

**QUALIFIED ALLOCATION PLAN  
AND MULTIFAMILY RULES COMMITTEE  
MEETING  
APRIL 25, 2018**



**Leo Vasquez, III, Chair**  
**Leslie Bingham Escareño, Member**  
**Paul A. Braden, Member**

**QUALIFIED ALLOCATION PLAN AND MULTIFAMILY RULES COMMITTEE  
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

**Agenda  
4:00 P.M.  
April 25, 2018**

**Texas State Capitol  
Capitol Extension E1.014  
Austin, TX 78701**

LEO VASQUEZ, III, CHAIRMAN  
LESLIE BINGHAM-ESCARREÑO, MEMBER  
PAUL A. BRADEN, MEMBER

**CALL TO ORDER, ROLL CALL**

Leo Vasquez, III  
Committee Chairman

**CERTIFICATION OF QUORUM**

**PUBLIC COMMENT**

The Qualified Application Plan and Multifamily Rules Committee ("Committee") of the of the Board of the Texas Department of Housing and Community Affairs will solicit public comment at the end of the meeting and will also provide for public comment on each agenda item after the presentation made by the Department staff and motions made by the Committee.

The Committee of the Board of the Texas Department of Housing and Community Affairs will meet to consider and possibly act on the following:

**REPORT ITEMS**

1. Presentation and discussion of the Resident Survey Marni Holloway  
Director
2. Presentation and Discussion of the 2019 QAP Project Plan Marni Holloway  
Director
3. Presentation, discussion, and possible action to make recommendations to the  
Governing Board regarding requesting further information or reports from staff  
and/or providing direction and priorities for future proposed rule changes as to  
distribution of accessible units under 10 TAC §1.207 Department Staff
4. Presentation, discussion, and possible action to make recommendations to the  
Governing Board regarding requesting further information or reports from staff  
and/or providing direction and priorities for future proposed rule changes as to  
the administration the right of first refusal under 10 TAC §10.407 Department Staff

**PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA  
ITEMS.**

**EXECUTIVE SESSION**

Leo Vasquez, III  
Chair

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 and under Tex. Gov't Code, §2306.039.

1. 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.

### **OPEN SESSION**

If there is an Executive Session, the Committee will reconvene in Open Session. Except as specifically authorized by applicable law, the 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.state.tx.us](http://www.tdhca.state.tx.us) or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11<sup>th</sup> Street, Austin, Texas 78701, and request the information.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Terri Roeber, ADA Responsible Employee, at 512-475-3959 or Relay Texas at 1-800-735-2989, at least three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, 512-475-3814, at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado, al siguiente número 512-475-3814 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

### **NOTICE AS TO HANDGUN PROHIBITION DURING THE OPEN MEETING OF A GOVERNMENTAL ENTITY IN THIS ROOM ON THIS DATE:**

Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun.

De acuerdo con la sección 30.06 del código penal (ingreso sin autorización de un titular de una licencia con una pistola oculta), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola oculta.

Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.

De acuerdo con la sección 30.07 del código penal (ingreso sin autorización de un titular de una licencia con una pistola a la vista), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola a la vista.

### **NONE OF THESE RESTRICTIONS EXTEND BEYOND THIS ROOM ON THIS DATE AND DURING THE MEETING OF THE COMMITTEE OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS.**

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**QUALIFIED ALLOCATION PLAN AND RULES COMMITTEE**

**MULTIFAMILY FINANCE DIVISION**

**APRIL 25, 2018**

Presentation and Discussion of the Resident Survey

The Texas Department of Housing and Community Affairs (“TDHCA”) and The University of Texas at Austin Ray Marshall Center (“RMC”) entered into an Interagency Contract to conduct and implement jointly TDHCA’s first ever survey of residents who live in TDHCA-financed properties. Staff closely worked with research staff at the RMC to develop focus group scripts, a sampling plan for the survey, and the survey itself. Both staffs developed methods for randomly identifying focus group sites and survey respondents that represented the diversity of residents TDHCA serves and their interests. Both staffs also reviewed and tested the survey questionnaire in both its online (English and Spanish) and printed formats.

Three focus groups were conducted in late July and early August. The survey went live in late July, providing targeted residents with about five weeks to complete the survey. All tasks were completed by the end of August. However, RMC allowed the survey to remain open until the end of September 2017, given the many surveys that staff at RMC continued to receive by mail and electronically. This extension led to an increase of several hundred respondents, which RMC graciously added to the completed work products. No costs were incurred outside the biennium.

Once the survey was closed, staff at TDHCA focused on finalizing the resident survey database. Once the database was completed, staff at TDHCA moved on to analyzing survey results in December 2017 and January 2018.

The following Resident Survey Report is a summary of the conclusions that staff was able to draw from the survey results.

In the current biennium, TDHCA does not have funds appropriated for such research.

## DISCLAIMER

The attached summary of the results of a Resident Survey are, in staff's assessment, useful in part but also potentially misleading in part. Ideally there would be another survey, conducted over a longer period and under conditions that would enable the collection of more representative data.

The survey results reflect the fact that elderly residents responded in far greater numbers than households with children. This fact means that certain high level results are in all probability skewed. For example:

- There would be a greater prevalence of Elderly households heavily reliant on Social Security income rather than earnings from employment, and as a result the income data would reflect much lower annual income than would typically be found in households with one or two adults working.
- Elderly households would be far less likely to place the greatest value on schools, recreational facilities, and continuing and after-school educational opportunities, even though those would be extremely important to households with school-age children.

Accordingly, staff views this report as providing specific and useful insights, most notably the uniformly high value placed on locations near amenities and locations not affected by high rates of crime. When and if the staff finds that it has time and access to the resources to perform a study that can engage a larger sample, including greater representation of households with working adults and school-age children, such a survey could yield more empirical information on issues and subgroups that the Board and the Department deem important

**The limited size and the disproportionate self-selection of elderly respondents mean that this survey should not be relied upon as reflecting the nature and makeup of the residents of TDHCA affordable housing as a whole. Where possible, staff has sought to isolate subgroups within the pool of all survey respondents, in order to uncover differences in opinion among households, based on their demographic characteristics.**

## Executive Summary

The Department contracted with the Ray Marshall Center of the University of Texas at Austin (“RMC”) to conduct a series of focus groups and a resident survey among Housing Tax Credit (“HTC”) residents. The goal was to gather feedback on what is most important to residents so that Department policies and rules support the goal of meeting low- to moderate-income residents’ needs. 653 residents responded to the survey, resulting in a 6.24% response rate. The survey consisted of about 35 questions, depending on how one responded. Researchers estimate that 63% of survey respondents were Elderly. A few central questions were required, with the remainder being optional. Three focus groups were held along with the survey; 27 residents in total attended the focus groups.

### Focus Groups:

The three focus groups gave residents an opportunity to share their experiences on living in TDHCA properties. The moderators of these focus groups sought to attract diverse groups that reflect the variety of residents that the Department serves—rural, Elderly, families, and persons with disabilities.

### Survey

The survey was available in both online and paper formats. The survey sought residents’ varied perspectives on what Unit, Development, and neighborhood features best meet their needs. With this knowledge tabulated in datasets, staff is now able to ask specific research questions about the needs of residents while simultaneously differentiating among their backgrounds.

### Survey Results

653 people responded to the resident survey. 316 respondents took the survey through a personal invitation, so the Department is able to analyze their responses according to their background information. 337 respondents took the survey through an email link sent to every Development’s property manager. These latter participants’ background information is limited to demographic details provided within the survey and general characteristics assumed about the Development in which they live (e.g., if the Development is majority Elderly, we assume that the respondent is also Elderly).

Residents could take the survey either through an online portal or through a paper survey. Individuals were either sent a paper survey or a postcard inviting them to go online to take the survey. About 8,000 individuals were contacted by postcard, with 3,000 reminders sent at a later date; over 2,000 individuals were sent individual surveys. Both media had small, but not insignificant, bounce-back rates. Of the 316 respondents who took the survey because of a personal invitation, the majority of them were through the paper surveys. The mass email sent to Developments’ property managers had an open rate of about 30% (including multiple reminders), and accounted for the remaining 337 respondents.

The survey consisted of about 35 questions, some of which required multiple responses. Only a few of the questions were absolutely required; the remaining questions could be skipped, in both the

online and the paper survey, if respondents chose to do so. Therefore, while the survey did have 653 participants, some individual questions had fewer participants if people chose to skip that question.

### Future Action and Possible Surveys

Half of the value of this survey has been the lessons learned by staff in designing it, managing its implementation, and analyzing the results. With the compressed timeline of less than four months from start to finish and a limited amount of funds that had to be expended by August 31, 2017, staff had to act quickly to implement the Resident Survey. With more time and fewer constraints, staff believes that they can better prepare for future surveys, if the Governing Board of TDHCA finds this initiative to be of value and would like to seek residents' input on more targeted issues.

Lessons learned include the following:

#### **1) Outreach and Communication**

The amount of returned postcards and surveys sent by USPS to residents suggests that individual contact information in Compliance Monitoring and Tracking System may contain some errors. Staff would therefore want to consider alternative options for contacting residents. One option is adding a field to CMTS that collects residents' personal email addresses or phone numbers. With reliable contact information like an email address or phone number, staff can create targeted, but anonymous surveys that could be completed in house.

#### **2) Survey Delivery**

For respondents who took the survey because of a personal invitation, the overwhelming majority responded through the actual paper survey, which included a pre-stamped return envelope. Hardly any residents contacted by postcard actually logged online, entered the personal code, and took the digital survey. Therefore, survey initiation via personal postcard appears to be an ineffectual means of communication, and should probably not be used again in future surveys

#### **3) Outreach, Communication, and Partnerships**

Midway through the survey, staff changed its targeting strategy in order to improve response rates. Instead of targeting individuals through the mail, staff began to contact all property managers at all TDHCA properties, asking them to forward electronic links to the online survey to their residents. In the future, advanced messaging with property managers and Development owners may be able to increase resident response rates.

#### **4) Survey Questions**

Question completion rates dropped as respondents move through the questionnaire, which suggests that the survey was too long. While 653 individuals responded to required questions, a few questions that were not required had fewer than 200 respondents. Poor responses rates on certain questions can potentially jeopardize staff's ability to draw conclusions.

## Focus Group Results

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Three focus groups were held in the months of July and August. The fourth and final focus group was cancelled because of the effects of Hurricane Harvey.

