TAAHP
TEXAS AFFILIATION OF AFFORDABLE HOUSING PROVIDERS

TEXAS AFFILIATION OF AFFORDABLE HOUSING PROVIDERS | 2401 E. 6th Street, Ste. 3037, PMB 153 | Austin, TX 78702
tel 512.476.9901 | taahp.org

August 3, 2022

Mr. Cody Campbell, Multifamily Finance Director
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701
cody.campbell@tdhca.state.tx.us

Re: Texas Affiliation of Affordable Housing Providers comments to the 2023 Informal Draft Qualified Allocation Plan and Multifamily Rules

Dear Mr. Campbell:

The Texas Affiliation of Affordable Housing Providers (TAAHP) appreciates the opportunity to submit public comments regarding the draft 2023 Qualified Allocation Plan (QAP) and Multifamily Rules. Our membership represents a variety of disciplines that work diligently to provide affordable housing to low- and moderate-income families in the State of Texas. It is TAAHP's policy to submit only those recommendations that represent consensus among our membership.

We would like to commend staff for preparing and issuing an unofficial preliminary draft so early in the QAP development process. This informal draft has allowed the industry to review new concepts with TDHCA staff and have a robust discussion on issues and scoring items that could impact the upcoming cycle. We would like to encourage TDHCA staff to continue this trend as it beneficial for all of us as we craft the QAP together.

On behalf of TAAHP, we respectfully offer the following recommendations for staff consideration and implementation in the formal draft of the 2023 QAP.

> §11.2 Program Calendar for Housing Tax Credits and §11.8(b) Pre-Application Requirements (Competitive HTC Only) – TAAHP requests the removal of the Third-Party Request for Administrative Deficiency ("RFAD") concept specific to Pre-Applications. This concept was borne out of discussion at the roundtable series in connection with the requirement for additional documentation on specific point scoring items. The goal was to give competing developers an opportunity to examine whether peers were truly able to meet the requirements for Underserved Area and Proximity to Jobs. The language proposed in §11.8 accomplishes that goal, without the need for an additional RFAD when the current rule allows for an RFAD to be submitted any time prior to the May deadline.

> §11.6(3)(C)(iv) Supportive Housing Awards – TAAHP requests that the proposed language be struck in its entirety and that the allocation of competitive tax credits to Supportive Housing developments continue to be handled as it was in the 2022

QAP with Supportive Housing having a three-point scoring advantage over other target population applications.

The universe for technically qualified Supportive Housing developers is relatively finite. Encouraging developers at large to try and pursue Supportive Housing developments because of an automatic award could ultimately lead to inadequately qualified and undercapitalized non-profits taking on more robust activities than they are equipped/experienced to handle. Further, this a one-sized-fits-all approach to a demographically diverse state. The needs of small metro and rural Texas are different than those of large metro/urban Texas. Applying the needs large metro/urban Texas to the whole state is imprudent.

Alternatively, a simple solution that will likely achieve the same goal of the set-aside in expanding the number of experienced developers pursuing Supportive Housing in Texas would be to strike the word "Qualified" in the scoring boost for Supportive Housing in both Section 11.9(c)(1)(A)(i) and Section 11.9(c)(2)(A) and make it applicable to technically-experienced nonprofit organizations that meet the requirements of IRC §42(h)(5)(C) with at least 51% ownership in the General Partner of the Applicant (as alternatively allowed in Section 11.9(b)(2)(C). This change could potentially boost the supply of Supportive Housing in two ways:

1) Allow national nonprofit developers of supportive housing to be eligible for the three additional points for Supportive Housing and therefore increase odds of getting a Supportive Housing development awarded.
2) Allow locally based nonprofit developers of Supportive Housing to be eligible for the three additional points for Supportive Housing if they expand more than 90 miles from their board member addresses, thereby allowing them to spread their experience to other areas that might not have it.

