mr. Russell,

This letter is written on behalf of Texas RioGrande Legal Aid (TRLA) in response to proposed changes in the Texas Department of Housing and Community Affairs' (TDHCA) staff draft of the 2021 Qualified Allocation Plan (QAP). TRLA represents low-income individuals in civil legal matters across 68 counties throughout Central and Southwest Texas. We are the third-largest provider of free legal services in the country. Among the wide variety of legal matters in which we represent individuals who otherwise could not afford the services of a lawyer, we assist tenants to secure and maintain safe and affordable housing so that they may achieve stability and self-sufficiency for themselves and for their families. Helping the most vulnerable individuals across Texas to access housing is critical to our work.

We are deeply concerned by the proposed changes to Section 11.1(d)(122) regarding the requirements for Supportive Housing developments that receive Department funds. These changes impose criminal background screening criteria that not only restrict housing developers' ability to set their own standards for admission, but that will greatly restrict the availability of much-needed supportive housing for individuals experiencing housing instability and homelessness across Texas.

We believe that imposing a mandatory criminal background screening requirement on all supportive housing developers seeking TDHCA funds is counterproductive to the work that TDHCA should be doing to encourage the development of affordable housing that is accessible to individuals who need it most. To this end, we believe that TDHCA should not impose the additional mandatory screening requirements contained in Section 11.1(d)(122)(B) and instead allow developers the flexibility to develop their own reasonable standards for criminal history screening, while complying with the federal laws that already restrict the types of criminal background screening that developers may deploy.

If TDHCA does not remove these proposed changes in favor of a simpler and more flexible requirement for reasonable criminal background screening, we believe that TDHCA should ensure the following requirements are included in the final QAP:

- That applicants may only be denied for criminal convictions and not for deferred adjudications that do not constitute a criminal conviction under Texas law;
- That the look-back time period contained in the criteria shall begin on the date of the offense and not on the date of the conviction. Individuals who choose to exercise their constitutional rights to take a criminal charge to trial should not be penalized relative to other individuals who choose to plead to an offense, thereby shortening the time between criminal offense date and conviction date. The concern about an individual's history should

reflect the date the criminal activity occurred, not the date that the charge was finally adjudicated;

- That the convictions currently listed in the draft as requiring “permanent denial” in the draft be shortened to a reasonable look-back period of ten (10) or fifteen (15) years from the date of conviction; and
- That all denials based on a criminal conviction that has occurred within the relevant look-back period, including those that are currently listed in the draft QAP as “permanent” or lifetime look-back periods, require the landlord to conduct an individualized review of the applicant’s convictions and other relevant information provided by the applicant to determine whether the applicant should be admitted to the housing development, based on mitigating factors relevant to the conviction and/or to the applicant’s personal history. The authorization for a “mitigation of denial” process permitted in the draft QAP for temporary denials should be extended to all denials based on criminal convictions.

Entire families and communities suffer when individuals with criminal history are unable to secure housing. Housing instability can significantly undercut the ability of children whose parents have criminal convictions to graduate high school, enroll in and finish college, and achieve success and stability as an adult. Efforts to reduce access to safe and affordable housing for families whose members have previous criminal convictions do not only harm those individuals and their families, but they create lasting harm across the entire community.

Moreover, people who are homeless are more likely to face future arrest and incarceration if they are unable to access safe housing, making it more likely that individuals with criminal backgrounds without stable housing will cycle back through the criminal justice system, which further burdens our communities financially. The better approach is to allow these individuals the opportunity—with supports, like those provided in supportive housing developments—to create a home in a safe, affordable housing unit.

Involvement with the criminal justice system should not result in a lifetime sentence to homelessness or financial insecurity. Ensuring access to housing benefits not only individuals with criminal backgrounds and their families, but also their communities across the state. Individuals with prior criminal records, who have served their time in accordance with the law, like everyone else in our nation, deserve a safe place to call home.

For all of these reasons, we are opposed to, and deeply troubled by, the draft changes cited above. It is our hope that TDHCA will modify or remove these provisions in accordance with its efforts to expand access to affordable housing to individuals across the state. Please feel free to contact me at (512) 374-2740 if I can provide additional information.

Sincerely,

TEXAS RIOGRANDE LEGAL AID, INC.



Marissa Latta
Attorney at Law

(166) Tim Smith

1. Feasibility Reports §11.204(15)

Feasibility reports should not be required for Rehab applications as the information contained in the reports are either not applicable to rehabs or they are covered in the PCNA/Scope and Cost Review.

Feasibility reports are conducted for new construction developments and, as stated in the Rules, is concentrated on site design, zoning, subdivision requirements, ordinances, ingress/egress, off-site costs, and site work cost. The rehabilitation development is already in existence. This rehabilitation Application is not redesigning the Development Site or having to plat a new subdivision or decide the ingress/egress or engage off-site costs.

Additionally, TDHCA's own underwriting staff has agreed that feasibility reports are not pertinent to underwriting Rehabilitation Developments. This requirement creates another expense and burdens to rehabilitating affordable housing without providing meaningful data in underwriting rehabilitation developments.

We request that applications proposing only rehabilitation be exempt from Feasibility Reports in their entirety.

2. Appraisal Review Fee

This is another burdensome fee on top of the other reports required by TDHCA. The proposed fee of \$6,000 represents the costs of a completely new and separate appraisal. You are now requiring two appraisals. Why is the department requiring a second appraisal from an approved provider list? In lieu of an appraisal fee, we ask that TDHCA publish a list of approved appraisers using the Uniform Standards of Professional Appraisal Practice (USPAP) to choose from. An appraiser will be certified by the Texas Appraisal Licensing and Certification Board and we should be able to rely on this professional to give an accurate appraised value and not have to pay for a 2nd appraisal for the sole purpose of TDHCA review.

We ask the Appraisal Review Fee be deleted and language in the appraisal guidance in the QAP be removed.

3. Concerted Revitalization Plan §11.9(d)(7)(a)(ii)

We request that the language "additional efforts" be removed from this paragraph. Such language is extremely subjective and difficult to define. Additionally, the context of "additional efforts" speaks to meeting the requirements of clause (iii) of this section. This is cumbersome wording and is not needed. Either a revitalization meets the criteria of clause (iii) or it does not. With this current wording, a city's revitalization plan could meet and comply with every item in clause (iii) but unless "additional efforts" were shown, then it is not accepted. This makes little logical sense. Please see the following as proposed re-write of this paragraph:

(ii) A plan may consist of one or two, but complementary, local planning documents that together create a cohesive agenda for the plan's specific area. The plan and supporting documentation must be submitted using the CRP Application Packet. No more than two local plans may be submitted for each proposed Development. A Consolidated Plan, One-year Action Plan or any other plan prepared to meet HUD requirements will not meet the requirements under this clause, unless evidence is presented that plan ~~additional efforts have been undertaken to~~ meets the requirements in clause (iii) of this subparagraph. The concerted revitalization plan may be a Tax Increment Reinvestment Zone (TIRZ) or Tax Increment Finance (TIF) or similar plan. A city- or county-wide comprehensive plan, by itself, does not equate to a concerted revitalization plan.