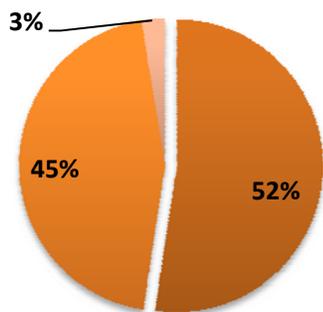
Focus Group	Date	Location	Attendees	Demographics
1	07-27-2017	Kyle, Texas	5 residents	4 women/1 man, 3 White/2 Hispanic, 2 with mobility disability
2	08-04-2017	South Houston, Texas	11 residents	9 women/2 men, 7 White/4 Hispanic, 2 with mobility disability
3	08-11-2017	Bowie, Texas	11 residents	8 women/3 men, 10 White/1 Hispanic, 2 with mobility disability

A common theme for the South Houston and Kyle focus groups was that, even though the Developments are located near many community amenities “as the crow flies,” accessing those amenities remains difficult. Such access is difficult because of a lack of public transit or safe, pedestrian routes that connect residents to the surrounding neighborhoods. Having a car seems to be requisite for accessing community features, which is infeasible for some residents, either because of cost or because of their age or disability. On the whole, however, focus group participants for both of these Developments expressed satisfaction with the location of their communities. Regarding Development concerns, both focus groups made a point to discuss their concerns about safety and security at the community, and the Kyle focus group commented on impediments to making use of the communal spaces for resident-organized events, such as having to put down a \$300 safety deposit.

The Bowie, Texas focus group was the only focus group located in a rural community. Residents here also noted how their community was near several community resources, such as a grocery store and a pharmacy. However, most of the focus group participants stated that they prefer to drive to a neighboring town where one can find large general goods stores, such as a Target or Wal-Mart, since they can get more for their money at these stores. Because Bowie has no public transit, some participants shared that they must rely on relatives or neighbors to drive them to places. Residents here also expressed concern about security and safety, wishing that the community was gated and closed to non-residents.

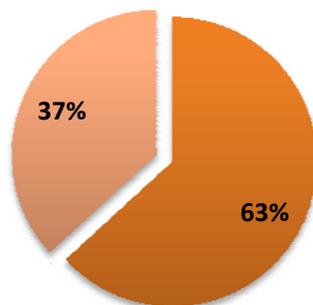
All focus groups expressed appreciation for being able to live affordably in nice communities

## Survey Results – Are the Survey Results Representative of the Entire Population?



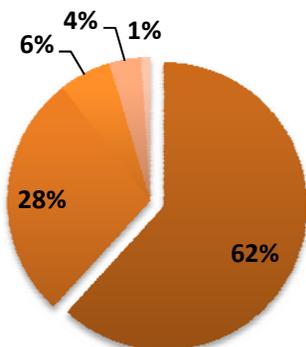
### Ethnicity of Respondents

- Hispanic or Latino - 52%
- Not Hispanic or Latino - 45%
- Tenant did not respond - 3%



### Elderly Respondents

- Elderly - 63%
- Not Elderly - 37%



### Race of Respondents

- White - 62%
- Black/African American - 28%
- Other - 6%
- Tenant did not respond - 4%
- American Indian/Alaskan Native - 1%

- The Hispanic/Latino ethnicity of respondents was roughly even. According to the Departmental database, roughly 59% of all LIHTC Unit heads of household identify as Not Hispanic/Latino, while 33% identify as Hispanic/Latino.
- The survey appears to have oversampled Elderly households. The majority of respondents—63%—were Elderly, while 37% were not Elderly. In TDHCA’s portfolio of all housing units, about 28% of all heads of household qualify as Elderly, while 72% do not.
- The majority of respondents were White, and 28% were Black/African American. In TDHCA’s portfolio, roughly 52% of all heads of households in tax credit properties report their race as White, and roughly 34% report Black/African American.

## Survey Results – Are the Survey Results Representative of the Entire Population?

The research partners at RMC grouped all TDHCA properties (2,024 total) into four “clusters,” or types. By creating these clusters, we ensured that surveys were sent to a range of household types. TDHCA staff identified four general criteria that could be used to group all the developments in the Department’s portfolio into four clusters: AMFI band, presence of Elderly household members, presence of children and families, and rural/urban designation.

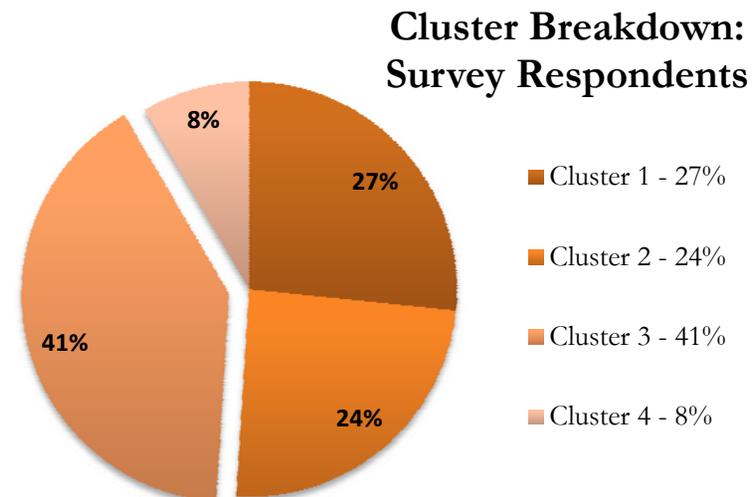
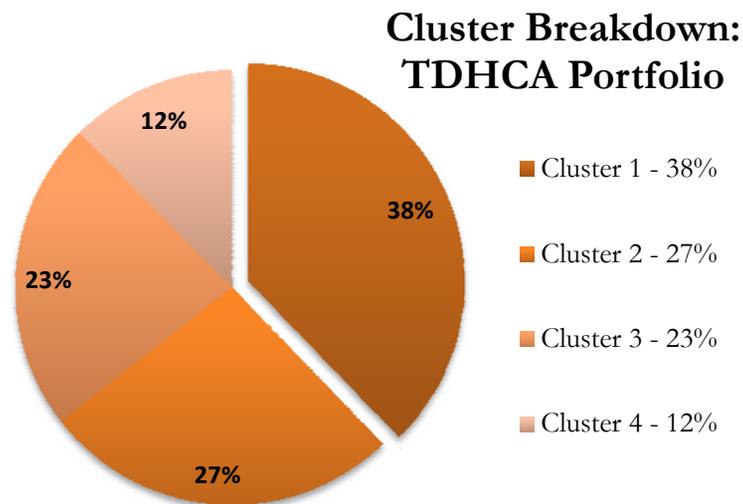
The resulting analysis divided all TDHCA properties into one of four cluster types:

**Cluster 1:** Properties with mostly **Family Households at 60% AMFI** (non-rural)

**Cluster 2:** Properties with mostly **Households between 40-50% AMFI; Elderly and Families** (non-rural)

**Cluster 3:** Properties with **Elderly Households** (non-rural)

**Cluster 4:** Properties that are **Rural Developments**



1. In TDHCA’s portfolio of all active Developments, the largest cluster is #1, Family Households at 60% AMFI.
2. The survey under-sampled Cluster 1 (Families) and over-sampled Cluster 3 (Elderly).

## **Survey Results – How to Group Respondents**

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Several of the survey questions speak directly to requirements in the Department’s Rules. For example, survey respondents were asked to identify the most important features of a neighborhood or to rank the tenant services from most important to least important. Because the Department serves so many **types of households**, with differing needs, and because the survey over-sampled Elderly households, staff believes that, for some questions, **it is preferable to analyze responses using specific filters**, as opposed to putting all respondents into one bucket.

Those possible filters for analyzing questions include the four clusters mentioned above and other options described below. The results that follow in this report do not make use of each filter for every question. If the Board would like to analyze results to a particular question based on a certain filter, staff can do so upon their request.

### **ELDERLY vs. GENERAL**

Staff is able to separate survey responses between those developments that serve the “General” population (i.e., everyone, no matter their age) and those that serve the “Elderly” population (i.e., generally developments that mostly serve heads of households who are older than age 55, but that still may have some families or younger heads of households present). Given the Elderly tilt of the survey results, this division is not the most useful frame for analyzing survey results, but it is helpful for some questions, such as asking if a respondent works full-time.

### **CLUSTER**

The responses to some questions are analyzed according to the cluster groups identified above. These clusters allow staff to make assumptions on how rural, Elderly, family, and very low income residents generally feel about housing issues.

### **CHILDREN**

Staff estimates that 44% of all TDHCA Units in Texas house at least one child under the age of 18. In the survey, roughly 85 survey-takers (out of 653 total) specified that they have children in their household, or 13% of all survey takers. Because this question was not required, it is possible that the percentage is higher, but staff is unable to make that determination definitively.

Nevertheless, staff has isolated this group’s responses in order to identify families’ perspectives on the Department’s policies.

### **POVERTY RATE of CENSUS TRACT**

The Qualified Allocation Plan (“QAP”) includes scoring for Opportunity Index community features. The two threshold criteria for Opportunity Index are poverty rates and income quartiles for census tracts. If a census tract is below 20% poverty rate, and if it is located in a first or second income quartile tract, or a third income quartile tract that borders a first or second quartile tract, then that tract is eligible for Opportunity Index points.

Staff has analyzed responses to some questions according to whether or not the census tract in which the respondent lives meets the Opportunity Index threshold requirements—i.e., relatively low poverty and high income.

