

BOARD WORKSHOP OF FEBRUARY 26, 2008

C. Kent Conine, Chair



Leslie Bingham Escareño, Member

Tomas Cardenas, Member

Sonny Flores, Member

Juan Muñoz, Member

Gloria Ray, Member

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

**BOARD WORKSHOP
February 26, 2008**

ROLL CALL

	Present	Absent
Bingham Escareño, Leslie, Member	_____	_____
Cardenas, Tomas, Member	_____	_____
Conine, C. Kent, Chair	_____	_____
Muñoz, Juan, Member	_____	_____
Ray, Gloria, Member	_____	_____
Flores, Sonny, Member	_____	_____
Number Present	_____	
Number Absent		_____

_____, Presiding Officer

Texas Department of Housing and Community Affairs

Board Workshop

3880 W Northwest Hwy
(Embassy Suites Hotel)
Dallas, Texas

February 26, 2008
8:00 a.m.

Agenda

CALL TO ORDER, ROLL CALL

Kent Conine, Chair

CERTIFICATION OF QUORUM

PUBLIC COMMENT

The Governing Board of the Texas Department of Housing and Community Affairs (TDHCA) will solicit Public Comment at the beginning of the meeting.

No motions or votes on any agenda item will occur

The Governing Board of the Texas Department of Housing and Community Affairs will meet to discuss the following:

- Item 1: Presentation and Discussion of the rules and statutes governing the Low Income Housing Tax Credit Program (LIHTC) and Multi Family Bond Rules.
- Item 2: Presentation and Discussion of sample issues regarding tax credit, bond transactions and underwriting issues heard during applications, award, appeals and amendments.
- Item 3: Presentation and Discussion of sample issues regarding HOME and Housing Trust Fund (HTF) applications, awards, appeals and amendments.
- Item 4: Discussion of governance structure of the Board for future Board Meetings.
- Item 5: Presentation and Discussion of sample issues regarding compliance and enforcement actions.
- Item 6: Presentation and Discussion of issues related to Weatherization (WAP), Low Income Home Energy Assistance Program (LIHEAP) and Community Service Block Grant (CSBG) awards, appeals and amendments.

ITEM 1:

Presentation and Discussion of the rules and statutes governing the Low Income Housing Tax Credit Program (LIHTC) and Multi Family Bond Rules

Texas Department of Housing and Community Affairs

Multifamily Finance Division

Multifamily Staff

- 12 Staff Members
- 1 Director
- 2 Administrators (9% HTC & Bond/4% HTC)
- 7 Housing Specialists
- 1 Database Administrator
- 1 Executive Assistant

Programs Administered

➤ **Housing Tax Credit Program**

Based on IRS Code, the State acts as an agent for the IRS

➤ **Multifamily Bond Program**

The Department has a shared responsibility with the Texas Bond Review Board

Housing Tax Credit Program

How Program Works

- ❖ Provides private investors with a dollar-for-dollar reduction on federal income tax liability
- ❖ Equity provided by investors allows for-profit and non-profit developers to offer lower rents
- ❖ Authority to allocate provided by IRS

Housing Tax Credit Program

Competitive or “9%” Tax Credits

- **State receives annual per capita allocation**
- **~\$47 Million / \$470 Million Ten Year Allocation**
- **Provides 65 – 70 % equity to the development**

Housing Tax Credit Program

Non-Competitive or “4%” Tax Credits

- Allocated to most developments receiving Private Activity Bond financing from local or state bond issuers
- No annual limit
- Typically provides 30-35% equity to a Development

Housing Tax Credit Program

Non-Competitive or “4%” Tax Credits:

TDHCA awarded \$27 million in “4%” tax credits in SFY 2007, which will translate into \$270 million over the ten years they are received

Housing Tax Credit Program

Federal Set-Asides

- **10% Non-Profit**

State Set-Asides

- **20% Rural**
- **15% At-Risk**
- **5% USDA**
- **13 Regional Allocations (Rural/Urban)**

Housing Tax Credit Program

Items considered by the Board:

- **Qualified Allocation Plan (Rule)**
- **Amendments**
- **Challenges**
- **Appeals**
- **Approved Applications List (June)**
- **Awards**
- **Waiting List**

Housing Tax Credit Program

Application Submission Logs

Housing Tax Credit Program

Redistribution of Credits

- Rural Statewide Collapse
- Full Statewide Collapse (Rural/Urban)

Housing Tax Credit Program

Restrictions or Ineligibility

Required by Statute

- **Statutory Concentration Restrictions “one-mile”**
- **2 X per Capita**
- **Material Non-Compliance**

Required by Rule

- **REA Concentration Restrictions**
- **Census Tracts with >30% HTC Households**
- **Qualified Census Tracts with >40% HTC Households**

Housing Tax Credit Program

Activities Funded

- **New construction**
- **Rehabilitation / Reconstruction**
- **Acquisition and rehabilitation**
- **Adaptive Reuse**

Housing Tax Credit Program

Eligible Development Type

- ❖ **Workforce/General Use**
- ❖ **Elderly**
- ❖ **Intergenerational**
- ❖ **Supportive Housing**
- ❖ **Mixed Income / Mixed Use**
- ❖ **At-Risk/Preservation**

Housing Tax Credit Program

Population Served

- ❖ **Households earning up to 50% or 60% of area median income**
- ❖ **Applicants encouraged to target lower income households**
- ❖ **Amendments to lower income targeting**

Competitive Timeline

- Pre-Application Process
- Application
- Eligibility, Scoring & Threshold
- Underwriting
- Challenges
- Appeals
- Final Awards / Waiting List
- Forward Commitments

Competitive Timeline (continued)

