

Attachment A: Summary of Public comment and Reasoned Response on the 2024 Draft State of Texas Analysis of Impediments to Fair Housing Choice (AI)

A summary of the comments received during the public comment period presented by topic, along with staff responses, is below.

TDHCA appreciates the careful review of the Draft 2024 AI and the comments received.

1. Scope - Housing

One commenter stated that investment in housing can alleviate poverty and suggested that TDHCA should invest in affordable housing to address root causes of poverty in Region 11.

(Comment made by come.dream.come.build (cdcb))

Department Response: The geographic distribution of funding is an issue that is unique to Texas, due to its large physical size and population. Because resources are finite, decisions that alter funding geographically will necessarily create areas with more or fewer resources. Access to more resources to invest in any or all regions than TDHCA already has is not within the scope of the AI. Parties interested in this topic and in altering the geographic distribution of funds can participate in the Regional Allocation Formula and Qualified Allocation Plan processes. No changes to the Analysis of Impediments have been made as a result of this comment.

One commenter noted that TDHCA should prioritize housing preservation in Region 11.

(Comment made by cdcb)

Department Response: As with geographic distribution of funds, distributing resources across new construction and preservation is also a balance of limited resources. Because this comment is specific to Region 11, TDHCA strongly recommends that the commenter and other interested parties utilize the Regional Allocation Formula and Qualified Allocation Plan processes to address this concern. No changes to the Analysis of Impediments have been made as a result of this comment.

Five commenters suggested that the AI should include a recommendation to increase funding for deeply affordable housing, and to increase state funding for emergency shelter, colonia self-help centers and vouchers. Two other commenters indicated that TDHCA should advocate for additional funds for TRR and/or eviction prevention, and TDHCA should amend the AI to include recommending additional emergency rental assistance.

(Comment made by Joy Davis, Christopher Jenkins, NAACP Legal Defense Fund, AARP Texas and Texas Housers)

Department Response: The allocation of state funds is under the sole purview of the Texas Legislature. The AI does not include requests for additional funds as executive agencies do not act as advocates, and are prohibited from lobbying the Legislature. Commenters that would like to see action from the Legislature should engage in the legislative process. No changes to the Analysis of Impediments have been made as a result of these comments.

One commenter mentioned that the state should create a permanent home repair and modification program.

(Comment made by AARP TX)

Department Response: TDHCA does have two permanent home repair and modification programs: 1) The Amy Young Barrier Removal program is designed to assist households with members who have a disability remove physical barriers in the home along an allowance for removal of some health and safety barriers. 2) The Homeowner Reconstruction Assistance program, while not specific to only repair, can be used to help reconstruct owner occupied housing or to replace manufactured housing with site-built housing. No changes to the Analysis of Impediments have been made as a result of these comments.

One commenter suggested that the AI include a recommendation to encourage universal design.

(Comment made by AARP TX)

Department Response: All multifamily housing funded by TDHCA since 2002 is required to meet construction standards of Section 504 of the Rehabilitation Act. All awards since 2014 must comply with the 2010 ADA standards with HUD's 11 exceptions. Additionally, all new multifamily construction is required to abide by the 2012 Texas Accessibility Standards. Furthermore, the QAP requires multifamily developments originally constructed on or after 1991, that are not subject to the Fair Housing Act Design and Construction Standards, to comply with accessibility requirements. No changes to the Analysis of Impediments have been made as a result of these comments.

One commenter stated that the AI should recommend increasing the role of non-traditional housing to increase affordable housing stock such as Accessory Dwelling Units and manufactured housing.

(Comment made by AARP TX)

Department Response: Some TDHCA single family activities already allow for the use of funds to place manufactured housing units. Additionally, TDHCA is committed to seeking out additional federal resources, when available, to pursue more assistance in Texas including non-traditional housing. TDHCA will add a recommendation to look into how single family funds could be used in the production of accessory dwelling units.

One commenter indicated that TDHCA should require rehabilitation developments at sites with a history of lead paint, rat or roach infestations to provide TDHCA with detailed plans on how the developer plans to eradicate or remove rats, lead, roaches.

