

# **Texas Department of Housing and Community Affairs**



## **Rules Committee Book**

**Wednesday, May 7, 2025**

**1:00 PM**

**Dewitt C. Greer State Highway Building  
125 E. 11th Street  
Williamson Board Room  
Austin, TX 78701**

### **Rules Committee**

*Kenny Marchant, Chair  
Holland Harper, Member  
Leo Vasquez III, Member*

**CALL TO ORDER****ROLL CALL****CERTIFICATION OF QUORUM**

The Rules Committee of the Governing Board of the Texas Department of Housing and Community Affairs (TDHCA) will meet to consider and may act on any of the following:

**REPORT ITEM:**

1. Report on the Development of the 2026 Qualified Allocation Plan

Cody Campbell

**PUBLIC COMMENT****EXECUTIVE SESSION**

The Committee may go into Executive Session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Tex. Gov't Code, Chapter 551. Pursuant to Tex. Gov't Code, §551.074 the Audit Committee may go into Executive Session 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) the Committee may go into executive session 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) the Committee may go into executive session 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.

Pursuant to Tex. Gov't Code, §2306.039(c) the Committee may go into executive session to receive reports from the Department's internal auditor, fraud prevention coordinator, or ethics advisor regarding issues related to fraud, waste, or abuse.

**OPEN SESSION**

If there is an Executive Session, the Committee will reconvene in Open Session and may take action on any items taken up in Executive Session. Except as specifically authorized by applicable law, the Rules Committee 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.texas.gov](http://www.tdhca.texas.gov) 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 X.

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 Danielle Leath, 512-475-4606, 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 Danielle Leath, al siguiente número 512-475-4606 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.



## Texas Department of Housing and Community Affairs

### Rules Committee

### Board Action Request

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**File #: 1006**

**Agenda Date: 5/7/2025**

**Agenda #: 1.**

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#### Report on the Development of the 2026 Qualified Allocation Plan

#### **BACKGROUND**

The Texas Qualified Allocation Plan (QAP) is a document developed by the Department that outlines the policies, procedures, and scoring criteria used to allocate federal Low-Income Housing Tax Credits (LIHTC) in Texas. These tax credits support the development and rehabilitation of affordable rental housing for low-income households.

The QAP establishes:

- Threshold eligibility requirements for Applicants and Developments
- Scoring criteria for Applications based on housing needs and priorities
- Underwriting requirements

The QAP must comply with both federal requirements under Section 42 of the Internal Revenue Code and state housing priorities established by the Texas Legislature and TDHCA's Governing Board.

Although state law permits a biennial update, TDHCA has traditionally revised the QAP annually. Each spring, the Department gathers input through roundtables, workgroups, and committee meetings. An informal draft is released in the summer, followed by a formal draft presented to the Board in September. After a public comment period, a final version is submitted to the Board in November and then sent to the Governor, who may approve, modify, or reject it. This annual cycle promotes transparency and responsiveness to Texas's housing needs.

Department staff has identified several key areas of the QAP to propose for revision this year. Suggested revisions are attached to this report for some of the following items.

#### **Concerted Revitalization Plans (Suggested Revisions Attached)**

Federal law requires the Department to give preference to projects that contribute to a concerted community revitalization plan, which is accomplished through the Concerted Revitalization Plan (CRP) scoring item. This item is worth seven points, and is not available to Applications that elect points under the Opportunity Index, a separate scoring item that rewards proximity to desirable Census Tracts and community amenities. Practically all applications must maximize points for either Opportunity Index or CRP to be competitive.

CRPs are generally published by municipalities or counties, and outline plans and strategies for revitalization. The review and scoring of CRPs have historically presented challenges. There is no standardized format or language that must be used in CRPs, and so it is essentially impossible to write objective, universal criteria by which they may all be evaluated. For example, a city's plan may identify a geographic area as being targeted for residential growth or economic development, which leaves staff in the precarious position of making a subjective determination as to whether those activities are truly revitalization.