(167) Texas Appleseed

October 9, 2020

Texas Department of Housing and Community Affairs

Attn: Matthew Griego

QAP Public Comment

P.O. Box 13941

Austin, Texas 78711-3941

Submitted Via Email: htc.public-comment@tdhca.state.tx.us

Comments of Texas Appleseed on the Staff Draft of 10 TAC, Chapter 11, 2021 Qualified Allocation Plan (QAP)

Dear Mr. Griego:

Texas Appleseed (Appleseed) is a non-partisan, non-profit, 501(c)(3) organization and part of a national network of public interest law centers. Our mission is to promote justice for all Texans by leveraging the volunteered skills and resources of lawyers and other professionals to identify practical solutions that create systemic change on broad-based issues of social equity, including fair financial services, foster care, criminal justice and fair housing. We appreciate the TDHCA Staff and Board's work on this draft, and this opportunity to comment.

COVID-19 has killed more than 15, 000 Texans. As of October 3, 2020 3.6 million Texans have filed for unemployment, the unemployment rate almost double what it was in August 2019, and all supplemental unemployment and other stimulus benefits have ended.¹ As of August 7, 2020, 30-40 million people were at risk of eviction and 2.6 to 3.8 million Texans were at risk of eviction – up to half of all renter households in Texas² The CDC eviction moratorium does not stop evictions, it only delays them until December 31, 2020 and does not provide any rent relief or a repayment grace period. On January 1, 2020 millions of families will likely face imminent eviction, and will be saddled with debt that affects their credit record and an eviction history, both of which will have a significant negative effect on their ability to obtain housing in the future. As 85 FR 55292 (September 4, 2020) states,

In the context of a pandemic, eviction moratoria—like quarantine, isolation, and social distancing—can be an effective public health measure utilized to prevent the spread of communicable disease. Eviction moratoria facilitate self-isolation by people who become ill or who are at risk for severe illness from COVID-19 due to an underlying

¹ Anna Novak and Mitchell Ferman, *The Texas Tribune* (data updated October 8, 2020) Available at: <https://apps.texastribune.org/features/2020/texas-unemployment/>

² Benfer, et. al, THE COVID-19 EVICTION CRISIS: AN ESTIMATED 30-40 MILLION PEOPLE IN AMERICA ARE AT RISK, Aspen Institute for Financial Security (August, 2, 2020) Available at: <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/>

medical condition. . . Furthermore, housing stability helps protect public health because homelessness increases the likelihood of individuals moving into congregate settings, such as homeless shelters, which then puts individuals at higher risk to COVID-19. The ability of these settings to adhere to best practices, such as social distancing and other infection control measures, decreases as populations increase. Unsheltered homelessness also increases the risk that individuals will experience severe illness from COVID-19.

Even families who move in with friends or family after an eviction increase the risk of transmission.

Evicted renters must move, which leads to multiple outcomes that increase the risk of COVID-19 spread. Specifically, many evicted renters move into close quarters in shared housing or other congregate settings. According to the Census Bureau American Housing Survey, 32% of renters reported that they would move in with friends or family members upon eviction, which would introduce new household members and potentially increase household crowding.³ Studies show that COVID-19 transmission occurs readily within households; household contacts are estimated to be 6 times more likely to become infected by an index case of COVID-19 than other close contacts.⁴

The Low-Income Housing Tax Credit (LIHTC) program, as the most significant source of affordable housing funding in Texas, is more vital than ever during the COVID-19 pandemic, and will continue to be so in its aftermath. Part of LIHTC Program’s success is due to the flexibility it gives to states to set priorities according to their own particular needs, and the ability to adjust the program’s priorities as needs change or in order to more effectively provide decent affordable housing . TDHCA’s priorities, especially now, must be serving Texas families with the greatest need, siting housing so that increases the ability of Texans to recover, and ensuring there are as few barriers as possible to accessing housing.

I. SUBCHAPTER A: PRE-APPLICATION, DEFINITIONS, THRESHOLD REQUIREMENTS AND COMPETITIVE SCORING

§11.1(d)(122)(B)(v) Supportive Housing definition - criminal screening

We strongly oppose the language proposing a new requirement that Tenant Selection Criteria (TSC) include a proscriptive criminal screening process. This language should be stricken from the final QAP.

³ United States Census Bureau. American Housing Survey, 2017. <https://www.census.gov/programs-surveys/ahs.html>.

⁴ Bi Q, Wu Y, Mei S, et al. *Epidemiology and transmission of COVID-19 in 391 cases and 1286 of their close contacts in Shenzhen, China: a retrospective cohort study.* *Lancet Infect Dis* 2020, [https://doi.org/10.1016/S1473-3099\(20\)30287-5](https://doi.org/10.1016/S1473-3099(20)30287-5).

The QAP definition of Supportive Housing is intended to encourage developments that target households in need of specialized services to maintain housing or transition to independent living. Children aging out of the foster care system, individuals with disabilities, people experiencing homelessness, and re-entering Texans are among the populations most likely to need these services; and disproportionately likely to have criminal records that prevent them from accessing the very housing that would enable them to build stability and access independent housing, jobs, and other systems.⁵

A fair screening process requires owners and landlords to have clear, publicly available tenant selection criteria and a transparent process. However, individual owners should be the ones to determine which criteria are most appropriate to their tenants and communities instead of having the State specifically proscribing the details of criminal records criteria in a way it does not do for any other suggested item in the TSC. Supportive housing providers have successfully used their own tailored TSC for decades, and the State has not presented data or other material showing that the current program requirements are not ensuring the safety of tenants and communities or to otherwise justify this change.

The inclusion of proposed §11.1(d)(122)(B)(v) would also place the ability of housing providers to leverage other funds – a key goal of the LIHTC program. Federal and local programs, and Housing Authorities have their own TSC requirements. If these screening mandates, which will vary across programs and jurisdictions, conflict with the proposed QAP language, it could prevent supportive housing providers from accessing local gap funding or other funding and partnerships that are essential to the viability of supportive housing projects.

Permanent Supportive Housing is a well-established, proven strategy for stably housing people with chronic homelessness, mental health challenges, and prior justice system involvement.⁶ The U.S. Department of Housing and Urban Development (HUD)⁷ and SAMHSA⁸ support reducing barriers to housing in programs for people vulnerable to homelessness, putting current federal policy at odds with the proposed QAP criminal screening language. The federal Continuum of Care program, also works to reduce barriers for vulnerable individuals. The proposed criminal screening requirements will also make it more difficult to meet the Continuum of Care (COC) set-aside in section 11.9(c)(6)(B). In Texas, formerly incarcerated individuals are nearly 10 times more likely to experience homelessness compared to the

⁵ Texas Appleseed would be happy to provide data and other information on foster children, homeless youth, and other persons experiencing homelessness.

⁶ E.g., M. Lori Thomas et al., *Moore Place Permanent Supportive Housing Evaluation Study Final Report*, Charlotte, NC: University of North Carolina at Charlotte, Department of Social Work (2015). Available at https://www.csh.org/wp-content/uploads/2015/05/Moore-Place-Evaluation-Project_Final-Report_4-28-15.pdf.

⁷ E.g., U.S. Department of Housing and Urban Development (HUD), *Housing First in Permanent Supportive Housing Brief* (2014). Available at <https://www.hudexchange.info/resource/3892/housing-first-in-permanent-supportive-housing-brief/>.