(Comment made by NAACP Legal Defense Fund)

Department Response: TDHCA agrees that the identified items present a health and safety concern. Because these comments focus only on properties that are being considered for awards for rehabilitation, staff suggest that the commenter utilize the QAP process to make sure that remediation plans in applications involving rehabilitation are part of the application process. As a result of this comment, TDHCA is including a new recommendation to consider adding an item in the QAP for rehabilitation applications to include a remediation plan for rehabilitation where the site has a reported history of lead paint or insect or rodent infestations.

2. Scope - Colonias

Two commenters indicated that TDHCA should improve the quality of Colonia Self Help Centers by seeking input more regularly from residents to respond to the shifting needs of colonia communities.

(Comment made by Christopher Jenkins and cdc)

Department Response: TDHCA recommends that those utilizing self-help centers and those advocating for those households attend board meetings and submit written comment that explicitly describes what

specific changes are being sought. Because there are no references to specific changes in this comment, no changes were made to the document.

One commenter suggested that TDHCA should increase the capacity of Colonia Self Help Centers to meet growing and shifting needs of colonias.

(Comment made by cdcb)

Department Response: Without additional funding for the CDBG program, the size of the 2.5% colonia set aside which funds the Colonia Self Help Centers does not provide for funds to increase capacity. No changes to the Analysis of Impediments have been made as a result of these comments.

3. Scope - Public Comment Process

One commenter recommended that the AI process should gather more public comment by gathering input at LIHTC properties by using surveys and meetings at those properties.

(Comment made by cdcb and Texas Housers)

Department Response: TDHCA sought input by sending invitations to comment to approximately 30,000 email addresses using the TDHCA email lists. Currently, there is a recommendation in Chapter 12 that proposes that the Tenants Rights and Resources Guide include information on how to sign up for TDHCA's mailing lists. Additionally, TDHCA conducts, at the direction of the Legislative Budget Board (LBB), customer service surveys. TDHCA will consider investigating the use of regular customer service surveys to ask for input on fair housing planning throughout the 5-year planning cycle. No changes to the document have been made as a result of this comment.

Multiple commenters felt that the AI input process was limited, and that the lack of in person meetings reduced overall input. One of these commenters also noted that the process was too passive and not affirmative.

(Comment made by Texas Appleseed, Disability Rights Texas and Texas Housers and cdcb)

Department Response: TDHCA sent invitations to provide both Early Consultation and public comment for the draft 2024 AI to approximately 30,000 email addresses using the TDHCA email lists. TDHCA and TDA reached out to their respective lists of advocacy and subrecipient groups, and individuals, in order to invite them to participate in the early input process. TDHCA believed that this invitation would also be shared by those groups with their constituents so that they too could participate in the process. TDHCA asks that stakeholder groups advertise comment opportunities to their constituents and inform them about the purpose of the comment period in order to maximize awareness of and participation in comment opportunities. The 2024 comment period elicited three times as many unique commenters compared to the 2019 document. No changes to the Analysis of Impediments have been made as a result of these comments.

One commenter felt that the AI did not have a detailed enough Executive Summary and that it did not speak to low-income Texans.

(Comment made by Texas Housers)

Department Response: Staff will expand the summary in order to provide more details about the recommendations.

One commenter stated that the 2024 AI relies frequently on input provided from the 2019 AI and that they felt this was misleading.

(Comment made by Texas Housers)

Department Response: TDHCA staff did selectively include consultation and comment from the previous AI, as some of those items were still salient. This was not intended to be misleading or imply that the comments were made in 2024. No changes to the Analysis of Impediments have been made as a result of these comments.

4. Scope - List of Impediments

Multiple commenters mentioned that evictions are not considered an impediment in the AI and TDHCA should consider implementing rules that require 30-day notice to vacate at LIHTC properties.

(Comment made by AARP Texas, Disability Rights Texas, NAACP Legal Defense Fund and Texas Housers)

Department Response: While evictions per se are not listed as an impediment, the document does discuss evictions and staff believe that the effect evictions have is covered by other listed impediments, such as the newly included Impediment 6: Unexpected or otherwise unpredictable events or economic shocks. Properties that TDHCA monitors are required to provide notices to indicate a lawful reason for either lease termination or lease non-renewal. No changes to the Analysis of Impediments have been made as a result of these comments. Commenters are encouraged to make comments on the applicable compliance and program rules.