§11.6(3)(C)(v) HUD Choice Neighborhood Awards – TAAHP proposes that any incentive related to developments utilizing HUD Choice Neighborhood Implementation ("CNI") awards be in the form of points rather than an automatic award through the allocation process section of the QAP. This concept would ideally be similar to the additional points supportive housing developments can access under the 2022 and prior QAPs. Automatic awards will presumably result in much lower scoring applications receiving awards. Retaining a scoring incentive for all developments ensures that those utilizing CNI awards are still incentivized to meet TDHCA's policy objectives, as outlined

in selection criteria, and continue to maximize points to the greatest extent possible. Therefore, if TDHCA seeks to prioritize CNI developments, and recognizing that there may be selection criteria that CNI developments cannot access due to their site location, TAAHP suggests that the use of limited and specific CNI incentive points can meet TDHCA's CNI prioritization goals without sacrificing other selection criteria priorities.

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Therefore, TAAHP proposes the language in section §11.6(3)(C)(v) be struck in its entirety and a new section in §11.9 be added with the following effect.

> HUD Choice Neighborhood Awards. An Application in an Urban subregion may qualify to receive 3 points if the Development Site is located in a neighborhood which is a recipient of a HUD Choice Neighborhood Planning or Implementation grant in the preceding five years from the date of Application submission and funds from the HUD Choice Neighborhood awardee are reflected in the Application's Sources and Uses.

§11.7 Tie Breakers – Currently, tie-breaker language related to the three-year average poverty rate for all awarded Competitive HTC Applications provides much uncertainty in the process since the average isn't known until the updated site demographics report isn't final until October/November each year. This time frame is well beyond the time Applicants begin the site selection process.

In an effort to provide certainty for Applicants that are actively searching for sites prior to the issuance of the site demographics report, the membership respectfully requests two minor changes to the current tie-breaker methodology. First, the membership requests the "three-year average" calculation be removed and a flat 20% poverty rate threshold be used for all regions other than 11 and 13. For region 11 it would be a flat 35% and region 13 would be a flat 25%. These poverty rates are consistent with the Opportunity Index threshold criteria.

The membership further requests the first tiebreaker be separated out into two independent tie breaker criteria, which ultimately results into three distinct tie breakers: (1) poverty rate, (2) rent burden, and (3) distance to the nearest HTC development. The membership believes this separation will provide a clearer path to determine tiebreakers for both staff and the development community.

§11.8(b)(1)(J) Pre-Application Requirements (Competitive HTC Only), threshold items – TAAHP requests "Opportunity Index" be struck from the draft language therein and that supporting documentation for only "Underserved Area and/or Proximity to Jobs" remain. The documentation related to Underserved Area and Proximity to Jobs is concise and easy to include in a very condensed pre-application delivery window. Having to provide in depth documentation for numerous Opportunity Index categories is overly burdensome, especially on deals that ultimately will not be submitted for a full application. Underserved Area and Proximity to Jobs are the two primary areas where an RFAD would come into play and are the appropriate targets for additional documentation.

§11.9(b)(2)(A) Sponsor Characteristics, HUB – TAAHP requests a reversion to 2022 language for the HUB portion of the Sponsor Characteristics scoring item. Internal Revenue Code Section 42 ("Section 42") requires that states allocate 9% credits using selection criteria, and this list includes the words "sponsor characteristics." Section 42 includes no information about what "sponsor characteristics" means and does not require capacity building or any other specific feature of a sponsor to satisfy this requirement. Historically, TDHCA has determined that it meets the Section 42 sponsor characteristic requirement by providing an incentive to developments including Historically Underutilized Businesses ("HUBs") and nonprofits. TAAHP's position is that the 2022 QAP language related to HUBs was sufficient to meet TDHCA's Section 42 obligations, and that further narrowing of the Sponsor Characteristics section of the QAP does not provide any meaningful benefit. Therefore, the additional restriction proposed in the draft 2023 QAP is unnecessary.