- **Commitment Notice**
- **Carryover**
- **10% Test**
- **Placement in Service**
- **Cost Certification**
- **Compliance Monitoring**

Housing Tax Credit Program

Pre-Application

- ❖ **Opened - December 7, 2007**
- ❖ **DEADLINE – January 7, 2008**
- ❖ **Allows applicants to see the competition and make business decisions**
- ❖ **Received 197 Pre-Applications**
- ❖ **Requested \$142,939,682**

Housing Tax Credit Program

Application

- ❖ **DEADLINE – February 29, 2008**
- ❖ **Serious Applicants**
- ❖ **Last Year Received 212 Pre-Apps**
- ❖ **Last Year Received 110 Full Apps**
- ❖ **Last Year Awarded 55 Apps**

Housing Tax Credit Program

Appeals

- ❖ Eligibility
- ❖ Threshold
- ❖ Scoring (majority)
- ❖ Underwriting
- ❖ Negative affect of a Challenge

Housing Tax Credit Program

Challenges

- ❖ **Unrelated Entities**
- ❖ **Active Application**
- ❖ **Identity of Challenging Party**
- ❖ **DEADLINE – June 15, 2008**
- ❖ **Specific Process**
- ❖ **Introduction in May (if needed)**
- ❖ **Update each Board Meeting**

Housing Tax Credit Program

Forward Commitments

- ❖ Requests throughout cycle**
- ❖ Staff does not recommend**
- ❖ Negates the competitive process**

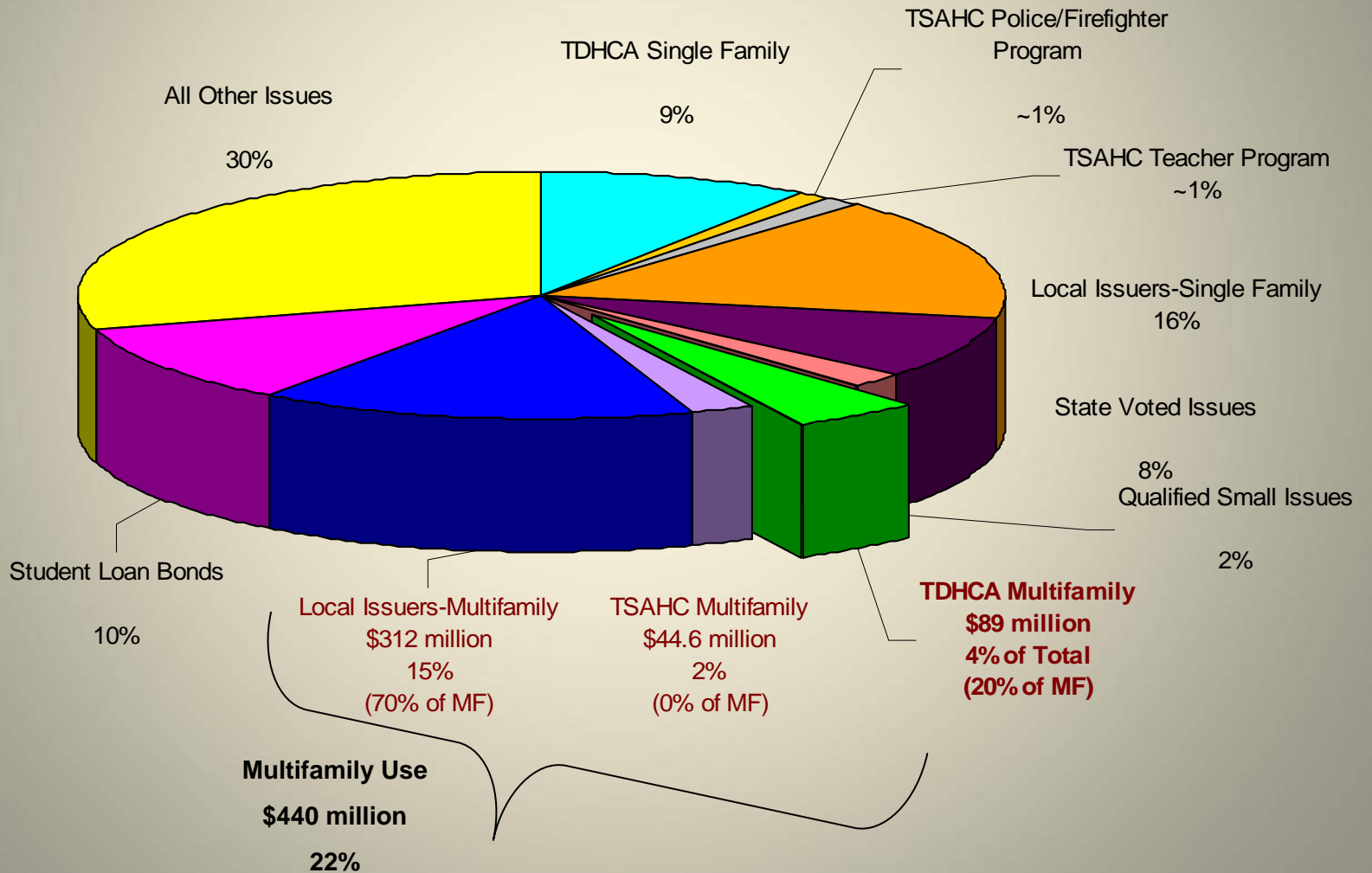
4% Housing Tax Credit Program

- **Generally awarded to rental developments that have received a reservation of tax-exempt private activity bond authority from the Texas Bond Review Board**
- **Must meet eligibility, threshold, underwriting, and compliance requirements**
- **Bonds may be issued by TDHCA, the Texas State Affordable Housing Corporation, or a local housing finance corporation.**