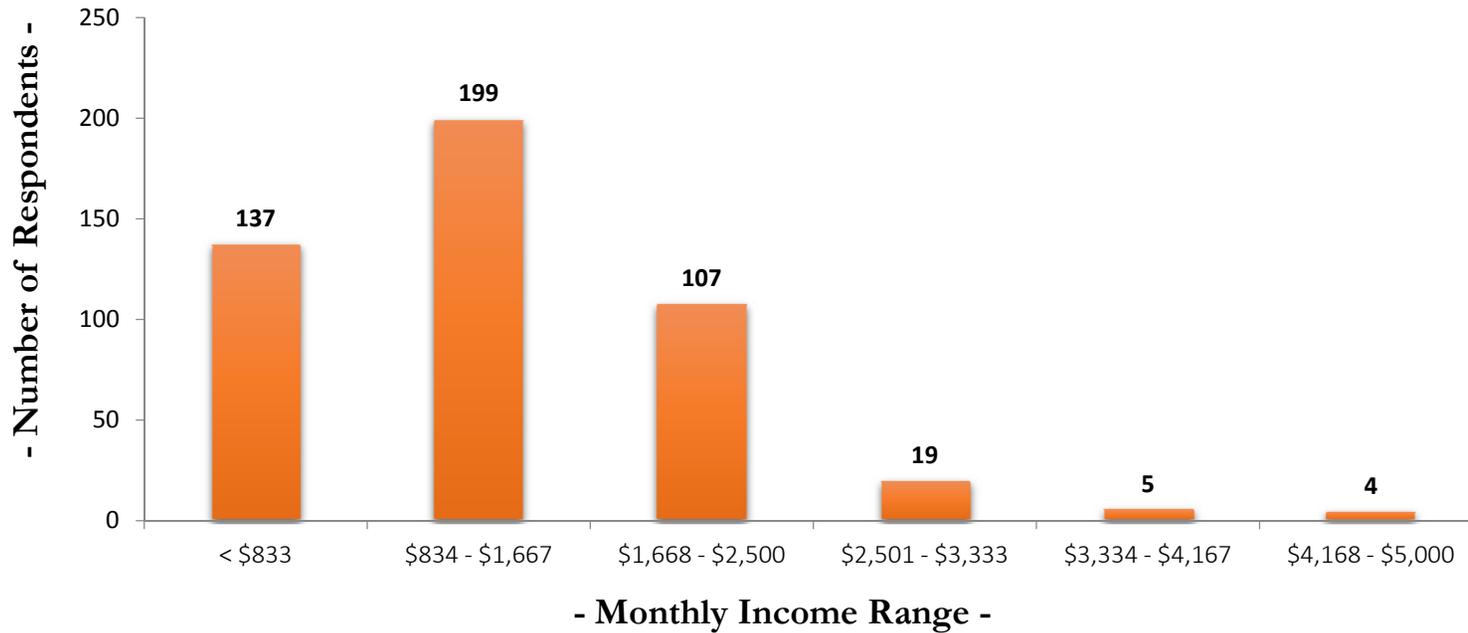
### **LIHTC CONCENTRATION of CENSUS TRACT**

An administrative provision in the Department’s Rules seeks to limit the concentration of Low Income Housing Tax Credit Developments in the state’s census tracts. This provision is commonly referred to as the “20% rule.” To encourage the dispersion of affordable housing and more renter choice, 10 TAC §11.3(e) restricts New Construction and Adaptive Reuse LIHTC development in census tracts where the fraction of housing tax credit Units already exceeds 20% of all housing Units in that census tract (unless waived by the local governing body).

Staff has analyzed the responses to some questions according to whether or not the respondent lives in a census tract where housing tax credit Units are above that 20% threshold.

### Self-Reported Household Monthly Earnings

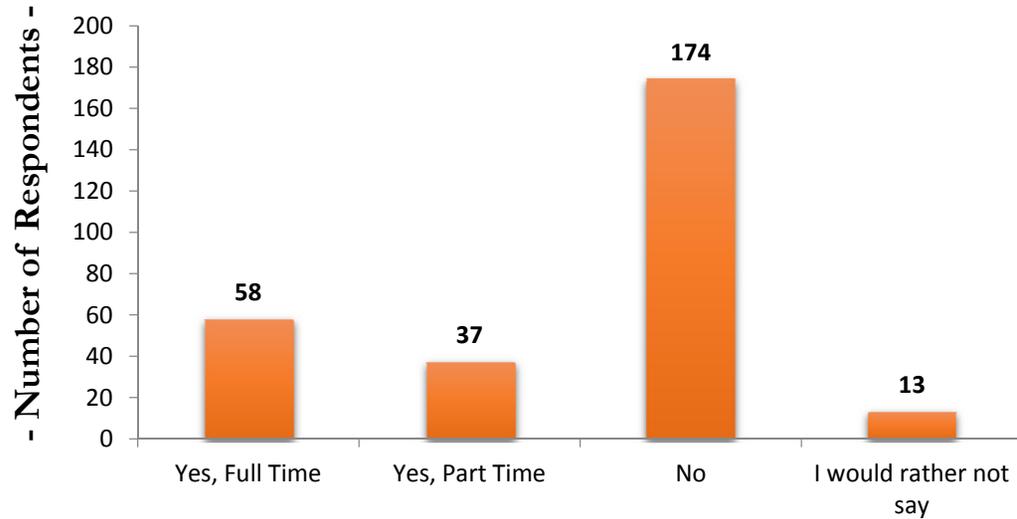
(outliers removed)



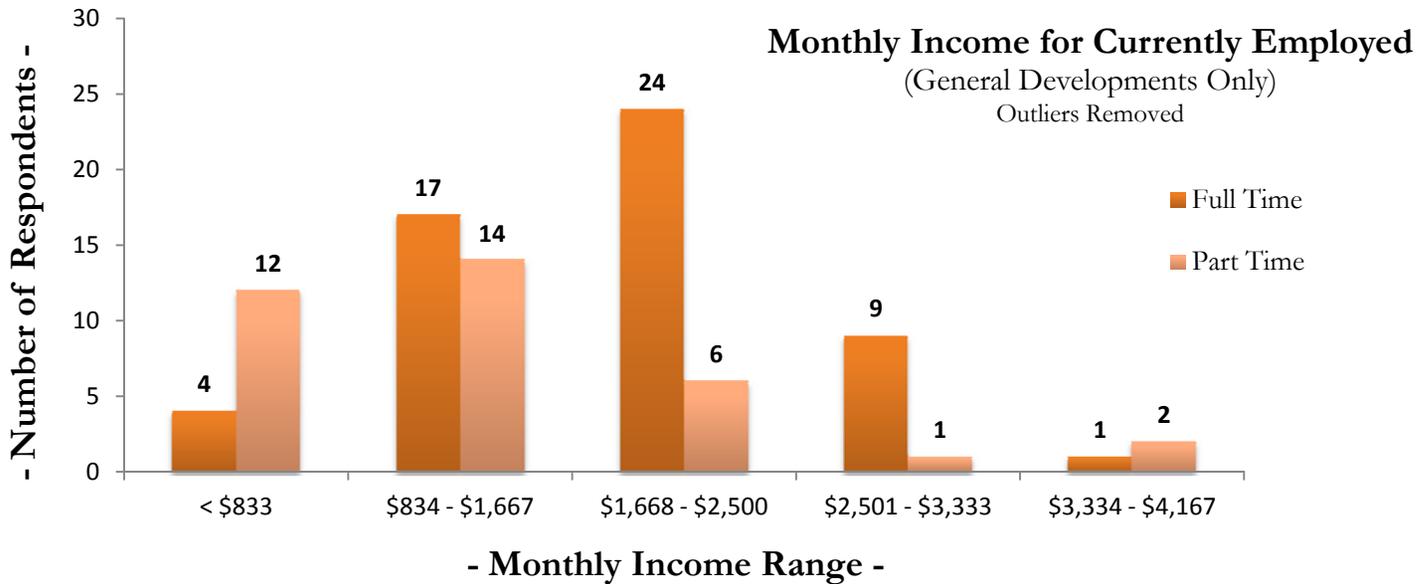
- With the majority of respondents being elderly, self-reported monthly earnings is in line with fixed-income bands associated with Social Security.
- The two highest bands more than likely reflect households with one or two members actively engaged in the workforce.
- According to the Department’s internal database, the median annual income of all households in TDHCA-assisted properties is roughly \$22,000.

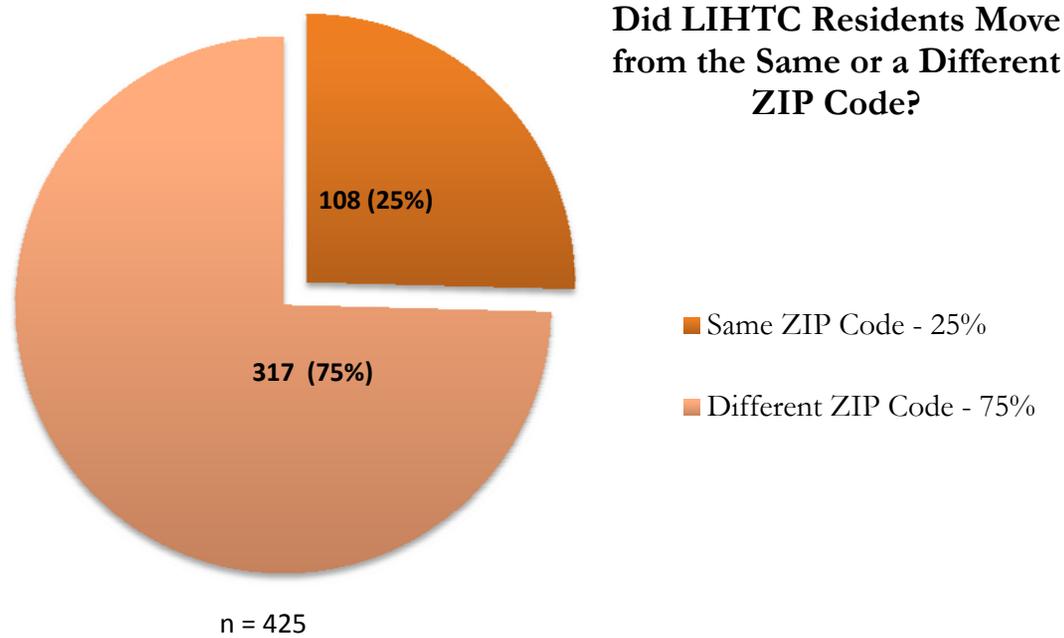
# Survey Results – Background Information on Respondents

## Are You Currently Employed? (General Developments Only)



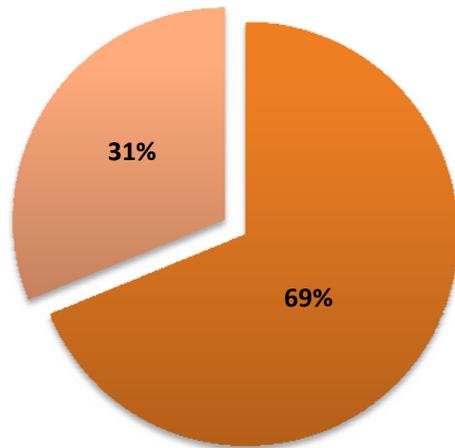
- The “No’s” here are more than likely Elderly households who live in General Developments and receive fixed-income assistance, such as Social Security.
- The monthly income for those respondents currently employed is shown below; the most predominant income band aligns with estimated median household income for all TDHCA units (~\$22,000).





