



Texas Low Income Housing
Information Service

October 15, 2015

Ms. Teresa Morales
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941
VIA EMAIL: Teresa.Morales@tdhca.state.tx.us

RE: Joint Comments of the Texas Low Income Housing Information Service and Texas Appleseed on the proposed 10 TAC, Chapter 11, Qualified Allocation Plan §§11.1-11.10

Dear Ms. Morales:

We offer these recommendations regarding the 2016 State of Texas Qualified Allocation Plan (QAP) for allocation of Low Income Housing Tax Credits (LIHTC).

This year TDHCA is considering various changes to the QAP. We encourage the Department to evaluate these changes by two important guiding principles:

- **Rewarding applications in High Opportunity Areas is necessary to offset the historical geographical imbalance of units created through the LIHTC program.**
- **Serving Very Low and Extremely Low income Texans is an important function of the LIHTC program**

We have incorporated these guiding principles and common sense in additional, specific comments regarding the proposed changes. While many of the proposed changes hold the promise of incremental improvements to the program, others raise new concerns. Our comments follow.

§11.9. (d) (7) Concerted Revitalization Plan.

While we agree in spirit with the department's stated vision that points for a Concerted Revitalization Plan (CRP) should be allocated to applications in which "the problems identified within the [Revitalization] plan will have been sufficiently mitigated and addressed prior to the Development being placed into service," we believe the presented framework lacks objective benchmarks and will become just another "letter from a local official," this one promising that things are already looking better and will be great by the time the units are put in service.

The proposed language allows an "appropriate local official" to choose the "measurable improvements" used for documentation. This process is begging to be gamed. For example, under the current language, it is conceivable that a local official could claim points for a reduction in stray dog 311 calls. Outline explicit benchmarks in the rules now to prevent such gaming.

We suggest the department look at three metrics over three years:

- 1) Tract Poverty (Census)
- 2) Tract Income (Census)
- 3) Neighborhood Land Values relative to Place (Appraisal District)

CRP points should be awarded only to applications that show a statistically significant improvement on two of these three metrics over a three-year period since the date of the adoption of the CRP. While this timeline is longer than that allowed by the current language, it recognizes that true revitalization takes an extended commitment in local and private resources.

Also on this topic, we do not view developing health care facilities (see A.i.(III).b) as augmenting a desirable neighborhood. There is a long tradition of relegating clinics and public hospitals to areas with low land values and few residential amenities. We suggest striking this language.

§11.9.(c) (6) (A) Underserved Areas - Colonias

We support the language presented, which strikes an appropriate balance between giving preference to LIHTC units in high opportunity areas and making the resources of the LIHTC program available to developments that help provide for the infrastructure needs of colonias.

§11.9.(c) (6) (E) Underserved Areas - No other tax credit units

Mere lack of existing tax credit housing should not qualify for a point in scoring. (For example, the fifty Texas census tracts with zero existing housing units of any type would qualify for these points.).

This point should be only available to applications proposing new housing that also qualifies for points under the opportunity index above.

§11.9.(c) (6) (F) Underserved Areas - new business facility

We disagree that building a new business facility within 5 miles merits preference for an allocation of credits.

In many urban areas, a five-mile radius would cover neighborhoods of a wide variety of quality and a fifty-person facility would have a negligible impact on the economic opportunities available to the area's population. In smaller areas, a fifty-person facility may represent a notable change in local conditions, but the state should not be choosing the placement of 30-year housing infrastructure by chasing after the recent employment activity of a single employer. We also note that other than

wage level, there is no restriction on the type of business that qualifies a development for this point. Given the lack of zoning in non-metropolitan and some metropolitan areas of the state, this could incentivize development near businesses unsuitable for a residential area.

We suggest striking this point category.

§11.9.(c) (6) (G) Underserved Areas - high growth areas

This point area appears to be an attempt to identify areas that are rapidly changing. We suggest that the language be refined to identify areas that are rapidly changing for the better. Similar to the suggestions in the CRP language above, we suggest the department look at three metrics in addition to population growth:

- 1) Tract Poverty (Census)
- 2) Tract Income (Census)
- 3) Neighborhood Land Values relative to place (Appraisal District)

Growth points should be awarded only to applications which show a statistically significant improvement on two of these three metrics over the decennial measurement period.

The department should also clarify the draft language to make explicit that population growth is the "growth" variable under discussion.

The department should also clarify how the 120% is applied and consider whether that is a meaningful benchmark. If a county has a 1% growth rate, 120% of the county growth rate is 1.2%. A tract with a 1.21% growth rate hardly seem like it deserves points for being an "underserved" area due to its growth rate. If this language remains, it should, at the very least, include a "floor" growth rate.

We recommend ranking tracts by growth rate by TDHCA service region, and awarding these points to the top 10% tracts in each region, provided that they also meet the poverty, income, and land value metrics described above (and have a large enough starting population base to make the % growth rate meaningful, say 3,000, which is about the ~75 percentile tract in the state)

§11.2 – Program Calendar

We support the proposed changes relating to the due date of local government and state representative letters.

§11.3(d)–Limitations on Developments in Certain Census Tracts

We disagree with the language allowing local jurisdictions to "waive" the limitation on packing more tax credit units into neighborhood where the existing installed base of tax credit units makes up one in five of the housing units in a jurisdiction.