To eliminate this subjectivity, the scoring criteria was updated in 2024 to defer to the relevant local government. To achieve the maximum points in this category, Applicants must submit a letter from the appropriate local government

official that explicitly identifies the proposed Development as contributing to that government's concerted revitalization plan. While this revision was successful in providing staff with objective criteria by which to evaluate this item, it also resulted in an increased number of Applications scoring CRP points. To help ensure that these Development Sites are still in desirable areas, staff recommends amending the scoring item so that the points are not available in census tracts with a poverty rate above 30%.

#### **Sponsor Characteristics (Suggested Revisions Attached)**

This item awards up to two points based on the characteristics of the entity or entities that is sponsoring the Application. These points are currently available to Applications that include either a Non-Profit Organization or a Historically Underutilized Business (HUB) as part of the ownership structure.

HUBs are for-profit entities with its principal place of business in the state, at least 51% owned, operated, and controlled by one or more individuals who are economically disadvantaged due to their identification as members of certain groups. These groups include racial minorities, women, and certain service-disabled veterans. HUBs must be certified by the Texas Comptroller of Public Accounts.

Staff believes that this item could be significantly improved by the following revisions:

- Revising the criteria for HUBs to require that the HUB be a truly independent entity with no members being related parties to or affiliates of other members of the Applicant group.
- Prohibiting HUBs that have participated in five or more previously awarded Applications from qualifying for points.
- Adding the following two categories as options for Sponsor Characteristics points:
  - Applications that contain either a local Housing Finance Corporation (HFC) or Housing Authority as part of the ownership structure.
  - Applications that do not include a property tax abatement, reduction, or exemption.

Staff is optimistic that these changes would result in positive changes to the Applicant pool, and believes that incentivizing the production of Developments that pay full property taxes is simply responsible public policy.

#### **Tie-Breaker Factors**

9% Applications are often tied with one another, and so the QAP establishes that ties will be determined by prioritizing the site that is closest to the following community amenities:

- A public park
- The elementary school of attendance
- A full-service grocery store
- A public library

Applications use the closest three of these amenities, and then are ranked based on that cumulative distance. If two Applications have a cumulative distance that is within one hundred feet of one another, the tie proceeds and is then determined based off the proximity to the nearest tax credit development. A separate tie-breaker is used for Applications in the USDA set-aside, which prioritizes Applications based off of the age of the property being rehabilitated, which is not addressed in this report.

One advantage to this tie-breaker is that the amenities within it can be changed periodically, which helps promote dispersion of development sites. Parks have proven to be the most challenging aspect of this tie-breaker administratively, and because of that, staff proposes that this is the most obvious candidate for replacement. One proposed addition could be healthcare facilities, which one member of the industry suggested could be defined as, “a full service hospital, community health center or general practice that takes walk-in patients.”

Staff also recommends adding a new first tie-breaker that would prioritize Applications in census tracts with a poverty rate below 20% (with Region 11 adding an additional 15% to that value and Region 13 adding an additional 5% to that value). This is similar to language that was used in previous QAPs, and staff believes that it is a simple, effective, policy-driven way to break many ties.

With staff’s recommendations, the order of tie-breakers for a non-USDA Set-Aside Application would be:

1. Prioritizing Applications in low-poverty census tracts
2. Prioritizing Applications in close proximity to valuable community amenities
3. Prioritizing Applications that are the furthest distance from the nearest Tax Credit Development

### **Quantity of Low-Income Units**

The QAP currently includes a scoring item related to the number of Low-Income Units provided in the Application. The thresholds for points are calculated based off the average number of units provided in the subregion in the 2022 and 2023 rounds, with points available to Applicants proposing a number of units that is 5% or 10% over those average. This scoring item has been one of the most prominent topics of discussion since it was introduced, with members of the development community expressing that the numbers are not achievable given the financing that is available.