⁸ E.g., U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), *Mental and Substance Use Disorders and Homelessness Resources: Housing and Shelter* (2020). Available at <https://www.samhsa.gov/homelessness-programs-resources/hpr-resources/housing-shelter>.

general population.⁹ By shutting much of this population out of LIHTC housing, TDHCA would do inhibit statewide efforts to end homelessness.

Over 65,000 people were released from the Texas prison system in 2018,¹⁰ and an estimated 505,000 individuals are jailed in Texas every year.¹¹ An Urban Institute study of men exiting prison to Houston found that the majority of these men had challenges finding and maintaining housing in the first year after release. Eight to ten months from release, 39% of the men in the study had moved at least once.¹² Formerly justice-involved people face an increased risk of housing insecurity and homelessness, including systemic barriers like criminal background restrictions (which may be as indiscriminate as arrest records even if there were not criminal charges) or landlord discrimination).¹³ The affordable housing shortage is already a barrier; coupled with legal and informal discriminatory restrictions on housing for people with criminal records, barriers for reentering Texans can be almost insurmountable, even years after their reentry.¹⁴

Housing instability has significant negative effects on family and child well-being for all families; home is the foundation that enables people to build healthy and productive lives. The stakes are even higher for people with prior justice system involvement. During a public health and economic crisis, housing stability is more important than ever.

Data and research have shown repeatedly that stable housing is integral to a successful reentry. Barriers to housing exacerbate other collateral consequences — including barriers to employment — undermining an individual’s ability to successfully reenter the community. Because homelessness has been widely criminalized, people who cannot obtain housing and as a result experience homelessness are more likely to face future arrest and incarceration, cycling them back into the criminal justice system based on their inability obtain housing.

It is not only previously justice-involved individuals that are affected by their inability to obtain housing; families and the larger community suffer as well. Nearly half of all U.S. children have a parent who has a criminal conviction; housing instability can significantly undercut the ability of these young people to graduate high school, enroll in and finish college, and have a successful

⁹ Texas Criminal Justice Coalition, *New Report Explains the Link Between Homelessness and Justice System Involvement* (2019). Available at <https://www.texascjc.org/sites/default/files/press-releases/TCJC%20Press%20Release%20-%20Return%20to%20Nowhere.pdf>. Full report available at <https://www.texascjc.org/one-size-fails-all>.

¹⁰ Texas Department of Criminal Justice, *FY 2018 Statistical Report* (2019). Available at https://www.tdcj.texas.gov/documents/Statistical_Report_FY2018.pdf.

¹¹ Wanda Bertram & Alexi Jones, *How Many People in Your State Go to Local Jails Every Year?*, Prison Policy Initiative (2019). Available at <https://www.prisonpolicy.org/blog/2019/09/18/state-jail-bookings/>.

¹² Nancy G. La Vigne et al., *One Year Out: Tracking the Experiences of Male Prisoners Returning to Houston, Texas*, Urban Institute Justice Policy Center (2009). Available at <https://www.urban.org/sites/default/files/publication/30436/411911-One-Year-Out-The-Experiences-of-Male-Returning-Prisoners-in-Houston-Texas.PDF>.

¹³ La Vigne et al., *supra* note 1.

¹⁴ Root & Rebound, *Fair Chance Housing Toolkit*. Available at <https://www.rootandrebound.org/wp-content/uploads/2020/02/RR-National-Fair-Chance-Housing-Toolkit.pdf>.

pathway forward. Criminal screening policies may prevent returning Texans from living with their families, whose support is also integral to successful reentry. These blows to stability and upward mobility do not just harm individuals and their families — in the end, they ultimately harm us all.

This proposal will also disproportionately affect communities of color, who are already overrepresented in the incarcerated population, and individuals with disabilities.

The proposed changes would create additional barriers for individuals with disabilities, a protected class under the Fair Housing Act (FHA) who need supportive housing. Individuals with disabilities, particularly mental health disabilities, are often justice-system involved precisely because of their disabilities and the lack of supportive services outside of the prison system. The proposed language on criminal records screening will make individuals whose convictions stemmed from their disabilities to obtain housing that provides the kind of supportive services they need to recover, and more difficult for supportive housing providers to obtain funding.

The proposed new requirements would have a disparate impact and discriminatory effect, on individuals with disabilities in violation of the FHA. The failure to provide for reasonable accommodation as part of this proposed policy constitutes also constitutes discriminatory treatment under the FHA. Under HUD and TDHCA's own definition, supportive housing is intended to provide housing for individuals with disabilities. Applying a set of requirements that do not apply to any other category of LIHTC development to developments that primarily serve individuals with disabilities appears discriminatory on its face.

As HUD's 2016 guidance lays out,¹⁵ blanket and prescriptive criminal records policies are extremely likely to have a disparate impact on Black and Latinx Americans.¹⁶ In Texas, despite similar rates of illicit drug use, white people are incarcerated for drug crimes at a rate of 20 per 100,000, while Black people are incarcerated for drug crimes at a rate of 230 per 100,000. This means Black people are 11.7 times more likely to be incarcerated on drug charges than white people, and Black men almost 14 times more likely than white men.¹⁷ Black Americans compose only 13% of the general U.S. population but represent 38% of persons convicted of a felony in state courts and in state prisons.¹⁸ Based on these disparities, Black people in Texas are more likely to be excluded from renting in affected LIHTC properties based on criminal records than people of other races. The effect of the QAP change will fall unfairly and disproportionately on African Americans, a protected class under the FHA and Title VI of the Civil Rights Act of 1964.

¹⁵ Available at: https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF

¹⁶ We note that many of the laws and policies, from the invention of criminal charges specifically to return Black Americans to a form of slavery (convict leasing), to a "War on Drugs" that President Nixon explicitly said was based on race, that have resulted in the disproportionate arrest and incarceration of people of color, were explicitly and deliberately discriminatory.

¹⁷ Human Rights Watch, *Targeting Blacks: Drug Law Enforcement and Race in the United States* (2008). Available at <https://www.hrw.org/report/2008/05/04/targeting-blacks/drug-law-enforcement-and-race-united-states>.

¹⁸ American Civil Liberties Union, *Racial Disparities in Sentencing* (2014). Available at https://www.aclu.org/sites/default/files/assets/141027_iachr_racial_disparities_aclu_submission_0.pdf.

Under §10.802(B)(v)(b)(1) TSC must be “reasonably related” to an applicant’s ability to pay rent, refrain from damaging the property, and not interfere with the right to quiet enjoyment of other tenants. Imposing specific and inflexible requirements on supportive housing providers violates the Texas Administrative Code, the language of which parallels the policy-maker’s burden in a discriminatory impact analysis to “prove that a policy or practice is justified”. HUD specifically notes in its guidance that;

A housing provider must, however, be able to prove through reliable evidence that its policy or practice of making housing decisions based on criminal history actually assists in protecting resident safety and/or property. Bald assertions based on generalizations or stereotypes that any individual with an arrest or conviction record poses a greater risk than any individual without such a record are not sufficient to satisfy this burden.

We understand that the proposed language is intended to tailor the criminal screening requirements more narrowly than a blanket ban. However, these requirements are too proscriptive and prevent supportive housing providers from doing the kind of individualized assessment that reduces the risk of discrimination and ensure that they are able to serve their target populations. Housing providers should be able to use best practices, such as those described in the *Texas Criminal Background Screening Guide for Rental Housing Providers* (Available at: https://www.reentryroundtable.org/wp-content/uploads/2018/04/Austin-Criminal-Background-Screening-Guidebook.final_.pdf) and be able to adjust their policies based on new research or data.