One commenter noted that the identified impediments only address housing programs and that analysis for programs governed by TDA or GLO are not included or are limited.

(Comment made by TX Appleseed and Christopher Jenkins)

Department Response: The General Land Office has no additional comment to add. The Texas Department of Agriculture notes that without knowing what specific analysis is lacking or missing, it is not possible to add new analysis or bolster existing analyses. No changes to the Analysis of Impediments have been made as a result of these comments.

5. Scope - Source of Income Discrimination

Multiple commenters indicated that source of income discrimination and HCV discrimination are not discussed in the AI.

(Comment made by Bernistine Williams, AARP Texas, Disability Rights Texas, Texas Housers)

Department Response: The duty to affirmatively further fair housing extends to agencies that receive federal funds. Source of income is not a protected class in either the federal or Texas Fair Housing Acts. The power to add source of income discrimination to the Texas Fair Housing Act rests with the Texas Legislature. As a result, the state did not identify source of income discrimination as an impediment. TDHCA has implemented rules for LIHTC and other multifamily housing that it monitors that bars properties from denying housing to solely based on the fact that they federal, state, or local government tenant based rental assistance, such as a Housing Choice Voucher. No changes to the Analysis of Impediments have been made as a result of these comments.

6. Scope - State Laws

One commenter notes that 88R HB 2127 preempts local protections and is not included in the AI.

(Comment made by Disability Rights Texas)

Department Response: TDHCA and other agencies that receive funds do not have the jurisdiction to preempt or alter HB 2127. No changes to the Analysis of Impediments have been made as a result of these comments.

Two commenters stated that the AI fails to identify Texas laws that are an impediment to fair housing choice.

(Comment made by Texas Housers and Disability Rights Texas)

Department Response: The AI does not identify specific laws as impediments because the power to make law rests with the Texas Legislature and the power to interpret law rests with the Texas judiciary. Executive agencies do not act as advocates or lobbyists. No changes to the Analysis of Impediments have been made as a result of these comments.

7. Scope - Impediment One: NIMBYism

Multiple commenters indicated that the AI does not adequately address NIMBYism. Two commenters also noted that the AI does not adequately address the specific issue of exclusion of HTC properties by NIMBY groups, which leads to more segregated neighborhoods for non-senior properties.

(Comment made by Sharon Underwood, Disability Rights Texas, NAACP Legal Defense Fund and Texas Housers)

Department Response: Staff respectfully disagrees that NIMBYism in the AI is not well addressed, as the AI does continue to address NIMBYism. No changes to the Analysis of Impediments have been made as a result of these comments.

One commenter stated that the AI does not discuss local deregulation in the context of NIMBYism.

(Comment made by Texas Housers)

Department Response: TDHCA, TDA, TWC, DSHA, and GLO do not have any jurisdiction over zoning. No changes to the Analysis of Impediments have been made as a result of these comments.

8. Scope - Impediment Two: Guidance on Fair Housing Rights

One commenter stated that the AI should use the Texas Organizing Project's 4 Housing Rights as a framework for the AI.

(Comment made by Texas Housers)

Department Response: No guidance from HUD on fair housing planning via the Affirmatively Furthering Fair Housing Rule was given, and the current rule is an Interim Final Rule (IFR). Due to IFR uncertainty, TDHCA felt the best action was to treat the 2024 AI as an update to the 2019 AI. No changes to the Analysis of Impediments have been made as a result of these comments.

9. Scope - Impediment Three: Homeownership

One commenter indicated that the AI fails to mention noteworthy barriers to accessing homeownership, and specifically mentions institutional homebuyers as an impediment.

(Comment made by Texas Housers)

Department Response: The AI devotes an entire chapter to discussing homeownership, and also evaluates TDHCA's homeownership programs. None of the agencies tasked with the duty to affirmatively further fair housing have any jurisdiction over institutional homebuyers. The Office of the Governor has identified the issue of institutional homebuyers as a priority for the upcoming 89th Legislative Session. No changes to the Analysis of Impediments have been made as a result of these comments.