During the 2022 and 2023 rounds, many cities and counties had access to an unusually high amount of soft funding that was made available through acts such as the American Rescue Plan, and this funding was often used to help supplement affordable housing projects. These funding sources have now been exhausted, and as a result, the number of units produced in those years is no longer achievable. In addition, interest rates have increased over the last several years, and the price that investors are willing to pay for Housing Tax Credits has decreased noticeably. Many Applicants are reporting credit prices of approximately \$0.75 per dollar, which is down from approximately \$0.90 in recent years.

These factors have created a challenging environment for Tax Credit development. Because of that, staff recommends that the Quantity of Low-Income Units scoring item be either eliminated or suspended for the 2026 QAP.

### **Force Majeure and Extensions to the Deadline to Place in Service**

Federally, Applicants must complete construction and place a development in service no later than the end of the second calendar year after the credits are allocated. Placement in service is generally evidenced by obtaining a Certificate of Occupancy for the Development. For example, an Applicant that is awarded Housing Tax Credits at the late July meeting in 2025 will be required to place the development in service no later than December 31, 2027.

Recognizing that Applicants will sometimes need the full amount of time that is federally available, many states allocate credits as early in the year as possible, and at least one state allocates credits a year in advance. Texas state statute prescribes the annual timeline for the 9% tax credit round, with Applications being due no later than March 1<sup>st</sup>, and allocations being made no later than July 31<sup>st</sup>. Because of these statutory limitations, the Department does not have the option to allocate credits earlier.

In the event that a Development experiences unforeseeable delays, the QAP allows for the Board to re-allocate credits to it, which effectively resets the clock on its federal deadlines (this is colloquially known as “force majeure treatment”).

The number of requests that the Department has received under this rules has increased dramatically over the past few years, as current conditions are not optimal for expedited closings or construction timelines.. In addition, staff met with several syndicators earlier this year to identify policies that might result in increased credit prices, and the tight deadline to place in service in Texas was consistently specified as a reason that investors may be hesitant to enter the Texas market.

To help reduce the number of requests that the Board hears, and to help encourage investment in Texas, staff proposes that it may be appropriate for the QAP to allow for a six-month extension to be administratively approved by staff.

#### **Minimum Age for Rehabilitation**

Acquisition and Rehabilitation of existing properties is an allowable activity within the LIHTC program. The QAP does not currently contain a minimum age for Developments to be eligible, and some Developments are rehabilitated as early as year 16. Staff proposes that the QAP should include a minimum age of 25 years for existing LIHTC Developments. Applicants proposing to rehabilitate newer Development would be able to request a waiver from the Board should an overwhelming need exist for a specific Development.

#### **Cash-out Refinances**

The QAP does not currently prohibit cash-out payments when land or existing Developments are transferred as part of a related-party transaction for a Housing Tax Credit Application. Staff recommends that the QAP prohibit any cash consideration to a seller in a related-party transaction.

## Concerted Revitalization Plans



(7) Concerted Revitalization Plan. (§42(m)(1)(B)(ii)(III) and (C)(iii)). An Application may qualify for up to seven (7) points under this paragraph only if no points are elected under subsection (c)(5) 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 geographically located within an area for which a concerted revitalization plan (plan or CRP) has been developed and published by the municipality. If proposing New Construction, the Development Site must be entirely located within a census tract that has a poverty rate equal to or below 30%.

(ii) A plan may consist of one or two complementary local planning documents that together have been approved by the municipality as a plan to revitalize the 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. 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, including a consolidated plan or one-year action plan required to receive HUD funds does not equate to a concerted revitalization plan. However, a comprehensive plan may include plans for specific areas targeted for revitalization that would qualify so long as that plan meets all requirements of this section.

(iii) The proposed Development must be entirely located within the targeted revitalization area. (iv) 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) and (II) of this clause:

(I) The concerted revitalization plan, or each of the local planning documents that compose the plan, must have been published by the municipality or county in which the Development Site is located.