II. School Ratings and other Opportunity Index Factors

Particularly in the context of COVID-19 and its ongoing impact on the education system, we support the proposed language allowing use of most recent school rating data, and we support keeping this item in the pre-application. By adjusting the language to remove the specific year reference, this change allows applicants to use slightly older data on schools to identify Neighborhood Risk Factors. However, §11.101(a)(3)(C) Neighborhood Risk Factors must retain the powerful factors around proximity to good schools that is essential to allow LIHTC tenants with children to support their families and prevent forcing children into inadequate schools.

§11.9(c)(4)(B) Opportunity Index – increased distance to amenities

We strongly oppose the proposal to increase distances to most amenities in the urban and rural Opportunity Index and recommend that the distances to amenities remain as they were in the 2020 QAP

§11.9(c)(8) Readiness to Proceed in Disaster Impacted Counties – change to four years

We support the change in this section allowing for points under this item for up to *four* years from December 1, 2020. This change allows areas affected by Hurricane Harvey to continue to be eligible for these points. Where Texas residents still feel the effects of Harvey, this will encourage rapid LIHTC development.

Sincerely,

Madison Sloan
Director, Disaster Recovery and Fair Housing Project
Texas Appleseed
msloan@texasappleseed.net
512-483-2800 ext. 108

(168) College & Community



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Texas Department of Housing and Community Affairs
Attn: Patrick Russell
P.O. Box 13941
Austin, Texas 78711-3941
Email: htc.public-comment@tdhca.state.tx.us

Re: Texas Department of Housing & Community Affairs (TDHCA) 2021 Qualified Allocation Plan (QAP)

Dear Mr. Russell:

As an organization that has worked to advocate for the full inclusion of women and their families since 2000, we are deeply concerned with the draft proposal that The Texas Department of Housing and Community Affairs (TDHCA) submitted for the 2021 Qualified Allocation Plan (QAP). Among the changes, the Plan would require supportive housing tax credit properties to **refuse to house individuals with criminal backgrounds** (temporarily or permanently, depending on the severity of the crime). **Please register our opposition to these changes proposed on page 15 of the document (pasted at the end of this letter).**

Research repeatedly shows that **housing is integral to successful reentry** for returning citizens. Home is the cornerstone from which people build healthy, productive lives for themselves and their families. And these concerns are even more prevalent during the current deeply unsettling times of economic and public health crisis.

Entire families and communities suffer when previously justice involved people are unable to secure housing. And these collateral consequences are not limited to justice-involved individuals. For example, nearly [half of all U.S. children](#) have a parent who has a criminal conviction; housing instability can significantly undercut the ability of these young people to graduate high school, enroll in, and finish college and have a successful pathway forward. These blows to upward mobility do not just harm individuals and their families — [in the end, they ultimately harm us all](#).

Anyone facing homelessness or housing instability is likely to experience significant physical and financial turmoil, but the stakes are even higher for people with a prior criminal conviction. Barriers to housing can layer on top of and exacerbate other collateral consequences — including barriers to employment — further undermining an individual’s ability to reenter the community. Moreover, [people who are homeless are more likely to face future arrest and incarceration](#) given policing practices, making it more likely that justice-involved people without stable housing will find themselves back in the unfortunate cycling of the justice system.

Vivian D. Nixon, Executive Director

Board Chair

Peter Bakstansky

Founder

Barbara Martinsons

Onyekachi Akoma
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Irene Branche
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Bridget Williams

Advisory Board

Michelle Fine, Ph.D
Julie Johnson Staples
Diane Stevens Liotta
Susan P. Sturm, J.D.

This proposal will also disproportionately affect the communities of color who are already overrepresented in the incarcerated population, as well as in our nation's homeless population.

Involvement with the criminal justice system **should not result in a lifetime sentence** to homelessness or financial insecurity. Ensuring access to housing is beneficial for justice-involved individuals, their families, their communities, and the State of Texas. People with prior criminal records, like everyone else in our nation, deserve a place to call home.

For all of these reasons, we are opposed to, and deeply troubled by, the changes cited below. Please contact me if I can provide additional information.

Respectfully,



Vivian D. Nixon
Executive Director
College and Community Fellowship

Draft 2021 Chapter 11, Qualified Allocation Plan (QAP) – page 15

(v) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident.

(l) The criminal screening criteria must not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(-a-) Permanent denial based on criminal history at application or recertification of any conviction for murder related offense, sexual assault, kidnapping, or arson;

(-b-) Temporary denial for a minimum of three years based on criminal history at application or recertification of any felony conviction for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;

(-c-) Temporary denial for a minimum of two years for non-violent felonies; and

(-d-) Temporary denial for a minimum of one year for Class A misdemeanors

(II) The criminal screening criteria may include provisions for mitigation of temporary denials including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must

have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

(169) Texas Network of Youth Services



October 9, 2020

Texas Department of Housing and Community Affairs
Attn: Matthew Griego
P.O. Box 13941
Austin, Texas 78711-3941, QAP Public Comments,
Submitted via email to: htc.publiccomment@tdhca.state.tx.us.

RE: QAP Public Comment

Dear Mr. Griego,

Texas Network of Youth Services (TNOYS) is a statewide organization working to strengthen services and support for Texas youth and families to help them overcome challenges and achieve healthy development. Our members share a vision of Texas where all youth and young adults are valued, their strengths are recognized, their voices are heard and respected, and they have access to the resources, opportunities, and support they need to meet their goals.

TNOYS writes to you today in opposition to proposed changes in the Chapter 11 Qualified Allocation Plan (QAP) due to the unintended harm the changes will cause Texas youth, young adults and families, particularly Black and LGBTQ+ youth.

In particular, TNOYS requests that the Texas Department of Housing and Community Affairs (TDHCA) remove the addition of 11.1(d)122(B)(v), Tenant Selection Criteria, from the definition of supportive housing in the QAP. The proposed requirement of evaluation, and in some instances required denial, of prospective residents for supportive housing based on criminal record, eviction history and credit are in direct opposition to the purpose of supportive housing and are harmful to the many populations outlined in subsection (C) of the definition of supportive housing.

On an annual basis, TNOYS engages roughly 550 providers and organizations across youth- focused systems: housing and homelessness, child welfare, justice, education, workforce, health and behavioral health, and victim and survivor services. Of those, currently 70 organizations are members of the TNOYS network who primarily work with youth and young adults experiencing or at risk of experiencing homelessness. Over the last year, TNOYS held a number of listening sessions to hear from service providers who support Texas youth and families, as well as young adults who have experience in various youth serving systems, including housing instability, homelessness, justice system involvement and foster care. Overwhelmingly, we heard from providers and young adults, from both urban and rural areas of Texas, that there is a need for additional affordable housing and housing supports to provide stability for families and young adults. As a state, it is imperative that we work to increase access to housing options, not limit it.

