



TEXAS AFFILIATION OF AFFORDABLE HOUSING PROVIDERS

2401 E 6th St, Ste 3037, PMB 153, Austin, TX 78702

(512) 476-9901 | info@taahp.org | taahp.org



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August 30, 2023

Mr. Bobby Wilkinson, Executive Director
Texas Department of Housing and Community Affairs
221 E 11th Street
Austin, Texas 78701
bobby.wilkinson@tdhca.state.tx.us

Re: Texas Affiliation of Affordable Housing Providers comments to the 2024 Draft Qualified Allocation Plan and Multifamily Rules

Dear Mr. Wilkinson:

The Texas Affiliation of Affordable Housing Providers ("TAAHP") greatly appreciates your time last week, and your willingness to help make Readiness to Proceed more workable for our membership, who represent a variety of disciplines and 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.

Readiness to Proceed

As you know, the original Readiness to Proceed framework was introduced after Hurricane Harvey in order to get units on the ground faster, and speed recovery in affected areas. Even in that smaller section of the State, it was always quite difficult for our membership to achieve the Readiness deadline, most often due to obstacles well beyond the reasonable control of the Applicant. You had mentioned the end of February as a possible alternative.

Our proposed language includes the end of March as to not overlap with the March 1st Competitive HTC Application Deadline. TAAHP also requests a modification to the deliverables. Instead of "all financing will be closed and the construction contract will be fully executed" membership requests the language "site acquisition and construction permit submission."

In addition to a few minor clean up items noted below, there is one point of clarification that needs to be made. In subparagraph (A), the requirement is to have zoning in place "at award." Because this is not a capitalized term, it is unclear if this means the July awards meeting or Commitment. Given that zoning must be in place as a condition of Commitment pursuant to 10 TAC §11.204(11), TAAHP recommends striking this requirement.

(9) Readiness to Proceed. ~~Due to continued economic uncertainty, scoring for all Applicants under this item is suspended (no points may be requested, nor will they be awarded) for 2023 HTC Applications. The Applications includes a certification that site acquisition and construction permit submission all financing will be closed and the construction contract will be fully executed will occur on or before the last business day of November-March or as otherwise permitted under subparagraph (C) of this paragraph. These-This points are-is not available in the At-Risk or USDA Set-Asides. (1 point)~~

(A) Applications must include ~~evidence that appropriate zoning will be in place at award and an~~ 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 ~~acquire the site and submit for construction permits, close all financing and provide evidence of an executed construction contract~~ by the ~~November-March~~ deadline will result in penalty under 10 TAC §11.9(gf), as determined solely by the Board.

(C) Applications that remain on the waiting list after awards are made in late July that ultimately receive an award will receive an extension of the ~~November-March~~ deadline equivalent to the period of time between the late July meeting and the date that the Commitment Notice for the Application is issued.

Developer Fee

One additional item to which TAAHP membership would like to request a change is the new language added to 10 TAC §11.302(e)(7), related to Developer Fee. TAAHP understands that this change resulted from an unusual circumstance that came before the Board on July 27th, related to a substantial escalation in developer fee on a 4% transaction, which generated a significant increase to the tax credits available for that Development. We also appreciate the Board's initial discomfort with the particulars of that increase. However, we believe that the proposed rule change over-corrects, particularly given that 9% credit allocations are fixed at award and cannot increase.

Developers fund predevelopment activity with no guarantee that a project will ultimately be completed. These predevelopment expenses are only reimbursed if a transaction closes. When a closing does happen, Developers provide guarantees, often personal, to lenders and investors that they will be financially responsible for a development should something go awry. They also must maintain substantial liquidity standards set by those investors. All of this equates to significant financial risk for a Developer, and Developer Fee is compensation for that risk. The QAP definition of Developer Fee clearly recognizes this risk, which states 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"** (emphasis added).

Furthermore, §11.302(e)(7) already limits Developer Fee to 15% of eligible cost on a majority of transactions (a small subset is limited to 20%) and REA staff underwrites transactions using this cap. However, the plans submitted at the time of Application are conceptual in nature. It is therefore premature to further limit Developer Fee, without the benefit of fully engineered plans and specs; it is nearly impossible to truly cost a construction job without them.

Therefore, TAAHP respectfully request that the new proposed language be amended as follows:

(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. 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. ~~All costs for general and administrative expenses for the Developer, including, but not limited to, travel, dining, and courier fees will be considered part of the Developer Fee. All costs for general and administrative expenses for the Developer, including, but not limited to, travel, dining, and courier fees will be considered part of the Developer Fee. Subsequent to original award, including at cost certification, the Total Developer Fees cannot exceed the Total Developer Fee amounts underwritten in the originally published Underwriting Report.~~

On behalf of our membership, we again thank you and staff for all your efforts on the QAP, and for your consideration and implementation.

If you have any questions of would like to discuss either of these items further, please do not hesitate to contact Kathryn Saar at (512) 828-6413 or via email at kathryn@tbsg.com any time.

Sincerely,



Kathryn Saar
TAAHP QAP Co-Chair



Deborah Welchel
TAAHP QAP Co-Chair

cc: Cody Campbell, TDHCA Multifamily Finance Director
Valerie Williams, TAAHP Board President
Roger Arriaga, TAAHP Executive Director