Multifamily Bond Program

Private Activity Bonds

- **PAB administered on state level by Texas Bond Review Board**
- **TDHCA is an “Exempt” issuer however the TBRB still has the authority to call any transaction in for approval**
- **State Issuer vs Local Issuer**



Multifamily Bond Program

- **\$1.9 billion in total PAB Authority for the State 2008**
- **\$446 million in PAB authority reserved for multifamily use by all issuers, including TDHCA**
- **Of this, \$89 million PAB authority reserved exclusively for TDHCA Multifamily use**

Multifamily Bond Program

- **Priority 1**
 - A – 50% Units at 50% AMGI / 50% at 60%
 - B – 15% Units at 30% AMGI / 85% at 60%
 - C – 100% at 60% in Census with Higher Median
- **Priority 2**
 - 80% Units at 60% AMGI
- **Priority 3**
 - Any Qualified Residential Rental Development

Bond Timeline

- Pre-Application
- Inducement (Board Action)
- Reservation (150 Days)
- Public Hearing
- Due Diligence & Underwriting
- Board Presentation (Board Action)
- Bond Closing

ITEM 2:

Presentation and Discussion of sample issues regarding tax credit, bond transactions and underwriting issues heard during applications, award, appeals and amendments

**Texas Department of Housing &
Community Affairs**

Real Estate Analysis Division

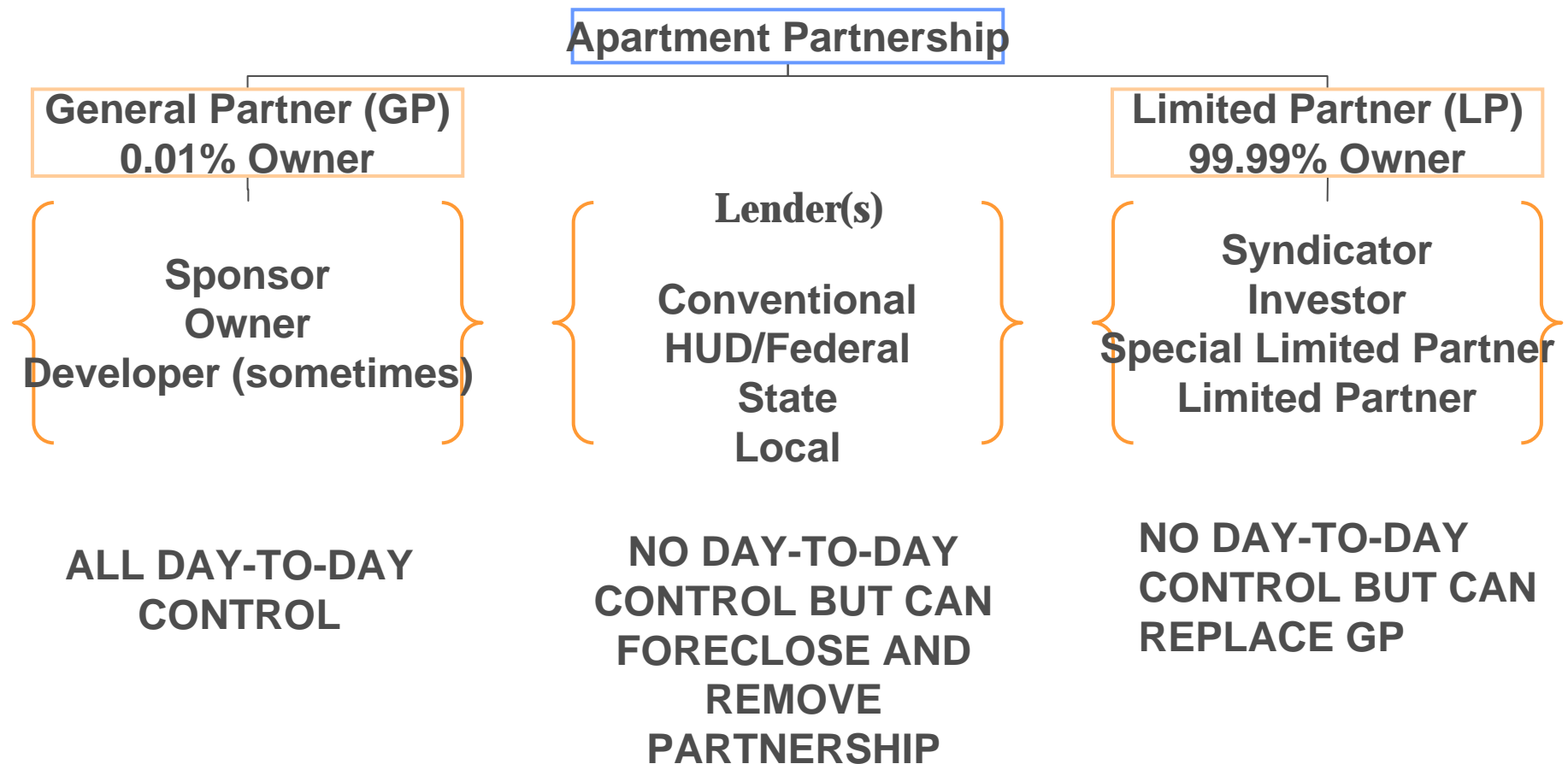
Why Underwrite?