10. Scope - Impediment Four: Inspections

Multiple commenters had concerns regarding the quality and condition of properties and the physical inspection process.

(Comment made by Disability Rights Texas, AARP, Texas Housers and NAACP Legal Defense Fund)

Department Response: It is anticipated that 10 TAC Chapter 10, Compliance Monitoring Rule, Subchapter F will be released for comment in the summer of 2024. This public comment period for this rule would be the appropriate forum to comment on any physical inspection concerns. No changes to the Analysis of Impediments have been made as a result of these comments.

One commenter suggested that TDHCA has allowed some poor property conditions after inspections, such as Bexar Creek.

(Comment made by Texas Housers)

Department Response: As of May 3, 2024, TDHCA had only received one complaint about the property called Bexar Creek and this complaint was not about the physical condition of the property. TDHCA strongly recommends that parties aware of physical issues at properties TDHCA monitors be reported using the TDHCA complaint process. TDHCA had already scheduled Bexar Creek for an inspection by the time comment was received, and has reached out to San Antonio code enforcement to obtain additional reports. It is anticipated that 10 TAC Chapter 10, Compliance Monitoring Rule, Subchapter F will be released for comment in the summer of 2024. This public comment period for this rule would be the appropriate forum to comment on any physical inspection concerns. No changes to the Analysis of Impediments have been made as a result of these comments.

11. Scope - Disaster Recovery

One commenter indicated that disaster recovery is a disability issue.

(Comment made by Disability Rights Texas)

Department Response: While this comment primarily focuses on traditional disasters, Impediment 6 also recognizes that disasters and disruptive economic events have an outsized impact on protected groups, including people with disabilities. No changes to the Analysis of Impediments have been made as a result of these comments.

Multiple commenters indicated that the 2024 AI did not sufficiently address disaster recovery activities.

(Comment made by Disability Rights Texas, Texas Housers, Harvey Forgotten Survivors Caucus, and Harris County Community Organizer Shirley Ronquillo)

Department Response: The Texas General Land Office (GLO) appreciates your comments. The GLO, Houston, and Harris County have administered a number of programs whose mission is to assist homeowners and communities in rebuilding, relocating, and revitalizing for long term disaster recovery. All programs are assessed by what languages are most spoken by Limited English Proficiency persons in Texas and updates that list of languages using the most recent available data. All programs abide by this

Language Assistance Plan and all applications, websites, assistance FAQ's and marketing materials are all available in the five most commonly spoken languages in the state, including but not limited to English, Spanish, Chinese, French, and Vietnamese. Bilingual case managers are available, and we rely on our vendor, Tetra Tech, for translation services as necessary.

Hurricane Harvey, with its wind speeds up to 150mph while dumping trillions of gallons of rain on the Houston and Texas Gulf Coast Communities, caused unprecedented devastation: more than \$125 billion in damage affecting more than eight million people across the state of Texas. Harris County has made great progress. As to date, the Houston State-Run Homeowner Assistance Program (HAP) has 775 homes approved or under construction. 1,593 complete homes complete. The Houston City-Run Housing Assistance Program (HoAP) has had 777 applications approved, 283 homes completed, 494 homeowners reimbursed. The Multi Family Rental Program (MFRP) has 31 approved projects, 10 projects completed, 10 projects with construction completed, 11 under construction for a total of 3,572 approved units with 3,072 (86%) Low to Moderate Income (LMI) applicants served. The Small Rental Program (SRP) - 5 projects approved, 5 under construction, 0 projects complete, for a total of 31 approved units with 31 (100%) LMI.

On the Harris County side, the Harris County State-Run Homeowner Assistance Program (HAP) has 131 homes approved or under construction. 375 are complete. The Harris County Homeowner Assistance Program (HAP) has 125 homes completed. The Multifamily Program (Harvey 57M and 5B) has 12 constructions complete, 4 projects under construction, 1 project recently approved to begin construction and a total 2,754 units with 2,480 LMI.