THEIR FUTURE IS OUR BUSINESS.

www.tnoys.org

Youth and young adults aging out of foster care need supportive housing

In the definition of supportive housing in the QAP, youth aging out of foster care are specifically acknowledged as a population for which supportive services within supportive housing are designed. Yet, the proposed changes would disproportionately deny, even if only for a year or two, supportive housing to youth aging out of foster care. Due to past trauma and instability, youth and young adults aging out of foster care are more likely to have criminal convictions than peers of similar age. An estimated one-quarter will be incarcerated within a few years of turning 18, as research shows that these youth get stuck in what is referred to as the “Foster Care to Prison Pipeline”.¹ They are also more likely than their peers to experience homelessness, in fact studies show that 36% of youth aging out of foster care will experience homelessness by the age of 26.²

Youth aging out of foster care already have a difficult time finding housing and the support they need to thrive and be successful. Denial of supportive housing designed specifically for them due to a mistake they made when they were as young as 17 is unconscionable, particularly given the fact that the offenses are often driven by the past trauma the youth have experienced or the homelessness or housing instability that the youth experience due to aging out of foster care.

Prince, the policy specialist on TNOYS’ staff, grew up in and out of foster care and currently lives in supportive housing designed for people with disabilities. After aging out of care, he reconciled and was living with his mother. At the age of 18, while trying to enter the home he was living in, his mother had him arrested for breaking in even though he was living in the home. In the end, he was charged and convicted of criminal mischief. That offense alone could have delayed his admission into the supportive housing he is in today under the proposed changes. Prince experienced housing instability and homelessness after the incident, and in an attempt to gain funds for housing and food was arrested, convicted and served jail time for state-jail level theft of a person. Under the proposed changes and requirements that would deny supportive housing for a minimum of 2 years, Prince would not have the stable supportive housing he has today that has allowed him to gain employment, go back to get his high school diploma, continue college classes and provide valuable training and policy analysis to effect systems changes to better serve the youth of Texas.

Also worth noting, young adults previously in foster care often take plea deals without guidance from an attorney in order to get out of jail. For many young adults with engaged parents the same mistake would lead to deferred adjudication and no criminal conviction and therefore would still allow other young adults who have made similar mistakes to gain supportive housing under the proposed changes.

Parents’ past mistakes should not create instability for youth and families

In addition to the specific harm caused to youth exiting foster care, the proposed changes to the definition of supportive housing could increase the number of youth in foster care as well as deny

¹ Pecora, P.J., et. al. (2005). Improving family foster care: Findings from the Northwest foster care alumni study. Seattle, WA: Casey Family Programs

² [Am J Public Health](#). 2013 December; 103(Suppl 2): S318–S323.

housing and create instability for children and youth because of their parent's past behavior and history of convictions.

A number of national studies have shown that supportive housing programs are particularly effective at improving outcomes for families involved with the child welfare system. The research has shown that supportive housing has higher success keeping families together as well as promoting family reunification than housing that does not include supportive services.³ Denying supportive housing for this population due to parental convictions will likely move more youth into foster care and keep more youth in care rather than allowing for reunification.

Data on the number of parents with criminal convictions is unclear, however, research estimates that at least 1 in 28 children have a parent who is incarcerated.⁴ In 2018, the Harris County Sheriff's Office added optional questions to their intake form and found that 50% of the respondents were the parent or caregiver to at least one child under the age of 18. Of those parents, 72% percent had at least one felony charge, 37.9% had at least one misdemeanor charge; the most common offenses were assaultive, drug related.⁵ Under the proposed QAP rule changes, if convicted, the majority of these parents would be denied for supportive housing either after release from jail or while on probation.

Convictions already make it difficult for parents to get jobs and housing. At least one study has found that when a parent has been released from incarceration, stable housing leads to increased contact with their children.⁶ The state of Texas should be working to ensure housing opportunities and promote family connections rather than limit it. As included in the definition of supportive housing, some supportive housing is available and provides additional services for "households where one or more individuals have alcohol and/or drug addictions." Supportive housing that can help people through addiction, like in an instance where their substance use is a driving factor in their offense and conviction, will also help the children and keep families together.

Consideration of previous evictions will lead to fewer opportunities for young adults

While the proposed change does not require that past evictions be used to deny supportive housing, the included requirement that past evictions be considered is concerning and should be removed from the definition of supportive housing. Evictions are quite common among youth and young adults who are currently or have in the past experienced homelessness and make it difficult to get housing on their own. Encouraging housing providers to consider eviction histories before approving supportive housing is likely to increase the number of young adults denied housing.

³ Casey Family Programs. How can supportive housing help improve outcomes for families in the child welfare system? August 2019. <https://www.casey.org/supportive-housing-child-welfare/>

⁴ Correa, Nancy P. Et. al. The Forgotten Families. 2019. Texas Children's Hospital. MPH <https://www.texaschildrens.org/sites/default/files/uploads/documents/Children%20of%20Incarcerated>

⁵

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For example, Alex, a communications specialist on the TNOYS staff, was evicted from his apartment when he was 20 years old. He had obtained the apartment and lease with funding to support young adults experiencing homelessness when the transitional living program he was living in closed. However, at the same time the funding ran out, he was also diagnosed with mental and physical health concerns, combined with the threat of a stalker and police encouraging him to not leave the apartment, that led him to not be able to work the hours he needed to get a full paycheck. Within just 10 days of missing rent, he was in court facing eviction. Like most young adults, Alex did not have the knowledge or resources to mitigate the eviction or truly understand the long term impact the eviction would have on him. Today, a-year-and-a-half later, Alex continues to face housing instability and is at risk of homelessness because he cannot find an apartment complex or landlord willing to give a lease to a person with an eviction history. Requiring supportive housing to consider eviction history takes one of the only housing opportunities for people with evictions off the table and continues the instability that makes it difficult to thrive.

Proposed changes will exacerbate disparities and inequities

When taking a holistic view of the proposed QAP changes that would require evaluation, and in some instances require denial, of prospective residents for supportive housing it is clear the proposed changes would exacerbate the disparities and inequities people of color and LGBTQ+ people experience with housing. Black and LGBTQ+ youth are disproportionately represented in the foster care system and even more likely to age out of the foster care system and experience homelessness.^{7, 8} Combined with the racial and LGBTQ+ disparities in the justice system and with evictions,⁹ the impact of this proposed change will likely have a detrimental effect on black and LGBTQ+ young adults and families.¹⁰

TDHCA administers and funds programs specifically for addressing homelessness and housing insecurity each year. In particular, through the Low-Income Housing Tax Credit (LIHTC) program, residents who have made past mistakes have the opportunity to get back on their feet and obtain housing with supportive services intended to help them lead successful lives. The goal of reducing homelessness and providing housing and community support using LIHTC is promoted by the Texas Governor's addition to the 2020 QAP requiring LIHTC developments to align with local homeless continuums of care units by requiring a reservation of units. A key component of the LIHTC program is to prevent homelessness and housing insecurity by providing affordable housing to Texas residents, to accomplish this goal TNOYS strongly recommends that TDHCA remove Section 11.1(d)(122)(B)(v) from the QAP in its entirety.

⁷ In 2019, Black youth made up 22.7% of youth who aged out of the Texas Foster Care system, but only made up 12% of the youth population in Texas. Data from the DFPS databook.

https://www.dfps.state.tx.us/About_DFPS/Reports_and_Presentations/Rider_Reports/documents/2020/2020-10-01_Rider_40_Report.pdf

⁸ A national study found that in 2019, 30.4 percent of youth in foster care identify as LGBTQ+ and 5 percent as transgender, compared to 11.2 percent and 1.17 percent of youth not in foster care. Baams L, Wilson BDM, Russell ST. LGBTQ Youth in Unstable Housing and Foster Care. *Pediatrics*. 2019;143(3): e20174211

⁹ Eviction Lab collected data on Evictions from all 48 state and found eviction most common in black communities. Eviction Lab. 2018.