- ❖ **Required by State and Federal law**
- ❖ **Enabling legislation is broad but not detailed**
- ❖ **Regulation fills in the details**
 - ❖ Texas Administrative Code Title 10 §1.32-1.36
 - ❖ Developed via industry workgroup
 - ❖ Transparency is a key
 - ❖ Typically revised annually

Board Priorities

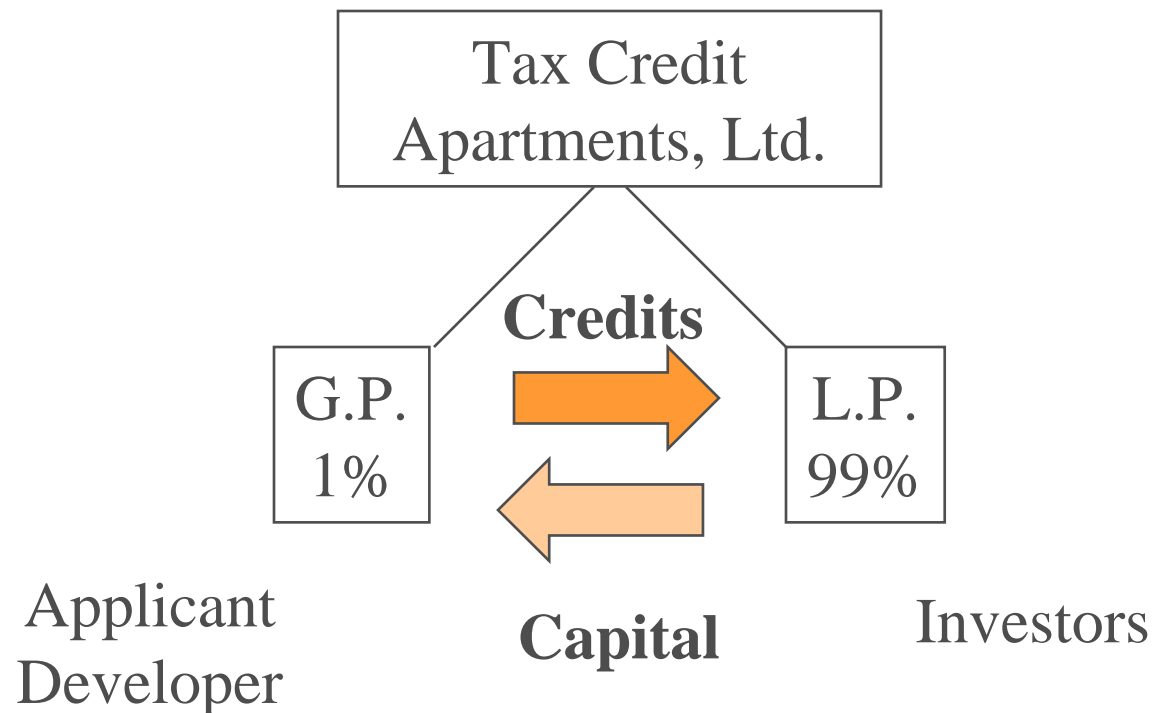
- ❖ **Provide independent evaluation of**
 - ❖ Risk
 - ❖ Financial feasibility
 - ❖ Long term affordability
- ❖ **Maximize effectiveness of limited State and Federal resources**
- ❖ **Limit adverse impact on existing housing**