12. Scope – Criminal History Screening

Multiple commenters stated that the use of criminal history screening can be a barrier to Fair Housing.

(Comment made by Joy Davis, Disability Rights Texas, NAACP Legal Defense Fund and Texas Housers)

Department Response: The agencies tasked with affirmatively furthering fair housing have limited ability to regulate criminal history screenings. For its part, TDHCA does provide technical assistance and make recommendations on criminal screenings at properties that it monitors, even though those recommendations are generally not binding. Since the 2019 AI was released, TDHCA rule updates have required properties to explicitly list what criminal screening findings would be disqualifying and what the lookback periods are for each offense or offense type. TDHCA has also made recommendations that screening criteria include language indicating that the property will look at mitigating factors in criminal backgrounds, in line with HUD's guidance on the topic. No changes to the Analysis of Impediments have been made as a result of these comments.

Commenters suggested that TDHCA should act to remove unnecessary screening criteria and/or bar all criminal screenings in HUD and LIHTC properties.

(Comment made by NAACP Legal Defense Fund and Texas Housers)

Department Response: TDHCA provides technical assistance and recommends that properties only screen on attributes that the property manager finds are directly related to an applicant's ability to perform under the lease. No changes to the Analysis of Impediments have been made as a result of these comments.

13. Scope - LIHTC

Two commenters stated that TDHCA is trying to shift responsibility to advocacy groups when looking for service providers in LIHTC housing.

(Comment made by Disability Rights Texas, Texas Housers)

Department Response: TDHCA respectfully disagrees with the comment. Asking advocacy organizations to help find and connect households with service providers is not shifting the responsibility, as TDHCA does not have a responsibility to find service providers for its properties. That responsibility lies with the property owners and applicants. TDHCA suggests that if advocacy groups want more high quality services at LIHTC properties, then those groups may have the expertise and local knowledge to help connect service providers to properties. No changes to the Analysis of Impediments have been made as a result of these comments.

One commenter indicated that the 2021 Interim Final Rule requires TDHCA to affirmatively further fair housing in the LIHTC program.

(Comment made by Inclusive Communities Project)

Department Response: The AI includes an analysis of LIHTC applications and recommendations related to scoring of LIHTC applications. No changes to the Analysis of Impediments have been made as a result of these comments.

One commenter stated that more than 90% of all LIHTC units since 2016 have been placed in census tracts with a population less than 50% White non-Hispanic.

(Comment made by Inclusive Communities Project)

Department Response: ICP's analysis shows that there have been 154 properties awarded in Dallas. TDHCA's Vacancy Clearinghouse shows that there are fewer than 140 TDHCA-monitored properties in Dallas. Additionally, the ICP analysis states that there have been 80 LIHTC awards from 2016-2023. TDHCA found less than half that number of awards in Dallas from 2016-2023 using the same data source as ICP. Overall, TDHCA disagrees with the statistical and legal conclusions reached in ICP's analysis, and it is established that the simple existence of a statistical difference is not prima facie proof of discrimination. No changes to the Analysis of Impediments have been made as a result of these comments.

Three commenters stated that the draft 2024 AI fails to examine the inequitable environmental conditions that impact LIHTC residents in racially and ethnically concentrated locations and recommends that the Environmental Justice Index be used.

(Comment made by Inclusive Communities Project, Texas Housers, and NAACP Legal Defense Fund)

Department Response: TDHCA reviewed the Environmental Justice Index data and documentation. The Environmental Justice Index technical documentation states that the EJI should not be used as a definitive tool for labeling Environmental Justice Communities, to represent risk or exposure for a community or to tell if individuals are at risk in that community. Accordingly, TDHCA does not believe that the EJI should be used as a tool to evaluate applications for Low Income Housing Tax Credits (LIHTC). No changes to the Analysis of Impediments have been made as a result of these comments.

One commenter notes that the AI deliberately omits meaningful actions to address segregation in the LIHTC program, ignoring thousands of LIHTC units that are already in areas of minority concentration.