- Most respondents at Developments indicate that they have moved from different ZIP codes. However, note that this question asked respondents to recall and input their previous ZIP code, so the margin of error is admittedly high for this particular question.
- Based on these preliminary results, one may assume that potential LIHTC residents are actively considering affordable rental opportunities in other parts of their towns, given this cross-zip code movement.

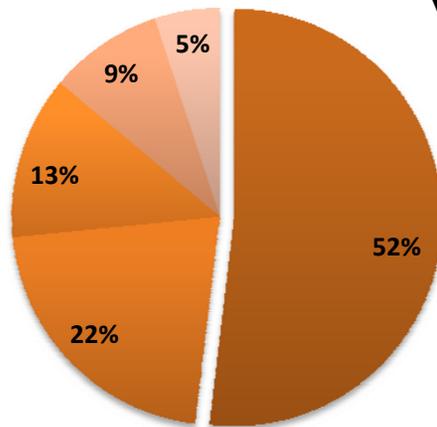
## Survey Results – Future Goals for Residents



n = 77

### Is Owning a Home a Medium- to Long-term Goal? (Households with Children)

- Yes - 69%
- No - 31%



n = 79

### What are your plans for the next 2 years? (Households with Children)

- I plan to stay where I live - 52%
- I plan to purchase my own home - 22%
- I plan to move regardless of my income status - 13%
- Other - 9%
- My income will increase, and I will therefore move - 5%

- While under-represented in survey results, responses from households with children can be isolated in order to draw conclusions—e.g., regarding future household goals.
- The majority of households with children state that owning a home is a medium- to long-term goal.
- A not insignificant percentage of households with children—22%—further clarify that they hope to purchase a home within the next 2 years.

## Survey Results – Quotes from Households with Children – Goal of Owning a Home

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“I believe in owning property and plan to do so as soon as I am able to afford a home worth purchasing for my children.”

“I need a house for my kids to be able to play outside.”

“I want stability for my children. With a home they will have that. And will be able to play in their back yard.”

“I would like to give my kids a yard to play in, and have more space outside.”

“My family needs a home not an apartment. Have an autistic child who needs to spend time outdoors enclosed with a fence. Have a large family who need their own rooms.”

“We do not have money saved; therefore, it is a long-term goal. It remains a goal nonetheless (rather than being content to stay in the apartments forever) because it would be nice to have a yard for our son to play in.”

“It is my dream to one day to become a successful business woman, purchase, and own my own home as well as raise a family.”

## Survey Results – Importance – Neighborhood Characteristics

**Percentage of Respondents Stating Importance, by Group**  
(Top 5 Selections are Highlighted)

	Cluster 1	Cluster 2	Cluster 3	Cluster 4		Children Present
Being near a grocery store, pharmacy, etc.	94%	95%	96%	94%		90%
Being near recreational places like a park, jogging path, or gym	69%	71%	58%	64%		81%
School quality	51%	53%	10%	42%		88%
Being near health care providers, like a doctor or clinic	87%	88%	92%	98%		89%
Being near your job or other employment opportunities	62%	56%	19%	42%		74%
Attractiveness of neighborhood (no trash or abandoned buildings)	96%	88%	94%	100%		96%
Being near public transportation	60%	73%	57%	45%		60%
Safety of neighborhood	99%	97%	97%	96%		98%
Being near friends and family	81%	81%	86%	77%		74%
Being near to your child care facility	35%	38%	6%	21%		62%
Being near organizations, such as your church	65%	70%	77%	62%		64%
Continuing education opportunities to get new job skills, like community college or training center	47%	52%	14%	26%		57%

**Cluster 1:** Family Households at 60% AMFI (non-rural); **Cluster 2:** Households between 30-60% AMFI; Elderly and Families (non-rural); **Cluster 3:** Elderly Households (non-rural); **Cluster 4:** Households in Rural Developments

- Survey respondents indicated which **neighborhood features** were **important** to them.
- All four Clusters agree on **top 5 most important features**—**grocery store/consumer amenities, healthcare providers, the attractiveness** of the neighborhood (no blight), the **safety** of the neighborhood, and **being near family and friends**.
- Another group of respondents—**Households with Children**—largely agreed with the four Clusters, but also had **school quality** in their top 5 **most important** neighborhood features.
- When asked to identify the **top three** of those neighborhood features selected as important, respondents—grouped together—picked **1) safety of neighborhood; 2) being near a grocery store, pharmacy, etc.; and 3) being near health care providers**.

## Survey Results – Importance – Development Characteristics

Percentage of Respondents Stating Importance (Top 5 Highlighted)

	Cluster 1	Cluster 2	Cluster 3	Cluster 4		Children Present
Size of my home	91%	83%	88%	84%		91%
Utility bills	92%	90%	92%	96%		95%
My home is accessible for people with disabilities	58%	70%	70%	67%		54%
Noise level	92%	86%	92%	90%		91%
Attractiveness of the apartment homes	90%	87%	92%	94%		89%
Storage	82%	71%	82%	69%		71%
Community of neighbors	83%	81%	84%	80%		84%
Amenities (club house, pool, workout room, etc.)	65%	66%	68%	57%		72%
Physical condition of the apartment and property	94%	90%	95%	98%		94%
Covered parking	58%	45%	61%	53%		59%
Landscaping	77%	77%	85%	78%		69%
Lighting	94%	90%	92%	88%		89%
Fencing and gates	77%	70%	85%	53%		73%

**Cluster 1:** Family Households at 60% AMFI (non-rural); **Cluster 2:** Households between 30-60% AMFI; Elderly and Families (non-rural); **Cluster 3:** Elderly Households (non-rural); **Cluster 4:** Households in Rural Developments

- Survey respondents indicated which **development and unit features** were **important** to them.
- Top 5 responses features were largely the same for all four Clusters, and include: **size of the unit, utility bills, noise levels, the attractiveness** of the apartment community, the **physical condition** of the property, and the **lighting** throughout the development.
- When asked to identify the **top three** of those development and unit features selected as important, respondents—grouped together—picked **1) size of my home; 2) utility bills; and 3) physical condition of the apartment and property.**

## Survey Results – Rank – Resident Services

Tenant Service Ranked as Most Important (Top 2 Highlighted)

Type of Respondent	Transportation Services	Community and Social Interaction Services	Education and Job Training for Adults	Education Services for Children	Health & Wellness Services
Cluster 1	28%	16%	9%	13%	34%
Cluster 2	32%	16%	7%	13%	32%
Cluster 3	38%	21%	2%	1%	38%
Cluster 4	36%	13%	4%	11%	36%
Children Present	26%	13%	9%	26%	27%

**Cluster 1:** Family Households at 60% AMFI (non-rural); **Cluster 2:** Households between 30-60% AMFI; Elderly and Families (non-rural); **Cluster 3:** Elderly Households (non-rural); **Cluster 4:** Households in Rural Developments

- Survey respondents **ranked** categories of **residential services**, with 1 being the most important and 5 being the least important. The distribution of services identified as being **most important (#1)** are shown in the table above.
- For all four Clusters, **Transportation Services** and **Health & Wellness Services** are identified as most important. This seems logical given the Elderly tilt of the survey results.
- Another group of respondents—**Households with Children**—agreed with the four Clusters that Health & Wellness Services should be in the top two, but also identified **Education Services for Children** as the **most important**.

## Survey Results – Best Neighborhood vs. Cheaper Rent – Census Tract Poverty and Income

### Do Residents Prefer to Move or Stay, Based on Census Tract Poverty Rate and Income Quartile?

Census Tract Type	Where would you locate your dream home (Question 12)?	Which do you prefer: 1) Cheaper rent in your current neighborhood; 2) Best neighborhood but higher rent (Question 22)?	% responding this way	
HOI* Eligible	Same Neighborhood	Cheaper Rent	55%	
HOI* Eligible	Same Neighborhood	Best Neighborhood	8%	
HOI* Eligible	<b>Different Neighborhood</b>	Cheaper Rent	17%	<b>37%</b>
HOI* Eligible	<b>Different Neighborhood</b>	Best Neighborhood	20%	
High Poverty, Low Income	Same Neighborhood	Cheaper Rent	46%	
High Poverty, Low Income	Same Neighborhood	Best Neighborhood	6%	
High Poverty, Low Income	<b>Different Neighborhood</b>	Cheaper Rent	24%	<b>48%</b>
High Poverty, Low Income	<b>Different Neighborhood</b>	Best Neighborhood	24%	

\*HOI, or High Opportunity Index threshold requirements

- Respondents were asked, “If you could have your dream home, would you keep your home in your current neighborhood or would you move your home to another part of town?” This is Question 12.
- Respondents were then asked a series of questions that asked them to reflect on the qualities of good and bad neighborhoods.
- Respondents were then asked the first question again, but in a different way: “Imagine you can move to the best neighborhood in your town or city. Which would you prefer? 1) Stay where I am but pay cheaper rent; or 2) Pay a little more in rent to live in the best neighborhood.” This is Question 22.
- Compared to residents in census tracts that qualify for High Opportunity Index, **a higher percentage of residents in census tracts that DO NOT qualify for High Opportunity Index preferred to move to a different neighborhood** when first asked where they would locate their dream home.