Understanding Financing Tax Credits

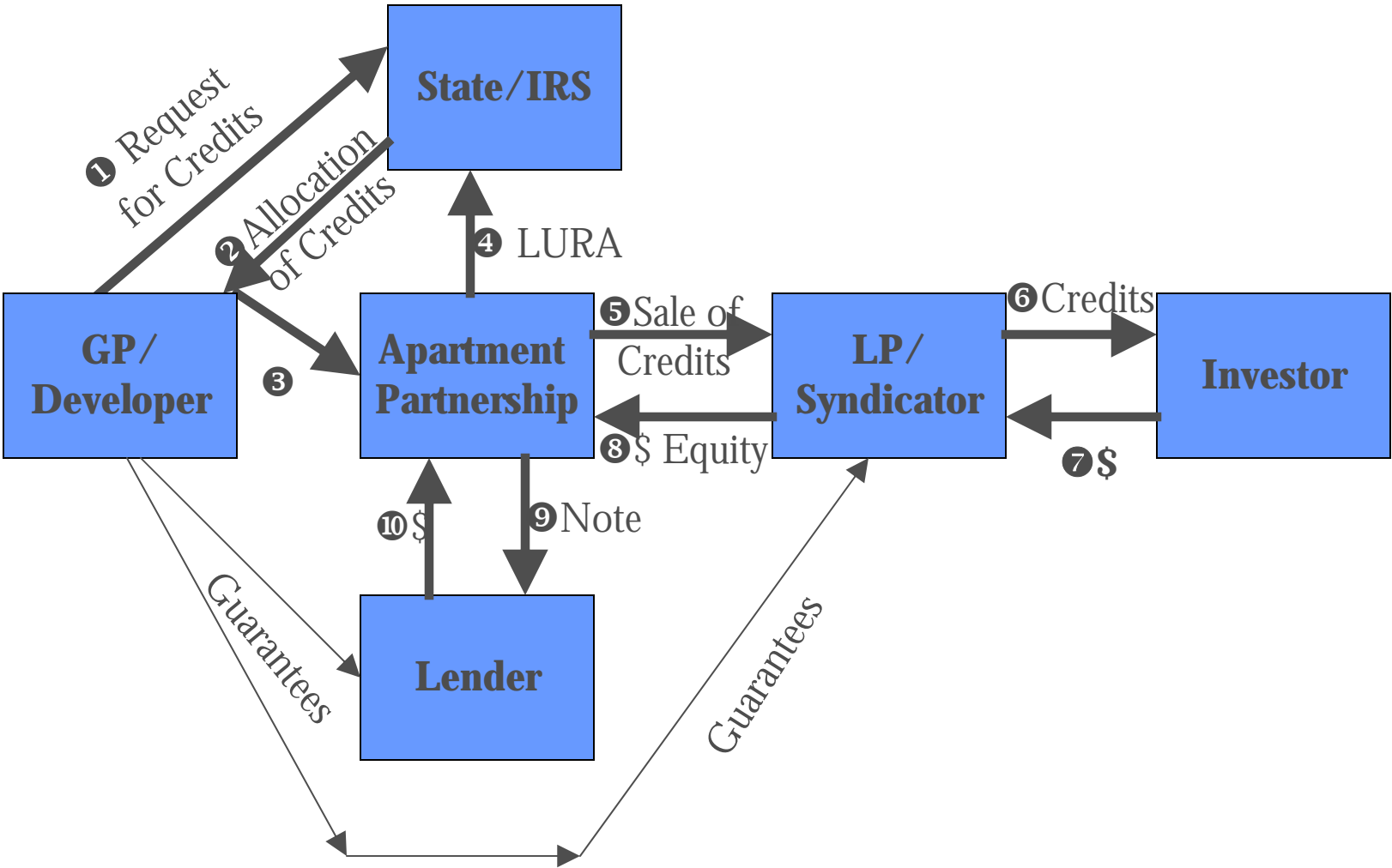


Ownership Structure

- The Limited Partnership owns 99% or more and receives 99% or more of the credits.



How the Sources of Funds Flow



Not More Funds Than Necessary

Eligible Costs

Funding based on validated eligible development costs

Equity Gap

Amount needed to fill the difference between the total cost and the total debt

Amount Requested

Amount listed on the application (subject to \$1.2M)

Key Questions of Feasibility

- ❖ **How much is it going to cost to build?**
- ❖ **How much net income will it generate?**
- ❖ **How does it impact the existing market?**

Development Costs

- ❖ **All costs to finish the development considered**
- ❖ **Estimated and documented by applicant**
- ❖ **Verified by Department staff**
 - ❖ Third party tools
 - ❖ First hand evaluation
 - ❖ Policy constraints

Policy Constraints On Cost

- ❖ Contractor fees limited to 14%
- ❖ Developer fee limited to 15%
- ❖ Site work costs safe harbor limit \$9,000 per unit
- ❖ Direct construction cost compared to industry standards
- ❖ Applicable percentage 40 (9%) or 15 (4%) basis points over current actual

“Eligible” Development Costs

- ❖ Anything that is capitalized into the building for use by the tenants**
- ❖ Land, operational costs or commercial purpose are ineligible**
- ❖ Ineligible cost considered but not part of the direct credit calculation**
- ❖ Ineligible costs can impact the gap of total funds needed**

Eligible Amenities



Eligible Basis Credits Example

\$100,000 land

\$50,000 street extension

\$60,000 site work

\$2,000,000 construction

\$120,000 const. financing

\$160,000 developer fee

\$ 50,000 reserves

\$2,540,000 Total Cost

\$60,000 site work

\$2,000,000 construction

\$120,000 const. financing

\$160,000 developer fee

\$2,340,000 Eligible Basis

Eligible Basis Credits Example

\$2,340,000 Eligible Basis

(less any below market loans or grants)

x 130% (if QCT or DDA)

\$3,042,000 Qualified Basis

x 100% (Applicable fraction if 100% tax credit)

\$3,042,000

x 8.40% (Applicable Percentage “9%” or “4%”)

\$255,528 per year for 10 years

Income Considerations

- ❖ **Rent is a function of Area Median Family Income (AMFI)**
- ❖ **Utility allowances are subtracted from AMFI rent**
 - ❖ Generally determined by Public Housing Authorities
 - ❖ Highly volatile from year to year and location to location
- ❖ **Recently: Incomes flat, utilities rising =net rents declining**