(II) The plan must be current at the time of Application. (v) If the Application includes an acceptable Concerted Revitalization Plan, up to seven (7) points will be awarded as follows:

(-a-) the proposed Development Site is located within a Qualified Census Tract and has submitted a letter from the appropriate local official for the municipality (or county if the Development Site is completely outside of a municipality) that explicitly identifies the proposed Development as contributing to the concerted revitalization efforts of the municipality or county (as applicable) (7 points); or

(-b-)the proposed Development Site is not located within a Qualified Census Tract and has submitted a letter from the appropriate local official for the municipality (or county if the Development Site is completely outside of a municipality) that explicitly identifies the proposed Development as contributing to the concerted revitalization efforts of the municipality or county (as applicable) (7 points); or

(-c-)the proposed Development Site does not have a letter described in items (-a-) and (-b-) of this subclause (5 points).

(B) For Developments located in a Rural Area, the Rehabilitation or demolition and Reconstruction of a Development 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. (7 points)

## Sponsor Characteristics

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) An Application may qualify to receive either one (1) or two (2) points if it meets the requirements of either subparagraphs (A), (B), ~~or (C),~~ (D), or (E) of this paragraph.

(A) HUB. The ownership structure contains a HUB or HUBs certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date. The HUB or HUBs must have some combination of ownership interest in each of the General Partner or Special Limited 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. When more than one HUB is included, each individual HUB is not required to participate in each category, nor is each HUB required to meet the minimum 5% in a category in which it does not participate. 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. Any Application that includes one or more HUBs must include a narrative description of each of the HUB's experience directly related to the housing industry (2 points).

(i) The HUB 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 is regularly, continuously, and substantially involved in providing services integral to the Development Team; providing services as an independent contractor is not sufficient.

(ii) No member of the HUB may be a Related Party to or an Affiliate of any other member of the Applicant. Members of the HUB may be Related Parties to one another; however, a member of the HUB may not be a member of the Applicant in any other capacity. A Principal or officer of the HUB cannot be a Related Party to or Affiliate, including the spouse, of any other Principal or officer of the Applicant, Developer or Guarantor (excluding another Principal of said HUB), regardless of Control. (2 points).

(iii) No member of the HUB may have previous participation with Department programs that would necessitate more than five Developments being listed on the Application's Previous Participation Form.

~~(iii) The HUB 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). (1 point).~~

(B) Qualified Nonprofit Organization. The ownership structure contains a Qualified Nonprofit Organization provided the Application is submitted in the Nonprofit Set-Aside. The Qualified Nonprofit Organization must have some combination of ownership interest in 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 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 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 Qualified Nonprofit Organization 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 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 Qualified Nonprofit Organization). (2 points).

(iii) The Qualified 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 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 Qualified Nonprofit Organization). (1 point).

(C) Nonprofit Organization. The ownership structure contains a nonprofit organization that meets the requirements of IRC §42(h)(5)(C) on the Application Delivery Date, with at least 51% ownership in the General Partner of the Applicant. (2 points)

(i) The nonprofit organization must maintain Control of the Development and materially participate in the operation of the Development throughout the Compliance Period. Nonprofit organizations that formally operate under a parent organization may assign Control of the Development to that parent organization, so long as it meets the requirements of IRC §42(h)(5)(C).

(ii) The nonprofit organization, or individuals with Control of the nonprofit organization, must provide verifiable documentation of at least 10 years' experience

in the continuous operation of a Development that provides services similar to those in the proposed Development.

(iii) The Applicant will provide a minimum of 3 additional points under §11.101(7) of this chapter (related to Resident Supportive Services), in addition to points selected under subsection (c)(3) of this section.

(D) Local Housing Finance Corporation or Housing Authority. The ownership structure contains a Housing Finance Corporation organized under Local Government Code Chapter 394, a Housing Authority created under Local Government Code Chapter 392, or an instrumentality of either, and the entire Development Site is located within that Corporation or Housing Authority's boundaries (2 points)

(E) Property Tax Status. The Application does not include any exemptions, abatements, rebates, or similar reductions related to the ad valorem taxes imposed by the taxing units in the Development Site's district. The Application must include a certification from the Development Owner that no such exemption or abatement will be sought or effected prior to the expiration of the Extended Use Period (2 points).