## Survey Results – Best Neighborhood vs. Cheaper Rent – Census Tract LIHTC Concentration

### Do Residents Prefer to Move or Stay, Based on LIHTC Concentration in Census Tracts?

LIHTC Concentration by Census Tract	Where would you locate your dream home (Question 12)?	Which do you prefer: 1) Cheaper rent in your current neighborhood; 2) Best neighborhood but higher rent (Question 22)?	% responding this way	
Under 20% HTC Concentration	Same Neighborhood	Cheaper Rent	52%	
Under 20% HTC Concentration	Same Neighborhood	Best Neighborhood	8%	
Under 20% HTC Concentration	<b>Different Neighborhood</b>	Cheaper Rent	21%	<b>41%</b>
Under 20% HTC Concentration	<b>Different Neighborhood</b>	Best Neighborhood	20%	
Over 20% HTC Concentration	Same Neighborhood	Cheaper Rent	46%	
Over 20% HTC Concentration	Same Neighborhood	Best Neighborhood	5%	
Over 20% HTC Concentration	<b>Different Neighborhood</b>	Cheaper Rent	20%	<b>49%</b>
Over 20% HTC Concentration	<b>Different Neighborhood</b>	Best Neighborhood	29%	

- Respondents were asked, “If you could have your dream home, would you keep your home in your current neighborhood or would you move your home to another part of town?” This is Question 12.
- Respondents were then asked a series of questions that asked them to reflect on the qualities of good and bad neighborhoods.
- Respondents were then asked the first question again, but in a different way: “Imagine you can move to the best neighborhood in your town or city. Which would you prefer? 1) Stay where I am but pay cheaper rent; or 2) Pay a little more in rent to live in the best neighborhood.” This is Question 22.
- Compared to residents in census tracts that are not too concentrated with LIHTC housing, **a higher percentage of residents in census tracts with relatively high concentrations of LIHTC housing preferred to move to a different neighborhood** when first asked where they would locate their dream home.

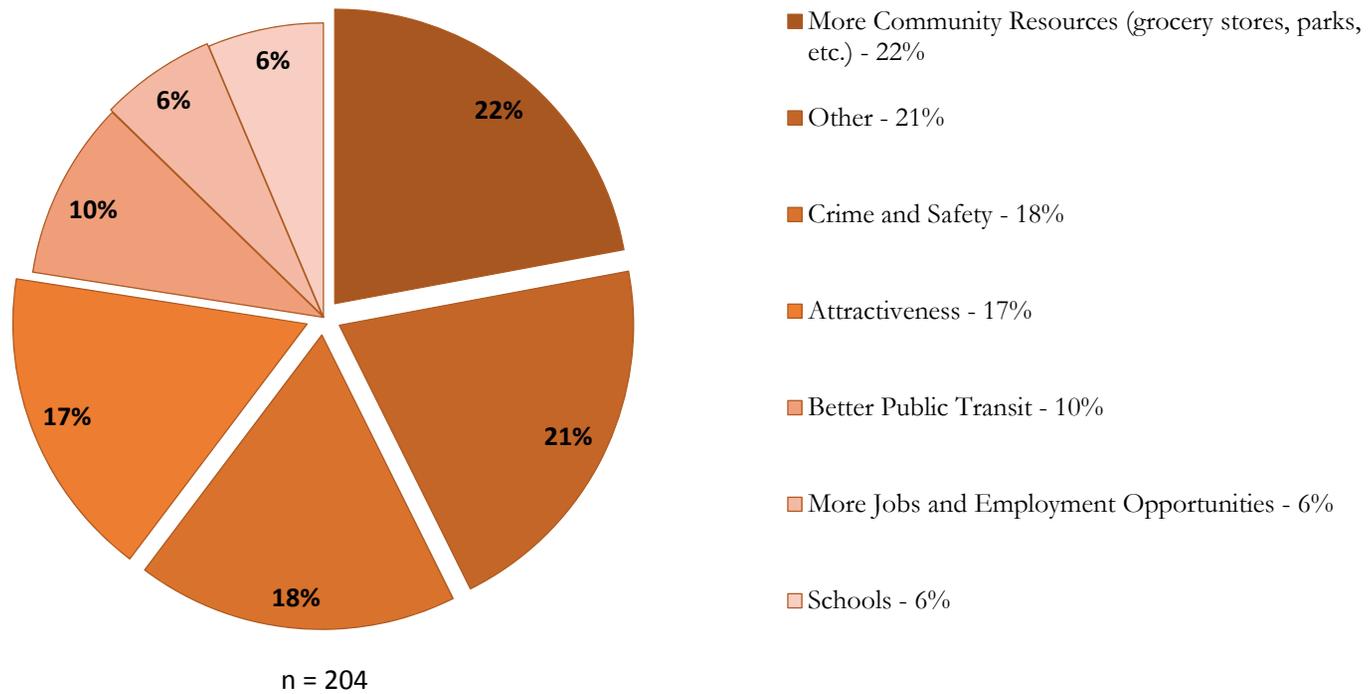
## Survey Results – Best Neighborhood vs. Cheaper Rent – All Respondents

### Do Residents Prefer to Move or Stay, All Respondents

Type of Respondent	Where would you locate your dream home (Question 12)?	Which do you prefer: 1) Cheaper rent in your current neighborhood; 2) Best neighborhood but higher rent (Question 22)?	% responding this way
All Respondents	Same Neighborhood	Cheaper Rent	50%
All Respondents	Same Neighborhood	Best Neighborhood	7%
All Respondents	Different Neighborhood	Cheaper Rent	21%
All Respondents	Different Neighborhood	Best Neighborhood	22%

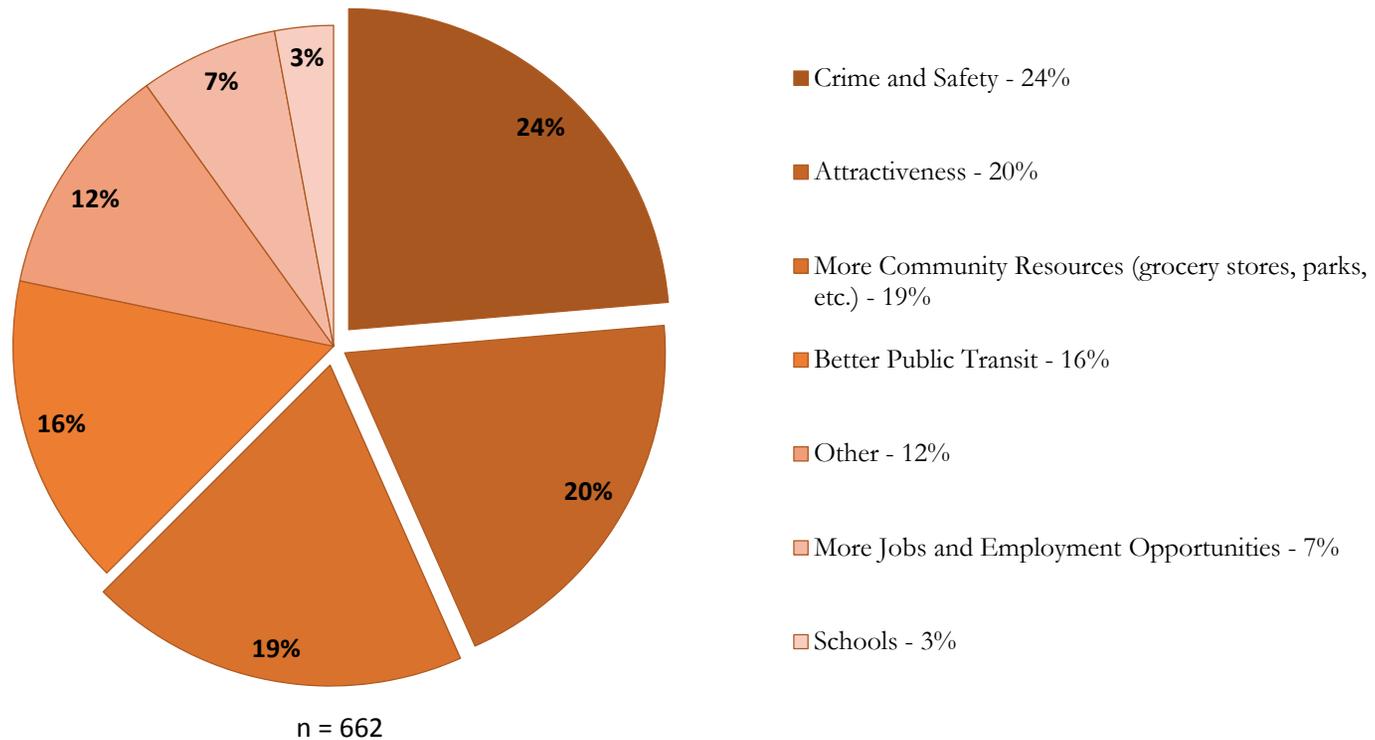
- Respondents were asked, “If you could have your dream home, would you keep your home in your current neighborhood or would you move your home to another part of town?” This is Question 12.
- Respondents were then asked a series of questions that asked them to reflect on the qualities of good and bad neighborhoods.
- Respondents were then asked the first question again, but in a different way: “Imagine you can move to the best neighborhood in your town or city. Which would you prefer? 1) Stay where I am but pay cheaper rent; or 2) Pay a little more in rent to live in the best neighborhood.” This is Question 22.
- Without any regard to who is responding or the neighborhood characteristics of where they live, **57% of all respondents preferred to locate their dream home in their same neighborhood, and 43% preferred a different neighborhood.**
- For those who initially preferred a different neighborhood, **nearly half of them changed their minds when presented with the option of cheaper rent** by staying in their current neighborhood. **The other half maintained their preference to move to the “best neighborhood,”** even if it meant a little more rent each month.

### What Factors Make You Want to Move to a Better Neighborhood? (All Respondents)



- When respondents stated that they would **prefer to locate their home to another part of town** because of the benefits they see there, the survey asked them to **identify the features of that neighborhood that attract them**.
- **More community resources, low crime and more safety, and neighborhood attractiveness** are the characteristics of neighborhoods that resonate with respondents who wish to move.

### What Factors of Your Neighborhood Need Improvement? (All Respondents)



- When respondents stated that they would **prefer to locate their home to another part of town because of features they do not like about the current neighborhood**, the survey asked them to identify those features. Similarly, for those respondents who stated that they wish to keep their home in their current neighborhood, the survey asked them to identify their current neighborhood's characteristics that could improve.
- Similar to the benefits some respondents see in “better” neighborhoods, residents who reflect on their current neighborhoods are drawn to issues of **crime and safety, neighborhood attractiveness, and the presence (or lack thereof) of community resources.**

## Selected Quotes from Survey Takers

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“This housing community made it possible for me to sell an old home and move to a better environment that was more financially advantages.”

“The manager here is great. My closest neighbor is great. I'm grateful I got to keep my pup. This is a great community and I'm grateful I got to move here.”

“I am happy here, thankful for having a place I can afford.”

“We do not have money saved; therefore, [owning a home] is a long-term goal. It remains a goal nonetheless (rather than being content to stay in the apartments forever) because it would be nice to have a yard for our son to play in; a driveway for him to shoot hoops in ...”