In 2015, only 115 of the state's 5265 census tract bumped into this limitation. These neighborhoods are the most egregious examples of over-concentration of LIHTC units, and the state should prevent further unit placement in those areas.

We ask the department to make 20% a meaningful, hard cap, and to lower the waivable cap to 10%.

§11.4 (c)(2) Small Area Difficult Development Area

We support this change, which recognizes HUD's recent work to identify small area differences in market rent.

§11.6(3) – Award Recommendation Methodology (HB 3311)

It is unfortunate that the department will be using non-public data in its calculations to implement HB3311. We ask that the department make the details of its calculations public, i.e. identifying the HISTA variable names and definitions used in its calculations. We note that the data presented to the legislature by TDHCA during the discussions regarding the expected impact HB 3311 used the relative elderly vs non-elderly *renter* populations in its calculations of the regional unit caps. This data choice is the most appropriate in statutory context and this methodology should not change in the actual implementation of the bill. (To do otherwise would make TDHCA's earlier testimony, upon which the legislature relied when adopting the language, misleading.)

11.9(c)(8) Aging in Place

We support the proposal of other commenters to extend these points to Single Room Occupancy developments.

§11.7 Tiebreaker Factors

We support these changes, which prevent the over-reliance on the distance tiebreaker created by the lack of detail in the opportunity index.

§11.9(b)(2)(B) Previous Participation Compliance History

We support this language, which addresses applicants with a negative compliance history but does not discourage new entrants to the competitive process. We suggest one additional criteria:

Non-compliance with Housing Sponsor Reports (HSR) requirements is a persistent problem facing TDHCA. The HSR provides important insight into the activities of existing properties, but as noted in the most recent Housing Sponsor Report summary available on the TDHCA website, (2013) "Not all properties returned the Housing Sponsor Report forms." This previous compliance point should also be unavailable to any applicant with a portfolio that includes a relevant property that has failed to timely and completely file an HSR in the last three years.

§11.9 (e)(6) Historic Preservation

We oppose this change, which increases the emphasis on historic structures relative to other factors far beyond what is necessary to comply with TDHCA's statute as modified by SB1316. (The existing language suitably incentivizes historic preservation when it is appropriate.) In addition to re-coupling these points with the extended affordability option, maintaining the per-unit cap, and returning the point structure to four points, the department should require the majority of development costs be covered by the accompanying historic tax credits to get these points.

The board heard testimony by Ms. Burchett of Structure Development, who stated: "However, with four points it's impossible to be competitive with high opportunity or community revitalization in almost all circumstance in these donut areas that have come up earlier in the conversation. Because downtown is usually not where the wealth is, and that's where the historic buildings are."

This implies that the purpose of these points is to prioritize the building itself beyond the needs of the families within them or the neighborhoods in which they are found. That is not consistent with the housing goals of the department. The current points suitably prioritize historic buildings over new construction when they are in areas with opportunity for the families within them, or when they are in areas that have undergone the comprehensive revitalization necessary to provide opportunity to the families who will call the building home.

11.9(c)(4) Opportunity Index

We recommend that the Department make (4)(A) consistent with (4)(B) by substituting "the Development Site has access to services specific to a senior population within 1 mile" for the "school attendance zone" criteria. The proposed point structure encourages developers to substitute elderly-only developments for family developments in high opportunity areas with access to good schools.

11.5(2) USDA Set-Aside

We support the presented language.

§11.9. (d)(5) - Legislative support letters

The statutory language outlining the priority of the legislative support letters is in conflict with the draft language presented. The statute ranks the priority, not the scoring, and the 16 point spread between the positive 8 and negative 8 points for legislative letters gives those letters priority above neighborhood organizations. We suggest reducing the spread between positive and negative letters to 8 points to comply with the statutory language. Make positive letters 6 points, and as other commentators have suggested, make negative letters negative -2 points.

Additionally, we support the idea, proposed by other commentators, of conditioning the award of positive and negative points based on whether or not the municipality or State representative provided the developer with a statement of reasons for the opposition and provided the developer with an opportunity to respond to the opposition.

11.9(d)(1) Local Government Support
11.9(d)(4) Quantifiable Community Participation

We support the addition of the language stating "Once a letter is submitted to the Department it may not be changed or withdrawn," in reference to Local Government Support and QCP letters.

11.9(d)(4) Quantifiable Community Participation

TDHCA's process for registering neighborhood associations is unnecessary and duplicative of the functions of the secretary of state and the county. Remove the TDHCA staff process and recognize associations on record with the county of secretary of state as of the 1st of the year of the award year. The unnecessary nature of TDHCA's additional process, and rules that allow groups as small as two people to have a nine-point impact on an application, is an impediment to fair housing choice, and conflicts with the State's commitment to reduce Not In My Backyard syndrome (NIMBYism) in its State of Texas Plan for Fair Housing Choice: Analysis of Impediments.

Thank you for considering our comments to the publically posted draft rules.

Sincerely,

Madison Sloan, staff attorney
Texas Appleseed

John Henneberger, co director
Texas Low Income Housing Information Service