§11.9(c)(5) Assisting Individuals with Children – TAAHP believes TDHCA's 2022 QAP and earlier versions already supports Individuals with Children in a variety of places and thus meets the requirements of IRS S.42. TAAHP believes this new scoring item is incompatible with Texas legislation and requests this new addition be removed in its entirety. Examples of where we see the QAP already supporting children include:

<u>Common Amenity points supporting for children:</u>

- Multifunctional learning and care centers pertaining to children;
- Children's Playscape;
- Swimming Pool;
- Splash Pad / water feature play area;
- Sport Court or field
- Library
- Activity room with supplies (Arts and Crafts, board games)
- Bicycle parking

<u>Resident Supportive Services</u>

- Children's supportive Services (i) and (ii)
- Food Pantry

<u>Neighborhood Risk Factors</u>

- Restricting developments to high performing schools or schools that have plans and policies in places for improvement or developments that commitment to provide enhanced educational services.

The Legislative Case against the scoring item: Assisting Individuals with Children:
Per Texas Legislative code 2306.6725(d)(2):

"For each scoring criterion, the department shall use a range of points to evaluate the degree to which a proposed project satisfies the criterion. The department may not award (2) to a proposed project for the general population a number of points

for a scoring criterion that is different than the number of points awarded for that criterion to a proposed project reserved for elderly persons if the proposed projects comply with the criterion to the same degree." <u>This proposed provision for Assisting Individuals with Children would violate 2306.6725(d)(2), especially due to Ineligibility of Elderly Development Criteria on large unit sizes.</u>

Furthermore, Texas Legislative code 2306.6725(d)(2) was passed in the 84th Leg with HB3311 which specifically states the intent of "C.S.H.B. 3311 seeks to add parity to the application process to help ensure that seniors are provided access to affordable housing resources."
https://capitol.texas.gov/tlodocs/84R/analysis/pdf/HB03311H.pdf#navpanes=0

Since elderly developments cannot exceed 70% of units as larger than 1-bedroom units and in nearly all cases, will need to exceed 30% of total units as 1br/0br to be an eligible development [QAP §11.101 (1) Ineligible Developments (B) Ineligibility of Elderly Developments (iii)]*, elderly applications will be unable to elect this scoring item. As a result, elderly applications would be deemed uncompetitive given the extreme competitive nature of the 9% program. This proposed criterion is in violation of statute unless the points are automatically awarded to elderly applications [and supportive housing applications]. As a reminder, elderly awards are capped in the largest 4 urban regions.

**QAP Ineligibility Elderly Developments include (iii) any New Construction, Reconstruction, or Adaptive Reuse Elderly Development (including Elderly in a Rural Area) proposing more than 70% two- Bedroom Units.*

If for some reason TDHCA believes there is a path forward with this language, at the very least, At-Risk should be excluded as applicants cannot change their unit mix and elderly properties need preservation just as much as general population properties, if not more so, as seniors typically have fewer appropriate housing options to age in place such as properties that do not require any stairs for unit entry and elderly typically have no opportunity for upward income mobility that younger working-age households have.

It should also be noted that 2-bedroom elderly units can be harder to market as many seniors are single/widowed and can only afford a one bedroom or studio unit. We also find the capture rate for these units to be much higher than in smaller bedroom sizes for elderly developments.

§11.9(c)(6) Assisting Households with Incomes Above HTC Limits – The LIHTC program was created to provide and create affordable housing for low-income households. TAAHP believes the resources for this program should and must continue to support those efforts. We ask that TDHCA allow market dynamics and economic feasibility to drive decisions related to market rate or non-LIHTC restricted units and this new scoring item be removed in its entirety.

§11.9(c)(9)(C) Proximity to Jobs Area – TAAHP requests the Access to Jobs scoring criteria be simplified to one-half mile from a bus/transit stop on a regularly scheduled bus/transit line. Since this is the first year the transportation component will be included in this scoring category, we would like it to be a simple process that can be expanded on in future cycles if deemed necessary and desirable. Applicants scoring two or three points could earn up to a maximum of two additional points by being located within one-half mile of a bus/transit stop with regularly scheduled service of any kind. Because of the dramatically different public transit offerings across the state, TAAHP would like to see the simplified scoring option in practice rather than the 'robust transit service' language as currently drafted. TAAHP proposes the following modification to the draft language.