“More affordable and dignified housing, such as this one! Had to wait a long time through Section 8. But, happy that I'm finally here.”

“I recently renewed my lease for another year. While doing so, I was told that my income level was within \$200 of being "too low" for qualification to live in the unit. While I have tried several times to get assistance, I am being told it's not available at this time. I'm concerned that should the qualifying income levels be changed before I have to renew my lease again (should I choose to do so), I may not be eligible to continue to reside in this unit. It concerns me that I will be forced to try and find somewhere else to reside and I know it will more than likely be more expensive. In my opinion, there would be no minimum qualifying amount for a low-income apartment.”

“I have seen apartment complexes built much like a high rise building with the ground-level being shops restaurants movie theaters and such and then of course elevators to go from the second floor however have it goes. I believe that something like that for people with disabilities would be excellent housing especially for those of us who cannot drive.”

“My work is only 15 mins away however, due to lack of before/afterschool programs in the area, some of my children attend school in another district and town.”

“Apartment I live in is not compliant with ADA. This is a major factor when building 55+ apartments. They attract much older people who use wheelchairs and walkers.”

“I am thankful TDHCA is involved in such a worthwhile enterprise. / Qualification and re-certification process could be more transparent so residents could do a better job of financial planning. Perhaps an ombudsman hot line would be helpful to everyone with these issues.”

“There are different cultures living here. It would help if there were classes or get together in order to learn customs, foods, etc. I think this would help towards living together in harmony.”

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**QUALIFIED ALLOCATION PLAN AND RULES COMMITTEE**

**MULTIFAMILY FINANCE DIVISION**

**APRIL 25, 2018**

Presentation and Discussion of the 2019 QAP Project Plan Report



# **2019 Qualified Allocation Plan ("QAP") and Uniform Multifamily Rules (the "Rules")**

## **Project Plan**

**April 17, 2018**

**IMPORTANT DISCLAIMER: THIS PROCESS IS INTENDED TO ENABLE STAKEHOLDERS AND STAFF TO PROPOSE AND DEVELOP IDEAS AND CONCERNS TO BE CONSIDERED IN THE DEVELOPMENT OF THE QAP AND UNIFORM MULTIFAMILY RULES FOR 2019. THE OFFICIAL PUBLICATION OF A BOARD APPROVED DRAFT FOR PUBLIC COMMENT WILL STILL OCCUR IN ACCORDANCE WITH THE STATUTORILY ESTABLISHED CALENDAR IN FALL 2018.**

## **INTRODUCTION**

The purpose of this project is to solicit and discuss ideas to be considered for inclusion in the 2019 QAP and the Rules. The ultimate deliverables for this project are a QAP and Rules that clearly articulate TDHCA housing policy as established by the Governing Board through threshold and scoring criteria and that also address all applicable state and federal requirements. TDHCA staff welcomes an open discussion with stakeholders in affordable housing across the state of Texas.

It is planned that the process will include regular monthly meetings on the day before Board meetings, outreach efforts so that stakeholders who are not able to attend meetings will have an opportunity for input, and focused meetings with stakeholders that have specific needs and insights. Staff may involve local and regional experts in affordable housing to present findings at meetings, and staff may conduct and contribute their own research on select issues.

Throughout this plan and in supporting documents, the terms “Rules” and “QAP” may be used interchangeably. Because the QAP (10 TAC Chapter 11) and the Rules (10 TAC Chapter 10) are currently so integrated, staff’s and stakeholders’ input will often reference these two Chapters in unison. However, it is likely that the QAP and aspects of the Rules will be reconfigured as a part of this process.

## **PROJECT GOALS AND PURPOSE**

The Multifamily Finance Division (“Division”) staff will lead the project, including scheduling meetings, accessing necessary resources, facilitating conversations, and compiling results. The Division will provide periodic reporting to the Board so they are regularly updated on the progress of the monthly meetings and have an opportunity for input throughout the process. Staff from other TDHCA divisions may be asked to participate as needed.

Stakeholders, including the development community, advocates for various interest groups served by affordable housing, residents of TDHCA properties, and various subject matter experts, will be invited to participate in meetings, surveys, or other forms of public comment and discussion so that a clear assessment of varying needs and priorities may be compiled. That assessment, along with applicable statutory and regulatory requirements, will be used to draft amendments and changes to develop the proposed 2019 QAP. Because many stakeholders cannot travel to Austin for these monthly QAP meetings, the Division staff will make a strong effort to solicit feedback through more flexible means. Possible media include online polls and focus groups. TDHCA staff also may hold stakeholder meetings in other locations.

It is anticipated that the process will continue through July 2018, and that a staff draft (one that has not yet had Board input) 2019 QAP will be available in late summer/early fall 2018. Specific sections of the QAP may be drafted and made available for informal comment throughout the process, in order to provide for the most effective possible feedback on those items.

## **PROJECT SCOPE**

The scope of the project will include the planning and development of specific topics to be considered for amendment in the 2019 QAP and Rules, and potentially years later. While it is anticipated that the process will be completed prior to publication of the staff draft and presentation of the QAP to the Board in September 2018, this is an ever-evolving process and there may be items that will be continued into subsequent years. The chief focus of the project is the 2019 QAP, but other parts of the Rules may be included in the project as needed.

The project will, in certain matters, rely heavily on data gathered from external sources. Sources may include (but will not be limited to) Census and American Community Survey data, reputable research centers, and best practices from other organizations or states. Internal data may include TDHCA's Compliance Monitoring and Tracking System ("CMTS") and general knowledge gathered from previous application rounds. Results from the Department's recently completed resident survey may also be included.

During this process, Division staff will be evaluating related topics to the QAP. This research and staff's experiences with and/or knowledge of evaluation, scoring criteria, and tenant needs will be incorporated into the project.

Broad questions that may guide our discussion throughout 2018 include the following:

1. How should the QAP treat applicable Fair Housing Requirements?
2. How can the scoring structure best address widely varying needs across the State (as well as within rural and urban subregions)?
3. How to optimize the providing of services and benefits to tenants? And how to maximize the value of TDHCA's annual LIHTC allocation while also providing meaningful tenant services?
4. Which scoring items can move from an "all-or-nothing" structure to a weighted structure that offers multiple scoring options, so as to encourage greater competition among Applicants? Once identified, how might this be accomplished?
5. Which policy changes are conducive to implementing a two-year QAP?
6. Some proposed changes to the 2018 QAP offered in public comment once it was posted as a proposed rulemaking were too significant to implement as a result of public comment. Their common themes included ideas relating to:
  - a. Costs and HTC Efficiency
  - b. Tie-Breaker Factors
  - c. Opportunity Index menu items and distances to amenities
  - d. Population limitations for certain scoring items

It is staff's desire to place at the front end of this project those ideas that will require the most time to develop adequately so that they can, if possible and, after assessment, appropriate, be considered for inclusion in the 2019 QAP and/or Rules.

Based on previous conversations, staff's research, and policy directions from the Governing Board, staff proposes the following topics as the initial points of departure as the Division and stakeholders begin composing the 2019 QAP and Rules:

1. Recognizing, but also containing, rising costs and encouraging HTC allocation efficiency
2. The inclusion of employment data in competitive scoring items
3. Weighting scoring items to encourage more competition among Applicants and more fine-tuned public policy that responds to quantifiable, real estate metrics.
  - a. Weighting opportunity index menu items
  - b. Weighting underserved area scoring criteria
  - c. Etc.
4. Better categorizing resident services, and accurately reflecting the value of items with weighted scores
5. Better categorizing common and unit amenities, and accurately reflecting the value of items with weighted scores
6. Monitoring the Readiness-to-Proceed item
7. Any other topics identified during the course of this project.

## SCHEDULE BASELINE

The initial schedule proposes to meet in Austin the day before the TDHCA Governing Board meeting. Specific topics to be discussed at each meeting will be mapped out prior to the January 25 meeting, based on input from stakeholders and staff priorities. Additional meetings may be scheduled in order to accommodate specific topics, or in locations other than Austin.

2017 QAP Planning Process - Tentative Schedule		
Title	Date	Description
1 <sup>st</sup> 2019 QAP Meeting	12/14/17	Location: John H. Reagan Building 140: 1:30 to 4:30 pm Subject: Planning the 2019 QAP monthly meetings; identifying topics of interest
TDHCA Board Meeting	12/14/17	TDHCA Governing Board meeting
2 <sup>nd</sup> 2019 QAP Meeting <b>**CANCELLED due to inclement weather – topics posted in TDHCA Online Forum**</b>	01/17/18	Location: Stephen F. Austin Building, Room 170 Time: 2:00 to 5:00 pm Subject: Opportunity Index & Employment Area Proximity
TDHCA Board Meeting	01/18/18	Presentation to the TDHCA Governing Board regarding progress on planning and discussion.
3 <sup>rd</sup> 2019 QAP Meeting <b>**CANCELLED**</b>	02/21/18	Location: Stephen F. Austin Building, Room 170 Time: 2:00 to 5:00 pm Subject: <del>REA – Costs and Efficiency; Direct Loan</del>
TDHCA Board Meeting	02/22/18	Presentation to the TDHCA Governing Board regarding progress on planning and discussion.