<https://evictionlab.org/map/#/2016?geography=states&type=efr>

¹⁰ Study after study, shows that Black youth, young adults and adults are severely overrepresented in the justice system. Balcko, R. Apr 2019. Washington Post. <https://www.washingtonpost.com/opinions/2019/04/09/more-studies-showing-racial-disparities-criminal-justice-system/>



The mission of TDHCA is to “invest its resources strategically and develop high quality affordable housing which allows Texas communities to thrive.” The Department’s administration of the LIHTC program and specifically, the inclusion of the supportive housing model for developing affordable housing provides greatly needed subsidized housing units and helps to reduce the barriers for individuals who need linked housing and critical services. Removing this language provides the opportunity for TDHCA to support the shared goals of TNOYS and our member network to strengthen services and support for Texas youth and families to help them overcome challenges and achieve healthy development.

Thank you for your consideration,

Lauren Rose
Director of Public Policy
Texas Network of Youth Services

THEIR FUTURE IS OUR BUSINESS.

www.tnoys.org

(170) Starting Over Inc



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www.startingoverinc.net O 951.898.0862 F 951.284,7889

Texas Department of Housing and Community Affairs

Attn: Patrick Russell

P.O. Box 13941

Austin, Texas 78711-3941

Email: htc.public-comment@tdhca.state.tx.us

Re: Texas Department of Housing & Community Affairs (TDHCA) 2021 Qualified Allocation Plan (QAP)

Dear Mr. Russell:

Starting Over, Inc is deeply concerned with the draft proposal that The Texas Department of Housing and Community Affairs (TDHCA) submitted for the 2021 Qualified Allocation Plan (QAP). Among the changes, the Plan would require supportive housing tax credit properties to **refuse to house individuals with criminal backgrounds** (temporarily or permanently, depending on the severity of the crime). **Please register our opposition to these changes proposed on page 15 of the document (pasted at the end of this letter).**

Research repeatedly shows that **housing is integral to successful reentry** for returning citizens. Home is the cornerstone from which people build healthy, productive lives for themselves and their families. And these concerns are even more prevalent during the current deeply unsettling times of economic and public health crisis.

Entire families and communities suffer when previously justice involved people are unable to secure housing. And these collateral consequences are not limited to justice-involved individuals. For example, nearly half of all U.S. children have a parent who has a criminal conviction; housing instability can significantly undercut the ability of these young people to graduate high school, enroll in, and finish college and have a successful pathway forward. These blows to upward mobility do not just harm individuals and their families — in the end, they ultimately harm us all.

Anyone facing homelessness or housing instability is likely to experience significant physical and financial turmoil, but the stakes are even higher for people with a prior criminal conviction. Barriers to housing can layer on top of and exacerbate other collateral consequences — including barriers to employment — further undermining an individual’s ability to reenter the community. Moreover, people who are homeless are more likely to face future arrest and incarceration given policing practices, making it more likely that justice-involved people without stable housing will find themselves back in the unfortunate cycling of the justice system.

This proposal will also disproportionately affect the communities of color who are already overrepresented in the incarcerated population, as well as in our nation’s homeless population.

Involvement with the criminal justice system **should not result in a lifetime sentence** to homelessness or financial insecurity. Ensuring access to housing is beneficial for justice-involved individuals, their families, their communities, and the State of Texas. People with prior criminal records, like everyone else in our nation, deserve a place to call home.

For all of these reasons, we are opposed to, and deeply troubled by, the changes cited below. Please contact me if I can provide additional information.

Respectfully,

Vonya Quarles

Executive Director and Co-founder Starting Over, Inc

Draft 2021 Chapter 11, Qualified Allocation Plan (QAP) – page 15

(v) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident.

(I) The criminal screening criteria must not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(-a-) Permanent denial based on criminal history at application or recertification of any conviction for murder related offense, sexual assault, kidnapping, or arson;

(-b-) Temporary denial for a minimum of three years based on criminal history at application or recertification of any felony conviction for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;

(-c-) Temporary denial for a minimum of two years for non-violent felonies; and

(-d-) Temporary denial for a minimum of one year for Class A misdemeanors

(II) The criminal screening criteria may include provisions for mitigation of temporary denials including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

(171) Prosecutor Impact LATE



50 Milk Street, Boston, MA 02110

Texas Department of Housing and Community Affairs
Attn: Patrick Russell
P.O. Box 13941
Austin, Texas 78711-3941
Email: htc.public-comment@tdhca.state.tx.us

Re: Texas Department of Housing & Community Affairs (TDHCA) 2021 Qualified Allocation Plan (QAP)

Dear Mr. Russell:

You don't know me, nor should you have reason to. I was a prosecutor in Boston for about a decade and someone who went into the profession believing that a criminal record was a meaningful document in the tens of thousands of decisions I would have to make as a prosecutor. I also had little to no idea how important a role housing would play in my pursuit of better public safety. I quickly learned two things: the very privileged people that I graduated from law school with would have had longer criminal records than anyone I prosecuted had they been policed in the same way the members of my community were in Boston AND housing was the difference between a safe community and a dangerous one. The actions your department is about to take is going to make your communities more dangerous, and it will result in crime victims. As a state agency you have a duty of care to your residents and the communities around you, and if you take the steps contemplated in denying housing to people because of their criminal records you will be in breach of that duty.

A staggering 66% of domestic violence victims point to housing as the thing they need to be safe. Child abuse festers in housing insecurity. School performance bottoms out in housing insecurity and if you are unfamiliar with the school to prison pipeline, perhaps you should pause before you decide to deny housing to anyone. The point is, lots of people who need help have criminal records and can be amazing tenants or homicide victims; it's up to you.

Because, the Texas Department of Housing and Community Affairs (TDHCA) submitted its draft proposal for the 2021 Qualified Allocation Plan (QAP). Among the changes, the Plan would require supportive housing tax credit properties to refuse to house individuals with criminal backgrounds (temporarily or permanently, depending on the severity of the crime). **Please register my opposition to the changes proposed on page 15 of the document (listed at the end of this letter).**

Research repeatedly shows **Housing** is the key to successful reentry for justice-involved individuals (Shriver Center on Poverty Law, Texas Criminal Justice Coalition, Justice Policy Center, Brennan Center for Justice Study and many more). Home is the cornerstone from which people build healthy, productive lives for themselves and their families.

Entire families and communities suffer when people with records are unable to secure housing. The collateral penalties of a criminal record are not limited to justice-involved individuals. For example, nearly half of all U.S. children have a parent with a record; housing instability can significantly undercut these kids' ability to graduate high school, enroll in, and finish college. These blows to upward mobility do not just harm individuals and their families — in the end, they ultimately harm us all.

Anyone facing homelessness or housing instability is likely to experience significant physical and financial turmoil, but the stakes are even higher for people with records. Barriers to housing can layer on top of and exacerbate other collateral consequences associated with a criminal record — like barriers to employment — further undermining one’s ability to reenter the community. Moreover, people who are homeless are more likely to face incarceration, making it more likely that justice-involved people without stable housing will recidivate.