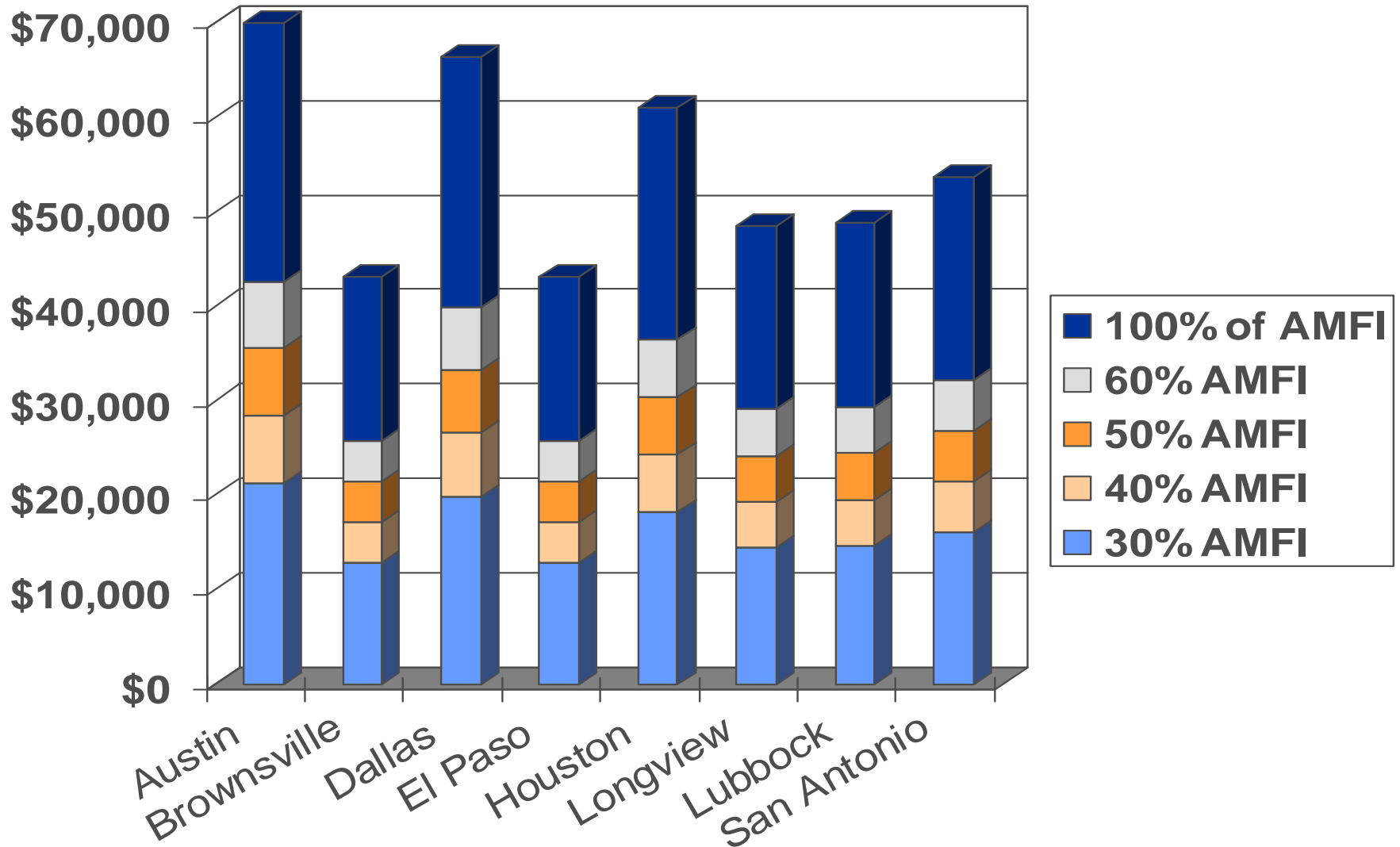
Rents

- ❖ **Rental income is calculated based on the lesser of:**
 - ❖ Gross restricted rents less utility allowances or
 - ❖ Market rent

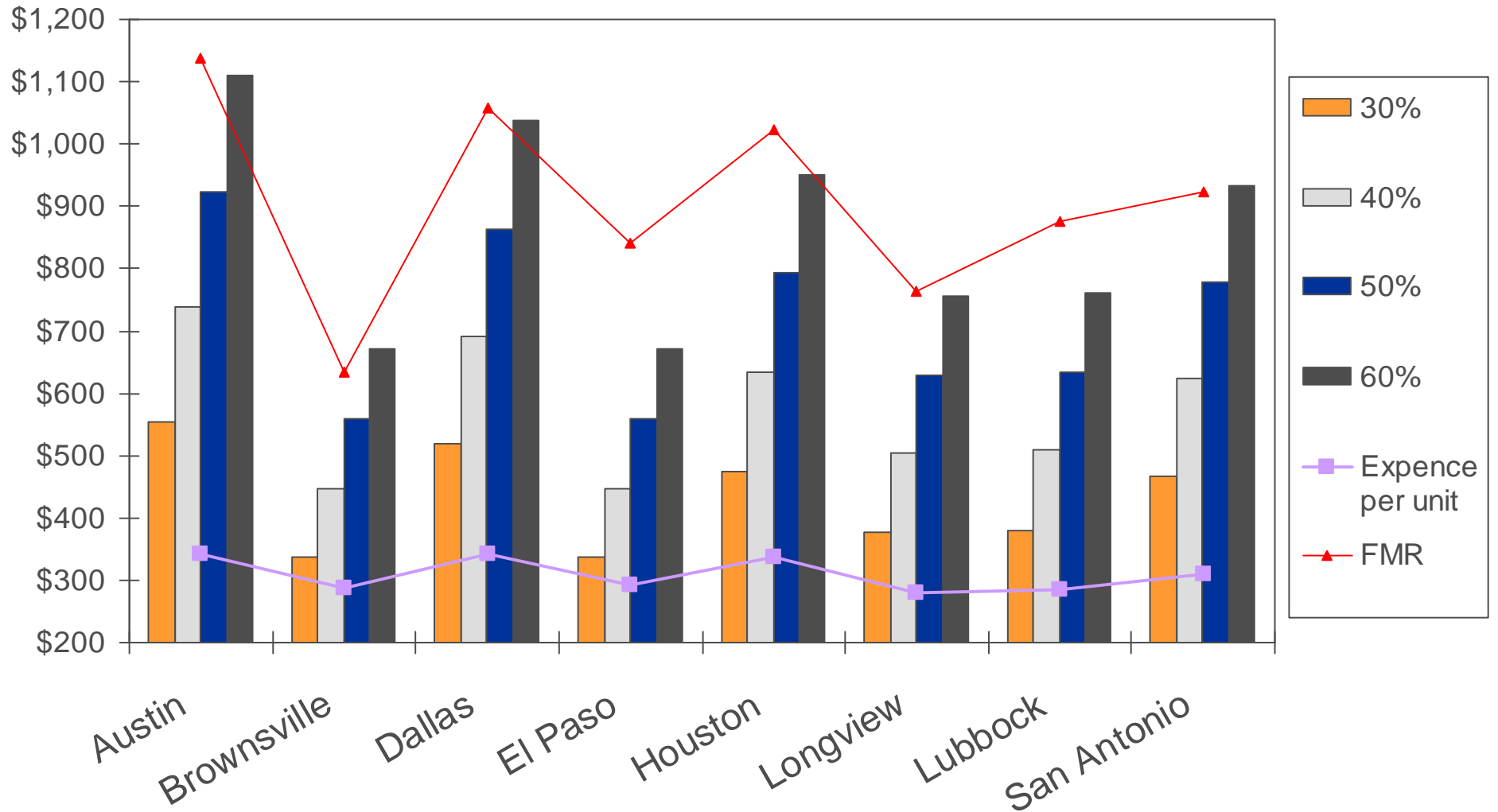
Example

Bed-rooms	Market Rent	Gross 60% Rent	Utility Allowance	Net Rent	Achievable Rent
1	630	686	- 73	613	613
2	720	823	- 84	739	720
3	880	951	- 94	857	857