4 <sup>th</sup> 2019 QAP Meeting	03/21/18	Location: John H. Reagan Building 140 Time: 2:00 to 5:00 pm Subject: REA and Costs; Direct Loan
TDHCA Board Meeting	03/22/18	Presentation to the TDHCA Governing Board regarding progress on planning and discussion.
TDHCA QAP & Rules Board Subcommittee <b>***DELAYED***</b>	<del>3/22/2018</del>	<del>Location: John H. Reagan Building 140 Time: 1:30 to 4:00 pm Subject: Resident Survey Report; 2019 QAP &amp; Rules Plan</del>
5 <sup>th</sup> 2019 QAP Meeting	04/25/18	Location: Stephen F. Austin Building, Room 170 Time: 2:00 to 3:30 pm Subject: Common and Unit Amenities; Building Standards; Resident Services; Integrated Housing Rule
TDHCA QAP & Rules Board Subcommittee	04/25/18	Location: Texas State Capitol, Capitol Extension E1.014 Time: Begins at 4:00 pm Subject: Resident Survey Report; 2019 QAP & Rules Plan; Unit Distribution policy; ROFR policy
TDHCA Board Meeting	04/26/18	Presentation to the TDHCA Governing Board regarding progress on planning and discussion.
6 <sup>th</sup> 2019 QAP Meeting	05/23/18	Location: Stephen F. Austin Building, Room 170 Time: 2:00 to 5:00 pm Subject: Tie-Breakers; Bond Rule; other topics TBD
TDHCA Board Meeting	05/24/18	Presentation to the TDHCA Governing Board regarding progress on planning and discussion.
<del>7<sup>th</sup> 2019 QAP Meeting <b>**CANCELLED**</b></del>	<del>06/27/18</del>	<del>Location: Stephen F. Austin Building, Room 170 Time: 2:00 to 5:00 pm Subject: TBD</del>
TDHCA Board Meeting	06/28/18	Presentation to the TDHCA Governing Board regarding progress on planning and discussion.
<del>8<sup>th</sup> 2019 QAP Meeting <b>**CANCELLED**</b></del>	<del>07/25/18</del>	<del>Location: Stephen F. Austin Building, Room 170 Time: 2:00 to 5:00 pm Subject: TBD *Subject to Cancellation</del>
TDHCA Board Meeting	07/26/18	Presentation to the TDHCA Governing Board regarding progress on planning and discussion.
Staff Draft of QAP	08/2018	In August, staff will post a draft of the QAP for input from stakeholders. That input will be considered as staff prepares the QAP for presentation to the Board in September.
TDHCA QAP & Rules Board Subcommittee	09/05/18	Location: Stephen F. Austin Building, Room 170 (subject to change) Time: 2:00 to 5:00 pm (subject to change) Subject: Presentation and discussion of staff draft of the 2019 QAP
TDHCA Board Meeting	09/06/18	Presentation to the TDHCA Governing Board regarding progress on planning and discussion.
Public Comment Period on Chapters 10 and 11	TBD	Following the September TDHCA Board Meeting, the public comment period on Chapters 10 and 11 will commence at a to be determined date and time and will

		conclude at a to be determined date and time.
TDHCA Board Meeting	10/11/18	Presentation to the TDHCA Governing Board regarding progress on planning and discussion.
TDHCA Board Meeting	11/08/18	Presentation to the TDHCA Governing Board regarding progress on planning and discussion. (Time to send to Governor)
TDHCA Board Meeting	12/06/18	Presentation to the TDHCA Governing Board regarding progress on planning and discussion.

As much as practically possible, amendments contemplated for proposal to the Board will be presented to stakeholders after they have been thoroughly reviewed by TDHCA staff, including Legal Services, for compliance with statutory and regulatory requirements and compliance with TDHCA Board housing policy. It is expressly pointed out that Board policy may evolve and change in this process. As the meetings progress it is likely that the Board will be asked to dig into different policy objectives and weigh in on the objectives it directs staff to pursue. Possible amendments that impact scoring will be added to a draft scoring matrix, so that impacts can be fully understood in context as they are developed and considered.

In the case of proposed changes that will significantly impact the development process, TDHCA staff may suggest a phased approach to implementation so that stakeholders are able to effectively plan for implementation.

This Project Plan will change over the course of 2018, as needs or priorities are identified and addressed. Schedules regarding individual topics may expand or contract as necessary to accommodate stakeholder input and staff priorities.

## COMMUNICATIONS MANAGEMENT PLAN

The Communications Management Plan sets the communications framework for this project. It will serve as a guide for communications throughout the life of the project and will be updated as communication requirements change. This plan identifies and defines the roles of stakeholders, staff and the Board as they pertain to communications. It also includes a communications matrix which maps the communication requirements of this project.

Communication Type	Description	Format	Participants/ Distribution	Deliverable
Periodic Status Report	Summary of project status	Website	Multifamily Finance	Status Report
Monthly Project Meeting	Meeting to discuss scheduled topic	In Person	All	Meeting Summary
Special Project Meeting	Meeting to discuss specific topics	In Person	All	Meeting Summary
Status Report to Governing Board	Report on Project progress, request	In Person	TDHCA staff and Board	Board report, Action Request as needed

	Board input			
Website	Posting of Meetings and Materials	Website	Multifamily Finance	Resource for Project participants
Online Forum	Method for gathering stakeholder input	Website	All	Input regarding specific topics to be integrated into rule making process

While informal communication is a part of every project and is necessary for successful project completion, any issues, concerns, or updates that arise from informal discussion between TDHCA staff and stakeholders will be communicated to the larger group so that the appropriate action may be taken.

## **COST MANAGEMENT PLAN AND OUTREACH**

TDHCA has minimal resources available to rent meeting space, provide hard copy materials, or travel to areas outside Austin. Wherever possible, meeting spaces that are available without charge will be utilized. Meeting participants will be requested to provide their own copies of materials.

As described in the Communications section, the project will provide opportunities for stakeholders that are not able to attend meetings to provide input. Division staff plan to conduct meetings in geographic areas outside of Austin as travel schedules and budgets allow.

## **SCHEDULE MANAGEMENT PLAN**

Meeting schedules and topics will be regularly posted to the TDHCA website, via the listerv, and through social media. Once the initial schedule has been established, necessary resources will be developed, reviewed and approved prior to posting. Schedules will be updated as the project evolves, and updates will be posted to the TDHCA website.

## **STAFFING PLAN**

Key TDHCA staff members working on the 2019 QAP and Rules Planning Process include:

### **Asset Management**

Director of Asset Management

### **Compliance**

Chief of Compliance

Director of Multifamily Compliance

### **Executive Team**

Executive Director

Chief of External Affairs

### **Fair Housing & Data Management**

Fair Housing Project Manager

Program Data Specialist

### **Legal**

General Counsel

Legal Counsel assigned to Multifamily Programs

Federal Compliance Counsel

### **Multifamily Finance Division**

Multifamily Finance Director

Multifamily Finance Manager

Housing Tax Credit Administrator

Multifamily Direct Loan Program Administrator

Multifamily Policy Research Specialist

### **Real Estate Analysis**

Director of Real Estate Analysis and key REA staff

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## QUALIFIED ALLOCATION PLAN AND RULES COMMITTEE

### REPORT ITEM

APRIL 25, 2018

Presentation, discussion, and possible action to make recommendations to the Governing Board regarding requesting further information or reports from staff and/or providing direction and priorities for future proposed rule changes as to distribution of accessible units under 10 TAC §1.207

### BACKGROUND

Questions have been raised regarding the interpretation and application of current 10 TAC §1.207(b), and this report is to begin discussion and to possibly elicit recommendations from the Committee regarding the proper, plain meaning interpretation of the Board's current rule, as well as any prospective changes to the wording of a proposed rule to be brought before the Board at a later date.

#### State Statutory Predicate – Texas Government Code

Sec. 2306.6722. DEVELOPMENT ACCESSIBILITY. Any development supported with a housing tax credit allocation shall comply with the accessibility standards that are required under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), and specified under 24 C.F.R. Part 8, Subpart C.

Sec. 2306.6730. ACCESSIBILITY REQUIRED. A project to which a low income housing tax credit is allocated under this subchapter shall comply with the accessibility standards that are required under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), as amended, and specified under 24 C.F.R. Part 8, Subpart C.

#### Referenced Federal Regulations

29 U.S.C. §794 provides the authority for the creation of federal regulations, which HUD exercised when it developed the state statute-referenced 24 C.F.R. Part 8, Subpart C:

- § 8.20 General requirement concerning program accessibility.
- § 8.21 Non-housing facilities.
- § 8.22 New construction - housing facilities.
- § 8.23 Alterations of existing housing facilities.
- § 8.24 Existing housing programs.
- § 8.25 Public housing and multi-family Indian housing.
- § 8.26 Distribution of accessible dwelling units.
- § 8.27 Occupancy of accessible dwelling units.
- § 8.28 Housing certificate and housing voucher programs.
- § 8.29 Homeownership programs (sections 235(i) and 235(j), Turnkey III and Indian housing mutual self-help programs).
- § 8.30 Rental rehabilitation program.
- § 8.31 Historic properties.

- § 8.32 Accessibility standards.
- § 8.33 Housing adjustments.

There is an open statutory interpretive question regarding whether the Tex. Gov't Code §§2306.6722 & .6730 requirement to “comply with the accessibility standards that are required . . . and specified under 24 C.F.R. Part 8, Subpart C” (emphasis added) means that compliance is required with the “Accessibility standards” (§8.32)<sup>1</sup> or the entirety of subpart C (all the sections listed, above). This is relevant to the separate legal question as to whether Section 504 of the Rehabilitation Act is applicable to developments not receiving funding through HUD or other federally funded programs.

However, neither this Committee nor the Board need reach a conclusion on these legal issues if it is accepted that the plain wording of the Texas statute cites to compliance with federal law and regulation, 24 C.F.R. §8.26 does not contain an absolute mathematical requirement as to unit type, and that the general premise of the federal regulation and state rule is consistent with Fair Housing and the ADA, as applicable:

**§ 8.26 Distribution of accessible dwelling units.**

Accessible dwelling units required by § 8.22, 8.23, 8.24 or 8.25 shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout projects and sites and shall be available in a sufficient range of sizes and amenities so that a qualified individual with handicaps' choice of living arrangements is, as a whole, comparable to that of other persons eligible for housing assistance under the same program. This provision shall not be construed to require provision of an elevator in any multifamily housing project solely for the purpose of permitting location of accessible units above or below the accessible grade level.

Below is the text of the current TDHCA rule (10 TAC §1.207(b) and (c)) regarding accessible units and their distribution within multifamily developments.

(b) Recipients must give priority to methods that offer housing in the most integrated setting possible (i.e., a setting that enables qualified persons with disabilities and persons without Disabilities to interact to the fullest extent possible). To the maximum extent feasible and subject to reasonable health and safety requirements, accessible units must be:

(1) Distributed throughout the Development and site; and

(2) Made available in a sufficient range of sizes and amenities so that the choice of living arrangements of qualified persons with Disabilities is, as a whole, comparable to that of other persons eligible for housing assistance under the same program.