According to the Urban Institute, offering stable and safe housing is the only proven strategy for addressing the reactionary incarceration strategy of those who suffer from homelessness.

This proposal will disproportionately affect the African American community who is overrepresented in the incarcerated population as well as in our homeless population.

This change to the QAP would severely and adversely impact the ability of homeless response systems across the state to secure supportive housing for their clients, which in turn would lead to increased recidivism and increased homelessness.

Involvement with the criminal justice system should not result in a lifetime sentence to homelessness or financial insecurity. Ensuring access to housing is beneficial for justice-involved individuals, their families, their communities, and our State. People with records, like everyone else, deserve a place to call home.

I am opposed to the changes cited below. Other district attorneys and law enforcement personnel and experts are also opposed and have provided you with their expertise why they are so opposed. You have been given notice and therefore, further action can only be construed as wanton, reckless, and negligent disregard. Please contact me if I can provide additional information.

Respectfully,

Adam Foss
Executive Director, Prosecutor Impact
adam@prosecutorimpact.com

Draft 2021 Chapter 11, Qualified Allocation Plan (QAP) – page 15

(v) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident.

(I) The criminal screening criteria must not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(-a-) Permanent denial based on criminal history at application or recertification of any conviction for murder related offense, sexual assault, kidnapping, or arson;

(-b-) Temporary denial for a minimum of three years based on criminal history at application or recertification of any felony conviction for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;

(-c-) Temporary denial for a minimum of two years for non-violent felonies; and

(-d-) Temporary denial for a minimum of one year for Class A misdemeanors

(II) The criminal screening criteria may include provisions for mitigation of temporary denials including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

(172) Mike Holloway LATE

From: [mike holloway](#)
To: [HTC Public Comment](#)
Subject: Re: Texas Department of Housing & Community Affairs (TDHCA) 2021 Qualified Allocation Plan (QAP)
Date: Friday, October 09, 2020 9:37:34 PM

Texas Department of Housing and Community Affairs

Attn: Patrick Russell

P.O. Box 13941

Austin, Texas 78711-3941

Email: htc.public-comment@tdhca.state.tx.us

Re: Texas Department of Housing & Community Affairs (TDHCA) 2021 Qualified Allocation Plan (QAP)

Dear Mr. Russell:

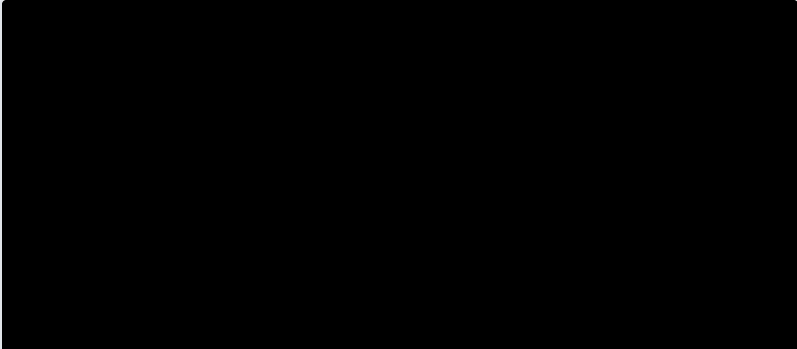
The Texas Department of Housing and Community Affairs (TDHCA) submitted its draft proposal for the 2021 Qualified Allocation Plan (QAP). Among the changes, the Plan would require supportive housing tax credit properties to refuse to house individuals with criminal backgrounds (temporarily or permanently, depending on the severity of the crime). **Please register my opposition to the changes proposed on page 15 of the document (listed at the end of this letter).**

In recent years, the State of Texas made great strides to address the issue of mentally ill in the criminal justice system. SB 292 and the Sandra Bland Act aim to reduce recidivism by decreasing the frequency of arrest and incarceration among people with mental

illness. **The denial of housing in this provision will undo the gains of the past 3 years.**

Anyone facing homelessness or housing instability is likely to experience significant physical and financial turmoil. Barriers to housing can layer on top of and exacerbate other collateral consequences associated with a criminal record — [like barriers to employment](#) — further undermining one's ability to reenter the community. Moreover, [people who are homeless are more likely to face incarceration](#), making it more likely that justice-involved people without stable housing will recidivate.

According to the Urban Institute, offering stable and safe housing is the [only proven strategy](#) for addressing the reactionary incarceration strategy of those who suffer from homelessness.



Addressing Chronic Homelessness through Policing Isn't Working. Housing ...

Rather than continuing to address chronic homelessness through policing, communities could fund housing services...

This change to the QAP would severely and adversely impact the ability of homeless response systems across the state to secure supportive housing for their clients, which in turn would lead to increased recidivism and increased homelessness.

Involvement with the criminal justice system should not result in a lifetime sentence to homelessness or financial insecurity. Ensuring access to housing is good for justice-involved individuals, their families, their communities, and our State. People with records, like everyone else, deserve a place to call home.

I am opposed to the changes cited below. Please contact me if I can provide additional information.

Respectfully,

Mike Holloway

1505 Elm #1004
Dallas, Texas 75201
214-766-3292

Draft 2021 Chapter 11, Qualified Allocation Plan (QAP) – page 15

(v) have Tenant Selection Criteria that fully comply with §10.802 of this title

(regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident.

(I) The criminal screening criteria must not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(-a-) Permanent denial based on criminal history at application or recertification of any conviction for murder related offense, sexual assault, kidnapping, or arson;

(-b-) Temporary denial for a minimum of three years based on criminal history at application or recertification of any felony conviction for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;

(-c-) Temporary denial for a minimum of two years for non-violent felonies;
and

(-d-) Temporary denial for a minimum of one year for Class A misdemeanors

(II) The criminal screening criteria may include provisions for mitigation of temporary denials including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect.

(173) For Restorative Justice LATE

From: [Willis Dunkum](#)
To: [HTC Public Comment](#)
Subject: Changes being considered to the QAP
Date: Friday, October 09, 2020 11:04:25 PM

Please kill the INSANE recommended changes to affordable housing requirements for re-entry to society!

This change would severely, adversely impact the ability of homeless response systems across the state to secure supportive housing for their clients, which in turn would lead to increased recidivism and increased homelessness.

Surely you realize that a one year delay in housing qualification will likely result in an increase in "failure to thrive" for many trying to reenter society.

Respectfully,

Please reconsider your position.....

Gary

W.G. Dunkum III
For Restorative Justice LLC
Houston, Texas
713-829-2723

gdunkum@gmail.com

[linkedin.com/in/garydunkum](https://www.linkedin.com/in/garydunkum)

*"We have met the enemy, and they are us."
(Walt Kelly/Pogo)*

(175) Susan Holloway LATE

From: chris.plauche@gmail.com
To: [HTC Public Comment](#)
Subject: 2021 Qualified Allocation Plan (QAP) and prior criminal records
Date: Saturday, October 10, 2020 11:57:53 AM
Attachments: [image001.png](#)
Importance: High

Texas Department of Housing and Community Affairs
Attn: Patrick Russell
P.O. Box 13941
Austin, Texas 78711-3941

Re: Texas Department of Housing & Community Affairs (TDHCA) 2021 Qualified Allocation Plan (QAP)

Dear Mr. Russell:

Our organization, and several of our partner organizations, are deeply concerned with the draft proposal that The Texas Department of Housing and Community Affairs (TDHCA) submitted for the 2021 Qualified Allocation Plan (QAP). Among the changes, the Plan would require supportive housing tax credit properties to refuse to house individuals with criminal backgrounds (temporarily or permanently, depending on the severity of the crime). Please register our opposition to these changes proposed on [page 15](#) of the document.