2007 AMFI Across Texas



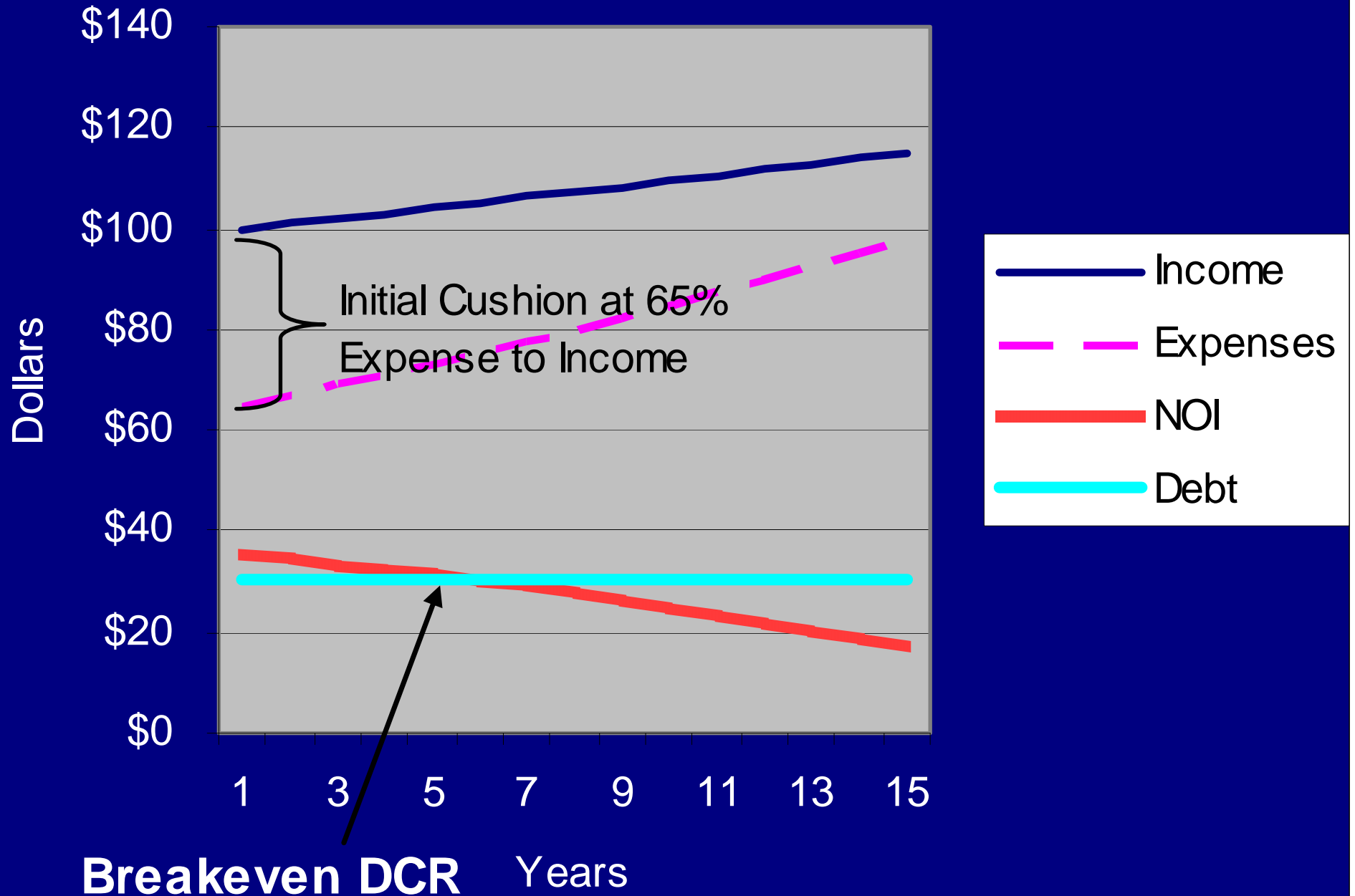
2007 3-Bedroom Rents



Calculating Operating Expenses

- ❖ Applicant historical data
- ❖ TDHCA database
- ❖ Industry information

What Happens When Rents Are Stagnant at 1% and Expenses Grow at 3%



Debt Coverage Ratio (DCR)

- ❖ **DCR = NOI/ Debt Service**
- ❖ **Debt Service is your monthly principal and interest payment**
- ❖ **Debt Service = NOI/DCR**

- ❖ **DCR must be between**

1.15



1.35

- ❖ **SO debt service capacity is**
 - ❖ NOI/1.15 as the maximum
 - ❖ NOI/1.35 as the minimum

How Much Debt, An Example

- ❖ **Say you have 20 two-bedroom units**
- ❖ **Getting \$720 in net rent per month for each**
- ❖ **7.5% vacancy and collection and \$3,800 per unit in expenses**
- ❖ **Loan terms 30 years at 8%**

Calculating the Debt Range

\$172,800	Rental income (20x\$720x12)
12,960	- Vacancy & collection losses (7.5%)
<u>76,000</u>	<u>- Operating expenses (\$3,800x20)</u>
\$83,840	=NOI