*(Source: 24 CFR §8.26)* EXAMPLE 207(1): A Development has 80 units with a total of 4 mobility accessible units, meeting the 5% requirement (80 x 5% = 4, always rounded up if not a whole number). The bedroom mix includes 15 one-bedroom/one bath units (15 x 5% = .75 accessible units), 25 two-bedroom/one bath units (5% = 1.25 accessible units), 25 two-bedroom/two bath units (5% = 1.25 accessible units) and 15 four-bedroom units/two bath (5% = .75 accessible unit). The mobility accessible unit requirement is met with 4 accessible units, and the distribution requirement is met with each of the bedroom/bath types having one accessible unit. EXAMPLE 207(2): A Development has 60 units with a total of 3 mobility accessible units, meeting the 5% requirement. The bedroom mix includes 10 one-bedroom/one bath units (5%=.5 units), 20 two-bedroom/two bath units (5%=1 accessible unit), 20 three-bedroom/two bath units (5%=1 accessible unit), and 10 four-bedroom/two bath units (5%=.5 accessible unit). Because this development is not required to provide more than 3 mobility units, only 3 of the 4 bedroom types

<sup>1</sup> Presumably, inclusive of internally referenced sections.

are required to provide 1 accessible unit. In this case, the Development provides an accessible two-bedroom and three-bedroom unit, and has the option of providing either an accessible one-bedroom or an accessible four-bedroom unit to meet the 3 unit minimum requirement. EXAMPLE 207(3): A Development with several buildings must not have all of its accessible units in one building, but, to the maximum extent feasible, the accessible units must be distributed throughout the Development.

(c) Multifamily Housing Developments covered by this subchapter and built after July 11, 1988 must have a minimum of 5% of the units that are fully accessible and an additional 2% that are accessible to persons with visual and hearing impairments. This obligation is an absolute requirement. For buildings that fall within this category, a Development Owner may not justify a failure to have met these requirements because of an undue financial and administrative burden. This requirement also applies to units that are newly constructed to replace demolished or uninhabitable units.

Interpretive questions are presented by this rule, especially as to the highlighted portion.

- On its face, the highlighted language contains a “source” for the language used by 10 TAC §1.207(b) and a set of non-exclusive examples. Following the adoption of the rule, in order to have a defined standard for compliance with the rule, staff developed a method for calculating unit distribution with mathematical certainty: requiring 5% of the units, per unit type, be mobility-impaired accessible. Clearly, satisfying this standard of 5% per unit type ensures compliance with the rule. However, since the rule does not contain an absolute mathematical formula, but, instead, has “examples,” does a plain reading of the rule indicate a requirement of an absolute 5% per unit type requirement as opposed to “a sufficient range of sizes” that is “on the whole, comparable,” which may allow more flexibility in attaining the “minimum of 5% of the units that are fully accessible?”
- “EXAMPLE 207(3)” does not appear to be an example, but a substantive provision. How should this provision be interpreted?

Interpretive Scenarios:

Scenario 1:

The following situation has been presented to the Department: An applicant for competitive tax credits described, in their Application, the number and type of accessible units they would deliver. Their application received an award. Their promised accessible units are as follows:

	<u>As applied for and built by Applicant</u>	<u>As required by current staff practice</u>
1BR:	6	4
2BR:	4	6
3BR:	4	3
Total	<u>14</u>	<u>13</u>

The Application, and the development as-built, satisfies the 5% mobility accessible standard. Though the accessible units are distributed around the development and unit types, there are fewer than 5% of two bedroom units in the development that were made accessible, which is how the “examples” in the rule have been interpreted. Accordingly, a compliance issue has been raised with the development. What would the Committee consider to be an appropriate interpretation and application of the plain meaning of the rule?

#### Scenario 2:

In conversation with the Director of HUD’s Fort Worth office of Fair Housing and Equal Opportunity, they confirmed that in instances where 24 CFR §8.26 does apply, HUD views what is an appropriate distribution of accessible units by a Housing Authority in a variety of ways, including on a development basis, on a portfolio basis, and on a regional basis. Again, it is noted that fundamental precepts of fair housing and the ADA, as applicable, beyond specific requirements under 24 CFR Part 8, would preclude concentrating accessible units and would favor distribution.

Given that the plain wording of the Texas statute cites to compliance with federal law and regulation, the interpretive question is whether the plain wording of the relevant statute and rule would indicate TDHCA regulation or standards for unit distribution should exceed those of federal law and regulation.

In this scenario, the developments in the portfolio of a Housing Authority are subject to 24 CFR Part 8 because they are HUD assisted. Therefore, the further interpretive question is whether if, by satisfying the federal unit distribution concerns of the cognizant federal agency, HUD, the plain wording of the relevant state statute and rule indicate satisfaction of TDHCA’s statute and rule regarding unit distribution.

#### Prospective Rule-Change Questions Presented:

Should a revised version of 10 TAC §1.207(b) and (c) be proposed for the next cycle that removes the above-highlighted language, so that at minimum the 5% and 2% accessible units are simply described as being made available in a sufficient range of sizes and amenities so that the choice of living arrangements of qualified persons with disabilities is, as a whole, comparable to that of other persons eligible for housing assistance under the same program? Alternatively, should a mathematical formula for what constitutes such a “sufficient range of sizes and amenities . . .” be stated in the proposed rule to facilitate a common understanding of compliance with the rule? If so, will there be any flexibility in how the rule is satisfied, recognizing that even if 24 CFR §8.26 were considered applicable in all developments, HUD views many different ways of addressing unit distribution as acceptable under different facts and circumstances? To the extent that a development was provided HUD funds or other federal funds, presumably 24 CFR §8.26 (or the particular federal funding entity’s version of 504 rules, e.g. U.S.D.A.) would apply regardless of our rule.

#### Important Note:

Interpretation of a TDHCA rule must be made on the basis of the wording of the current rule and relevant statutes. New policies or requirements of general application are not established through interpretation, but through rule-making. Any suggestions or direction from the Committee or Board as it relates to a proposed new or amended rule is not a rule, and can only be considered a part of the rule after the completion of the rule-making process.

24 CFR 8.32 - Accessibility standards.

**§ 8.32 Accessibility standards.**

(a) Effective as of July 11, 1988, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) shall be deemed to comply with the requirements of §§ 8.21, 8.22, 8.23, and 8.25 with respect to those buildings. Departures from particular technical and scoping requirements of the UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided. The alteration of housing facilities shall also be in conformance with additional scoping requirements contained in this part. Persons interested in obtaining a copy of the UFAS are directed to § 40.7 of this title.

(b) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of individuals with physical handicaps.

(c) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

(d) For purposes of this section, section 4.1.4(11) of UFAS may not be used to waive or lower the minimum of five percent accessible units required by § 8.22(b) or to apply the minimum only to projects of 15 or more dwelling units.

(e) Except as otherwise provided in this paragraph, the provisions of §§ 8.21 (a) and (b), 8.22 (a) and (b), 8.23, 8.25(a) (1) and (2), and 8.29 shall apply to facilities that are designed, constructed or altered after July 11, 1988. If the design of a facility was commenced before July 11, 1988, the provisions shall be followed to the maximum extent practicable, as determined by the Department. For purposes of this paragraph, the date a facility is constructed or altered shall be deemed to be the date bids for the construction or alteration of the facility are solicited. For purposes of the Urban Development Action Grant (UDAG) program, the provisions shall apply to the construction or alteration of facilities that are funded under applications submitted after July 11, 1988. If the UDAG application was submitted before July 11, 1988, the provisions shall apply, to the maximum extent practicable, as determined by the Department.

[ 53 FR 20233, June 2, 1988, as amended at 61 FR 5203, Feb. 9, 1996]

**§ 8.22 New construction - housing facilities.**

**(a)** New multifamily housing projects (including public housing and Indian housing projects as required by § 8.25) shall be designed and constructed to be readily accessible to and usable by individuals with handicaps.

**(b)** Subject to paragraph (c) of this section, a minimum of five percent of the total dwelling units or at least one unit in a multifamily housing project, whichever is greater, shall be made accessible for persons with mobility impairments. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in § 8.32 is accessible for purposes of this section. An additional two percent of the units (but not less than one unit) in such a project shall be accessible for persons with hearing or vision impairments.

**(c)** HUD may prescribe a higher percentage or number than that prescribed in paragraph (b) of this section for any area upon request therefor by any affected recipient or by any State or local government or agency thereof based upon demonstration to the reasonable satisfaction of HUD of a need for a higher percentage or number, based on census data or other available current data (including a currently effective Housing Assistance Plan or Comprehensive Homeless Assistance Plan), or in response to evidence of a need for a higher percentage or number received in any other manner. In reviewing such request or otherwise assessing the existence of such needs, HUD shall take into account the expected needs of eligible persons with and without handicaps.

[ 53 FR 20233, June 2, 1988, as amended at 56 FR 920, Jan. 9, 1991]

**§ 8.23 Alterations of existing housing facilities.**

**(a)** *Substantial alteration.* If alterations are undertaken to a project (including a public housing project as required by § 8.25(a)(2)) that has 15 or more units and the cost of the alterations is 75 percent or more of the replacement cost of the completed facility, then the provisions of § 8.22 shall apply.

**(b)** *Other alterations.*

**(1)** Subject to paragraph (b)(2) of this section, alterations to dwelling units in a multifamily housing project (including public housing) shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with handicaps. If alterations of single elements or spaces of a dwelling unit, when considered together, amount to an alteration of a dwelling unit, the entire dwelling unit shall be made accessible. Once five percent of the dwelling units in a project are readily accessible to and usable by individuals with mobility impairments, then no additional elements of dwelling units, or entire dwelling units, are required to be accessible under this paragraph. Alterations to common areas or parts of facilities that affect accessibility of existing housing facilities shall, to the maximum extent feasible, be made to be accessible to and usable by individuals with handicaps. For purposes of this paragraph, the phrase *to the maximum extent feasible* shall not be interpreted as requiring that a recipient (including a PHA) make a dwelling unit, common area, facility or element thereof accessible if doing so would impose undue financial and administrative burdens on the operation of the multifamily housing project.

**(2)** HUD may prescribe a higher percentage or number than that prescribed in paragraph (b)(1) of this section for any area upon request therefor by any affected recipient or by any State or local government or agency thereof based upon demonstration to the reasonable satisfaction of HUD of a need for a higher percentage or number, based on census data or other available current data (including a currently effective Housing Assistance Plan or Comprehensive Homeless Assistance Plan), or in response to evidence of a need for a higher percentage or number received in any other manner. In reviewing such request or otherwise assessing the existence of such needs, HUD shall take into account the expected needs of eligible persons with and without handicaps.

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