(Comment made by Inclusive Communities Project)

Department Response: As the commenter notes, recommendations must be actions. There are several LIHTC-specific recommendations that, when taken together, do address disparities. TDHCA also disagrees that the LIHTC program was omitted from the AFFH analysis (commenter cites page 184). The 2024 draft AI examines the LIHTC portfolio, which this commenter acknowledges, and the document never states that the duty to affirmatively further fair housing does not extend to the LIHTC program. Furthermore, almost no other program mentioned in the 2024 AI draft received as much analysis as the LIHTC program. No changes to the Analysis of Impediments have been made as a result of these comments.

One commenter stated TDHCA should consider regularly surveying tenants at LIHTC properties.

(Comment made by Texas Housers)

Department Response: The AI already makes this recommendation, but staff will expand the language to read “Investigate opportunities to partner with state research universities to assess the impacts and trends of the State’s multifamily programs, including options to regularly survey tenants in TDHCA-monitored properties.”

One commenter noted that the AI should include a short description of the LIHTC program in Chapter 1.

(Comment made by Texas Housers)

Department Response: TDHCA has added a description of the LIHTC program to Chapter 1 of the 2024 AI.

A commenter suggested that the AI should take the extra step to identify specific geographic areas of concern.

(Comment made by Texas Housers)

Department Response: TDHCA already contemplates this, as it related to LIHTC by use of scoring and tiebreakers in the QAP. No changes to the Analysis of Impediments have been made as a result of these comments.

One commenter said that the state should reevaluate the role local approval plays in the HTC application process, including requirement surrounding letters from State Representatives.

(Comment made by Texas Housers)

Department Response: The representative letter requirement is set forth in Texas statute. Executive agencies are not permitted to act as advocates or lobbyists to the Legislature. No changes to the Analysis of Impediments have been made as a result of these comments.

One commenter indicated the AI failed to include older housing when considering housing choice, using only post 2018 LIHTC award cycles does not show the full array of housing choice.

(Comment made by Texas Housers)

Department Response: TDHCA specifically uses only recent LIHTC award cycles because, as the commenter rightly notes, TDHCA is not able to undo these past awards. No changes to the Analysis of Impediments have been made as a result of these comments.

One comment supported TDHCA's recommendation to consider gentrification and displacement in awarding LIHTC properties, but are concerned about implementation. This commenter suggests that TDHCA should specifically use the methodology used in the Uprooted report from researchers at the University of Texas.

(Comment made by Texas Housers)

Department Response: TDHCA recommends that the commenter utilize the QAP roundtable process to suggest specific methodologies, including the Uprooted report, as alternatives to identifying neighborhoods at risk of gentrification. TDHCA has added a mention of the Uprooted report methodology to the recommendation as a possible option to consider.

One commenter stated the AI showed that 4% LIHTC properties were disproportionately placed in higher poverty, racially concentrated areas.

(Comment made by NAACP Legal Defense Fund)

Department Response: TDHCA appreciates the comment but disagrees with the interpretation given by the commenter. The 4% tax credit program provides developers with less financial incentive than the 9% program. These awards are also usually non-competitive, meaning the vast majority of applications that meet threshold requirements are funded. If additional restrictions are placed on the program, it would most likely reduce the number of units either rehabilitated or placed-in-service rather than change their geographic distribution. No changes to the Analysis of Impediments have been made as a result of these comments.

14. Scope - Racial Segregation

One commenter said the AI fails to identify existing patterns of racial segregation and does not use correct measures of segregation or integration.

(Comment made by Inclusive Communities Project)

Department Response: TDHCA appreciates this comment but disagrees. The AI utilized two different measures of racial segregation, including R/ECAPs and a diversity index. Maps of both of those are available in the 2024 AI. TDHCA does not believe that there is value in analyzing LIHTC applications and awards that are more than 5 years old as they are not indicative of current policy, and there is no meaningful action TDHCA can take to "undo" those awards. Also, as identified by the commenter, the interim AFFH rule that subjects LIHTC to the affirmatively furthering fair housing rule was only put in place in 2021. It would be uninformative to apply standards set in 2021 to awards placed in service a decade or more prior to that rule. No changes to the Analysis of Impediments have been made as a result of these comments.