(C) Access to Jobs. A Development site which qualifies for at least 2 points under subparagraph (A) or (B) may qualify for up to two (2) points under this subparagraph if the Development Site is located ~~on a route, with sidewalks for pedestrians, that is~~ within ~~a specified distance~~ one-half (1/2) mile or less from the entrance of a public transportation stop or station, with sidewalks for pedestrians, ~~,~~ with a route schedule that provides ~~regular~~ regularly scheduled service to employment and basic services. ~~Only one of the following may be selected:~~

~~(i) 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~~

~~(ii) The Development Site is 1/2 mile or less from the stop or station and the scheduled service arrives every 30 minutes, on average, between 6 a.m. and 8 p.m., every day of the week (2 points).~~

§11.9(e)(9) Readiness to Proceed - TAAHP requests the complete deletion of this scoring item. Reducing the amount of time developments have to place in service is in complete contrast with the realities of constructing affordable housing in the current environment. At a time when developers are already struggling to meet the statutory placement in service deadline, reducing that time by six months is unreasonable.

If TDHCA must include this concept, TAAHP suggests a certain closing deadline rather than an accelerated placement in service deadline. Proposed language follows (again, only if there is truly no option to delete this problematic scoring item entirely):

(9) Readiness to Proceed. An application will be eligible for up to three (3) points for meeting subparagraphs (A) and (B). If the applicant is unable to achieve this commitment, all Applications submitted by that Applicant, Affiliate, or Related Party will have one (1) point deducted from their score in the following round.

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(A) An Application must include a certification from the Applicant that they will complete a financial close and fully execute the construction contract on or before the last business day of the ninth (9th) month after the issuance date of the Commitment Notice.

(B) Applications seeking points under this paragraph will receive an extension of the 9-month 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 the award.

(C) If the Applicant requests and is granted Force Majeure, the penalty point will not be assessed.

§11.9(f)(2) Cost of Development Per Square Foot – TAAHP would like to express our appreciate for the adjustments made to this point scoring category. These changes will help alleviate the need for future requests of supplemental credits and put new applications on solid financial footing from the start. Ultimately, this will help speed the delivery of new affordable housing units which has lagged in recent years due to constrained levels of capital and ballooning costs.

§11.101(a)(3) Neighborhood Risk Factors – TAAHP recommends the following change to language outlined in the provision.

In subparagraph (A), strike the last sentence that reads "Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility."

For TAAHP, this is the rasion d'etre to TDHCA, along with the creation of affordable units and as such, it should be considered as a reason for a conclusion of eligibility.

As it relates to subparagraph (B), TAAHP believes that every school district, municipality, and local government is unique, and circumspect to factors that may otherwise preclude revitalization of the community through the preservation or revitalization of new or existing affordable housing for certain neighborhood risk factors, most especially schools, and certainly during the COVID pandemic. It is to be expected that school ratings will suffer for years because of remote learning, disrupted classrooms, and the national health crisis brought on by COVID-19. TAAHP requests that schools not be considered as a Neighborhood Risk Factor, or an ineligibility criteria until ratings have resumed in full for two years to establish a base and give school districts and communities a chance to improve upon said ratings. If the criteria must be included in the QAP, then please include the ability for schools that have a score of F and an Improvement Required rating in the previous year, to have the same list of mitigation options outlined in Neighborhood Risk Factors.

For subparagraph (D)(iii), TAAHP proposes the following language:

(iii) Evidence of mitigation for each of the schools in the attendance zone that has a TEA Accountability Rating of D or F 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 must may include satisfying meet the requirements of subclauses (I) and (II)- (III) of this clause which will be a requirement of the LURA for the duration of the Compliance Affordability Period and cannot be used to count for purposes of meeting the threshold requirements under subparagraph (7)(B)(ii) of this paragraph.

(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 has committed that until such time the as school(s) achieves a rating of A, B, or C it will operate an after school learning center that offers a minimum of 12 hours of weekly, organized, on-site educational services provided to elementary, 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.

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Up to 20% of the activities offered may also include other enrichment activities such as music, art, or technology.

§11.101(b)(1) Ineligible Developments – TAAHP recommends the following change to language outlined in the provision.