Research repeatedly shows that housing is integral to successful reentry for returning citizens. Home is the cornerstone from which people build healthy, productive lives for themselves and their families. And these concerns are even more prevalent during the current deeply unsettling times of economic and public health crisis.

One of our most successful stories is a man who, in a fit of anger murdered a man early in adulthood. He repented and anger subsided to a state of mellowness and faith in God while in prison, after release, he was homeless and after 10 years he was housed with remarkable transformation and became an inspiration and huge help to others. If this law had been in effect, he would likely be still homeless and struggling with an alcohol addiction. Many of our other clients have multiple misdemeanors, many associated with the Quality of Life ordinances in San Antonio that discriminate against those without homes. And like Johnny, their lives are turned around with housing.

Entire families and communities suffer when previously justice involved people are unable to secure housing. And these collateral consequences are not limited to justice-involved individuals. For example, nearly [half of all U.S. children](#) have a parent who has a criminal conviction; housing instability can significantly undercut the ability of these young people to graduate high school, enroll in, and finish college and have a successful pathway forward. These blows to upward mobility do not just harm individuals and their families — [in the end, they ultimately harm us all.](#)

Anyone facing homelessness or housing instability is likely to experience significant physical and financial turmoil, but the stakes are even higher for people with a prior criminal conviction. Barriers to housing can layer on top of and exacerbate other collateral consequences — including barriers to employment — further undermining an individual’s ability to reenter the community. Moreover, people who are homeless are more likely to face future arrest and incarceration given policing practices, making it more likely that justice-involved people without stable housing will find themselves back in the unfortunate cycling of the justice system.

This proposal will also disproportionately affect the communities of color who are already overrepresented in the incarcerated population, as well as in our nation’s homeless population.

Involvement with the criminal justice system should not result in a lifetime sentence to homelessness or financial insecurity. Ensuring access to housing is beneficial for justice-involved individuals, their families, their communities, and the State of Texas. People with prior criminal records, like everyone else in our nation, deserve a place to call home.

For all of these reasons, we are opposed to, and deeply troubled by, the changes cited below. Please contact me if I can provide additional information.

Sincerely,

Chris Plauche, M.Ed., MA, MD
Executive Director (Volunteer)



Housing First Community Coalition (HFCC)
(210) 274-8884
chris.plauche@gmail.com
hfcommunitas.org

(175) Susan Holloway LATE

From: [Mike and Susan Holloway](#)
To: [HTC Public Comment](#)
Subject: TCHCA 2021 Qualified Allocation Plan
Date: Sunday, October 11, 2020 8:19:16 PM

Dear Mr. Russell:

The Texas Department of Housing and Community Affairs (TDHCA) submitted its draft proposal for the 2021 Qualified Allocation Plan (QAP). Among the changes, the Plan would require supportive housing tax credit properties to refuse to house individuals with criminal backgrounds (temporarily or permanently, depending on the severity of the crime). **Please register my opposition to the changes proposed on page 15 of the document (listed at the end of this letter).**

In recent years, the State of Texas made great strides to address the issue of mentally ill in the criminal justice system. SB 292 and the Sandra Bland Act aim to reduce recidivism by decreasing the frequency of arrest and incarceration among people with mental illness.

The denial of housing in this provision will undo the gains of the past 3 years.

Anyone facing homelessness or housing instability is likely to experience significant physical and financial turmoil. Barriers to housing can layer on top of and exacerbate other collateral consequences associated with a criminal record — [like barriers to employment](#) — further undermining one's ability to reenter the community. Moreover, [people who are homeless are more likely to face incarceration](#), making it more likely that justice-involved people without stable housing will recidivate.

According to the Urban Institute, offering stable and safe housing is the [only proven strategy](#) for addressing the reactionary incarceration strategy of those who suffer from homelessness.

This change to the QAP would severely and adversely impact the ability of homeless response systems across the state to secure supportive housing for their clients, which in turn would lead to increased recidivism and increased homelessness.

Involvement with the criminal justice system should not result in a lifetime sentence to homelessness or financial insecurity. Ensuring access to housing is good for justice-involved individuals, their families, their communities, and our State. People with records, like everyone else, deserve a place to call home.

I am opposed to the changes cited below. Please contact me if I can provide

additional information.

Respectfully,

Susan Cantrell Holloway

Draft 2021 Chapter 11, Qualified Allocation Plan (QAP) – page 15

(v) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident.

(I) The criminal screening criteria must not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(-a-) Permanent denial based on criminal history at application or recertification of any conviction for murder related offense, sexual assault, kidnapping, or arson;

(-b-) Temporary denial for a minimum of three years based on criminal history at application or recertification of any felony conviction for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;

(-c-) Temporary denial for a minimum of two years for non-violent felonies; and

(-d-) Temporary denial for a minimum of one year for Class A misdemeanors.

(II) The criminal screening criteria may include provisions for mitigation of temporary denials including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years.

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect

Sent from my iPhone

(176) Pedcor



October 5, 2020

Teresa Morales
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Re: Comment on the draft of the 2021 Housing Tax Credit Program Qualified Allocation Plan ("QAP")

Dear Ms. Morales:

Please accept this letter as public comment to the 2021 draft of the QAP. First, we want to thank the TDHCA staff and Governing Board for their thoughtfulness in preparing the draft and for the consideration of this comment, which you will see is rather brief. Pedcor Investments, A Limited Liability Company ("Pedcor") is a national housing development company and has utilized the tax credit program in 19 states across the country. We have received 15 tax credit awards in Texas over the last 8 years with two more expected for approval this week and with plans to submit more applications in 2021. These comments are made from that perspective, that we may be able to continue to provide affordable housing to low-income Texans.

We suggest that, due to the volatility in the market related to the COVID-19 pandemic coupled with rumors of legislative changes, that the Department consider an adjustment to §11.1(d)(5), related to the definition of Applicable Percentage. Much like the uncertainty that existed leading up to the 9% credit being "fixed" through legislative action, we believe that is also a possibility for the 4% credit. Therefore, we request this definition be revised to give staff the needed flexibility to respond to possible legislative changes and/or unusual fluctuations in the published Applicable Percentage without disrupting the underwriting process and/or inappropriately cutting credit requests.

Please feel free to contact me with any questions, and thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jean Latsha".

Jean Marie Latsha
Vice President - Development

(177) Katherine Randolph

Transcription of voicemail received Friday, October 9, 2020, 2:41pm

Hi, um, my name is Katherine Randolph, I am from Arlington, Texas zip code 76107. Um, I am just calling to register my extreme disappointment in the department's new regulation, that will stop people who have been convicted of crimes from accessing safe supportive housing. I think it's unbelievably cruel, completely wrong, goes against everything Texas stands for, and is also extremely not pro-life. Also it results in higher rates of homelessness. I just wanted to call and say that I am really disappointed in this legislation, and I will personally do everything I can to make sure that Greg Abbott is never reelected to Office of the Governor of Texas. Anyways, my phone number is 817-240-5442 and you can please feel free to give me a call back to explain the department's reasoning on such an inhumane decision. Thank you, have a very good day.