15. Scope - Data in the AI

One commenter indicated that the Draft AI uses a biased dissimilarity index that fails to measure discrimination as defined by the AFFH rule.

(Comment made by Inclusive Communities Project)

Department Response: The commenter identifies a tract with a score of .41 and claims that this is “integrated” according to the Diversity Index. This is incorrect, as scores closer to 1 indicate higher integration/diversity and scores closer to 0 indicate segregation/low diversity. The diversity index score of .41 accurately represents the example given by the commenter. This incorrect understanding of the diversity index is more pronounced when the commenter indicates that an even split of 50% White and 50% Hispanic would have a score of 0.5 while a 75% White and 25% Hispanic tract would have a score of .75. This is mathematically inaccurate, as evidenced below.

i. The 75/25 example :

$$\frac{((1 + .25) * (1 + .75)) - (2)}{((1 + \frac{1}{2}) * (1 + \frac{1}{2})) - (2)} = .75$$

ii. The 50/50 example:

$$\frac{((1 + .5) * (1 + .5)) - (2)}{((1 + \frac{1}{2}) * (1 + \frac{1}{2})) - (2)} = 1$$

As explained in the 2024 AI Appendix specific to the Diversity Index, a higher number indicates a more integrated census tract. A 50/50 split (in a two option case) garners a score of 1 while a 75/25 split garners a score of .75. As 1 is higher than .75, the Index correctly identifies the 50/50 split as the more diverse outcome. It is crucial to note that scores in the examples like this are not comparable to scores produced with more than just two categories (as is the case in the Diversity Index maps). No changes to the Analysis of Impediments have been made as a result of these comments.

Multiple commenters stated the AI should include inspection scores and violations and tenant and neighborhood populations.

(Comment made by Sharon Underwood, AARP Texas and Texas Housers)

Department Response: The current AI includes information on tenant demographics. The AI does not include information on neighborhoods because analysis of hyperlocal population dynamics is the responsibility of the local jurisdictions that must complete fair housing certifications. Inspections data would be static and not useful information for a 5-year document. Tenant population information is available in the TDHCA’s annual compiled Housing Sponsor Report. In response to this comment, TDHCA has included a link to a map that was already available in the Tableau dashboard that shows the percent White, Non Hispanic and Poverty rates by census tract, and the diversity index gives census tract data as well. No changes to the Analysis of Impediments have been made as a result of these comments.

One commenter offered that the AI should recommend that TDHCA’s Fair Market Rent/Small Area Fair Market Rent (FMR/SAFMR) analysis show that TDHCA is using the higher of FMR and SAFMR, and should inform the public about the difference between FMR and SAFMR.

(Comment made by Texas Housers)

Department Response: The results of the analysis of FMRs and SAFMRs, and the eventual payment standards used by TDHCA, are publicly available. TDHCA understands that when the draft AI was released, the Department’s newly redesigned website did not have a link to current payment standards. It is expected to be added to the website. No changes to the Analysis of Impediments have been made as a result of these comments.

One commenter indicated the AI fails to indicate that there are not enough Extremely Low Income (ELI) units in Texas.

(Comment made by Texas Housers)

Department Response: TDHCA disagrees citing the commenter’s acknowledgement that the AI states that only 4.2% of LIHTC units are set aside for ELI Texans, while 21.5% of renter households in Texas are ELI. The commenter continues to say “TDHCA mentions the need for extremely low income units but fails to take the extra step of demonstrating that need with readily available data.” TDHCA again disagrees, and notes that not only does the AI provide said data, but that data is also in line with the commenter’s own data source (NLIHC Gap Report). However, in response to this comment, TDHCA will include the data provided in the AI, as one of the reasons for identifying Impediment 1.

A commenter suggested that the AI fails to include tenant income data and should compare LIHTC tenant incomes to rents.

(Comment made by Texas Housers)

Department Response: TDHCA did not feel that it was necessary to provide detailed tenant income data when TDHCA reached the same conclusion as the commenter, which was that many tenants in TDHCA monitored properties are renting units with rents higher than what they could otherwise qualify for. There are not enough ELI or VLI units to meet the number of ELI households. Specific income data will not change that fact, nor does it alter the conclusion that more ELI units are needed. No changes to the Analysis of Impediments have been made as a result of these comments.