For subparagraph (C), TAAHP believes this entire section should be struck given the circumstances surrounding the lasting impacts of the COVID 19 pandemic and the resulting impacts on school ratings. Additionally, the requirement to provide Pre-K in the proposed language does nothing to support older elementary, middle, or high school students and seems an ineffective fix at a significant cost to TDHCA's goal of delivering more affordable housing units. TAAHP proposes schools with F and Improvement Required ratings be required to prove up the same mitigation factors as listed under Neighborhood Risk Factors [11.101(a)(3)(iii)].

For subparagraph (D), TAAHP requests this new provision be struck in its entirety and for the Applicants to continue to have the ability to provide mitigating evidence for Development Sites with Part 1 violent crime rates greater than 18 per 1,000 persons (annually).

§11.204(6) Experience Requirement – TAAHP proposes a revision to the experience requirement to remove the requirement that a person seeking an experience certificate had control over the development(s) being used for experience. Many industry professionals that are integral in the development of housing units do not strictly meet the definition of "Principal," and thus despite extensive, meaningful experience in development are prohibited from meeting TDHCA's experience requirement. TAAHP believes that these experienced professionals should have the ability to secure a TDHCA experience certificate. To accomplish this, TAAHP suggests the following language revisions:

(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:

(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~~ member 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

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> demonstrate they had the authority to act on their behalf that substantiates the minimum 150-unit requirement. A certification from the member of the Development Owner, General Partner, or Developer stating that the individual attempting to use the experience had the authority to act on their behalf is sufficient to meet this requirement.

§11.302(e)(1)(C) Eligible Basis on Acquisition of Buildings – TAAHP recommends the following change to the language outlined in this provision so that it is consistent with practical application by market participants.

> "Building acquisition cost included in Eligible Basis is limited to the appraised value of the buildings, exclusive of land value, as determined by and the appraisal that meets the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines). If the acquisition cost in the Site Control documents is less than the appraised value, Underwriter will utilize the land value percentage from the appraisal and adjust the building acquisition cost accordingly."

Specifically, tax credit investors/ syndicators use the land's relative percentage of total value, not the stated land value, when adjusting for something other than appraised value for acquisition costs of a building. We ask that TDHCA be in line with how tax credit equity market participants account for this underwriting item.

Subchapter F. Supplemental Housing Tax Credits – The Affordable Housing industry continues to face significant challenges to developing and delivering new, affordable units to Texans. Rising construction cost and escalating interest rates have both negatively impacted 2021 allocations and have forced developers to put planned projects on hold until other sources of capital can be identified to fill gaps. TAAHP surveyed 2021 awardees in June and noted that over 90% of planned developments still and not closed their financing and commenced construction. Now is the time to make all tools in the toolbox available to see the industry through this crisis and expedite the delivery of affordable units. Because of these challenges, TAAHP requests that Subchapter F, and all related references, be reinstated in their entirety with the modifications noted below.

First, Supplemental Credits from the 2023 program year should be made available to Original Applications from program year 2021. The allocation of said credits should be handled as an 'across the board' increase of 15% of the original credit allocation to those 2021 allocations rather than continuing with the application methodology described in the 2022 QAP. This allocation should be made available as quickly as possible. That said, the concept of an "Intent to Request" should be incorporated into the language so that 2023 Applicants can fully understand the impact to the various subregions where they may be submitting new 2023 applications. These changes will minimize the workload on TDHCA staff and ensure that 2021 awardees will have access to all necessary tools to close funding gaps.

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On behalf of our membership, we again thank you for the opportunity to provide public comment to the 2023 draft QAP and Uniform Multifamily Rules for your consideration and implementation.

If you have any questions or would like to discuss any of these items further, please do not hesitate to contact Nathan Kelley at (281) 833-1086 or via email at nkelley@blazerbuidling.com any time.

Sincerely,

Nathan Kelly
TAAHP QAP Co-Chair

Lora Myrick
TAAHP QAP Co-Chair

cc: Mr. Bobby Wilkinson, TDHCA
Mr. Homero Cabello, TDHCA
Ms. Brooke Boston, TDHCA
TDHCA Governing Board
TAAHP Membership