16. Scope – Local and Regional Coverage

One commenter stated that recommendations in the AI should not be limited only to actions that can be taken by some state agencies.

(Comment made by Texas Housers)

Department Response: The duty to affirmatively further extends to agencies that receive certain federal housing funds and resources. The state agencies that administer these funds and resources do not have authority to opine on what other state agencies or local entities should do in their steps towards affirmatively furthering fair housing. No changes to the Analysis of Impediments have been made as a result of these comments.

17. Scope - Proactivity

One commenter indicated that the AI relies too heavily on education and outreach to address impediments.

(Comment made by Texas Housers)

Department Response: TDHCA disagrees. Education and outreach efforts are key to not only reducing discrimination, but also to combating NIMBYism. They are also the most cost effective efforts when additional funds are not available or consistent. No changes to the Analysis of Impediments have been made as a result of these comments.

Two commenters noted that TDHCA should provide tenants rights training to tenants at non-subsidized housing.

(Comment made by Joy Davis and Texas Housers)

Department Response: TDHCA does not have jurisdiction over the rights of all Texas tenants and is not the agency that enforces those rights. TDHCA refers tenants needing information on their rights to Texas Law Help.org. No changes to the Analysis of Impediments have been made as a result of these comments.

One comment stated the AI must place tenant expertise at the center of relevant recommendations.

(Comment made by Texas Housers)

Department Response: TDHCA relies on input at specific events like the TDHCA Governing Board meetings, QAP roundtables, and public hearings. As mentioned in a previous reasoned response, the 2024 AI will add further detail on surveying LIHTC tenants to the recommendation that includes investigating partnering with state universities and other institutions.

One commenter stated TDHCA should add a recommendation to notify existing tenants of a property when that property applies for rehabilitation funds.

(Comment made by Texas Housers)

Department Response: TDHCA appreciates this comment and will consider this suggestion in the development of its QAP. As a result, a recommendation has been added that states: Consider notification requirements for tenants at properties that apply for rehabilitation funds or tax credits from TDHCA.

One comment indicated that TDHCA should strengthen affirmative marketing requirements and ensure that properties in TDHCA's portfolio are working with public housing authorities to connect voucher holders to properties that must accept vouchers.

(Comment made by Texas Housers)

Department Response: All individuals who call or email TDHCA requesting resources related to finding affordable housing are provided with a list of TDHCA-monitored properties and contact information for the local Public Housing Authorities (PHA). TDHCA does not have any jurisdiction over PHA's and cannot compel them to work with properties. TDHCA is also including a new recommendation: Research offering a multifamily affirmative marketing tool to be available for properties in identifying least likely to apply populations more accurately, and in streamlining the process of creating an affirmative marketing plan.

Multiple commenters suggest that the state of Texas has not done enough to provide affordable housing in high opportunity areas.

(Comment made by Donna Pryor, Chanttani Schrock, Karla Graham, Trish Woods and Brigitte Norris, Inclusive Communities Project, Texas Housers, NAACP Legal Defense Fund)

Department Response: The state strives to improve the siting of affordable housing in high opportunity areas through the annual development of the QAP. TDHCA encourages commenters and all Texans to participate in the process to improve outcomes for Texas families. No changes to the Analysis of Impediments have been made as a result of these comments.

One commenter stated that the Texas Workforce Commission should be more efficient and more transparent in its enforcement of the Fair Housing Act.

(Comment made by Christopher Jenkins)

Department Response: The commenter included no specific metrics for "efficacy" or particular areas where more transparency was needed. No changes have been made to the Analysis of Impediments as a result of this comment.

Two commenters suggested that the Analysis of Impediments lacks specific actions or time frames for implementing recommendations

(Comment made by Texas Housers and Texas Appleseed)

Department Response: TDHCA has provided specific actions. The timeframe for actions related to recommendations is the 5-year period covered by the document. No changes have been made to the Analysis of Impediments as a result of this comment.