NOI/DCR = Debt Service

\$83,840/1.35

\$62,103 Min

\$83,840/1.15

\$72,904 Max



Debt Amount

\$699,142

\$820,737

Sources and Uses of Funds Example

- ❖ Total Development Cost was \$2,540,000
- ❖ Credits were \$255,528 per year for 10 years
- ❖ Syndicator offers \$0.85 for stake in 99.99% of property

$$\$255,528 \times 10 \times .85 \times .9999 = \$2,171,770$$

Sources and Uses of Funds Example

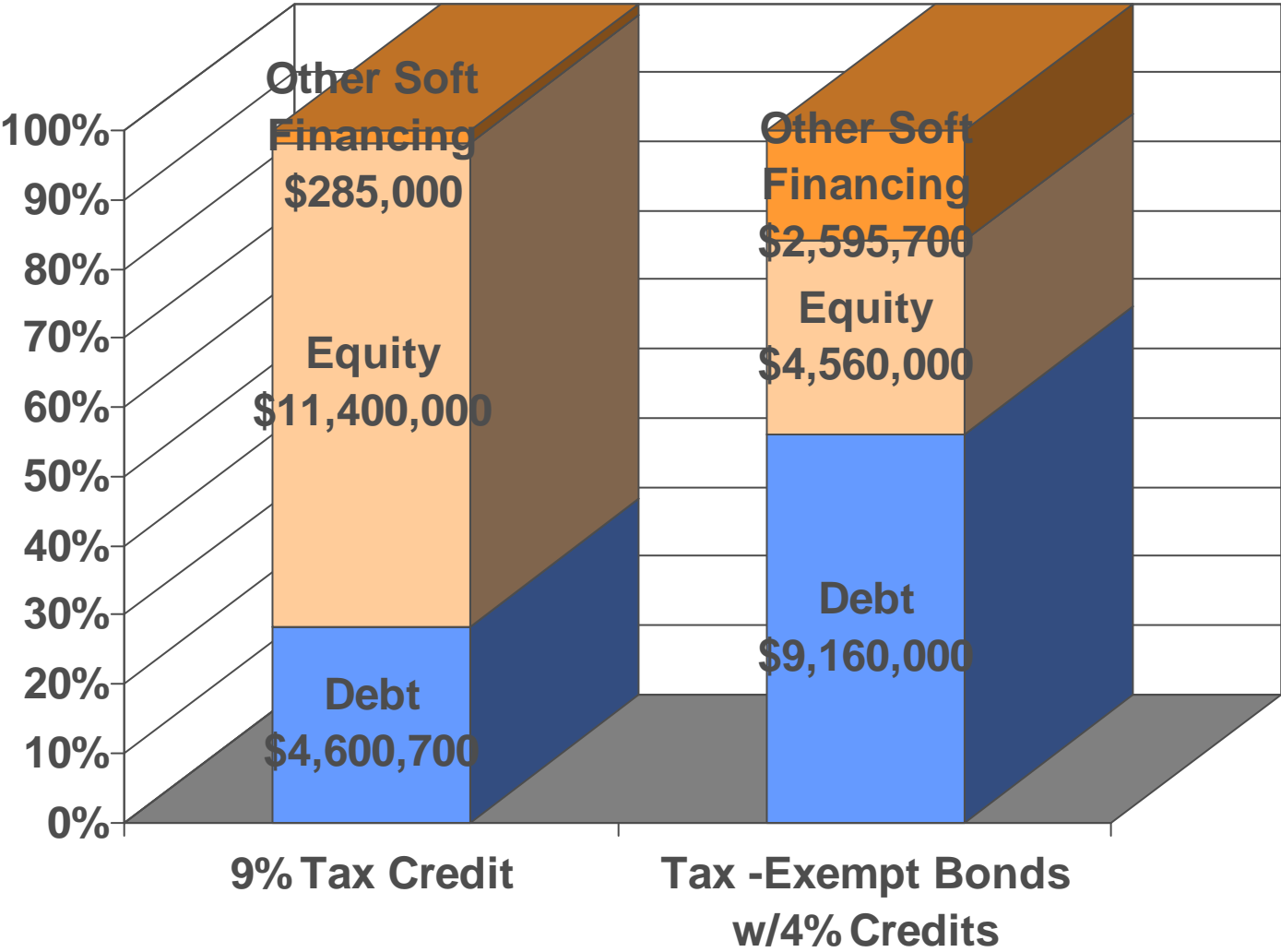
Uses of Funds	\$2,540,000
Minimum Debt	- 699,142
Syndication Proceeds	- <u>2,171,770</u>
Gap of funds (excess)	(\$330,912)

- ❖ There is an excess of funds of \$330,912
- ❖ The Tax Credits must be adjusted Downward
- ❖ The excess would grow and the credit would shrink if more debt service capacity was used

Why Some Deals Do Not Work

- ❖ **Deep income targeting for points**
- ❖ **Rents in some rural areas too low**
- ❖ **Project size too small**
- ❖ **Insufficient market demand**
- ❖ **Development costs too high**
- ❖ **Bond deals need to have 50% or greater debt**

Potential Financing Structures for a 200 Unit Urban Development



Market Issues: Market Study Guidelines

- ❖ **Each development must have acceptable market study by TDHCA-approved market analyst**
- ❖ **Rules and guidelines in 10 TAC §1.33**
- ❖ **Verify feasibility of development's rental rates and demand**
- ❖ **New development must not exceed the inclusive capture rate standard which includes all unstabilized comparable developments**

Inclusive Capture Rate

**All unstabilized competing units
(including proposed units)**

Divided By

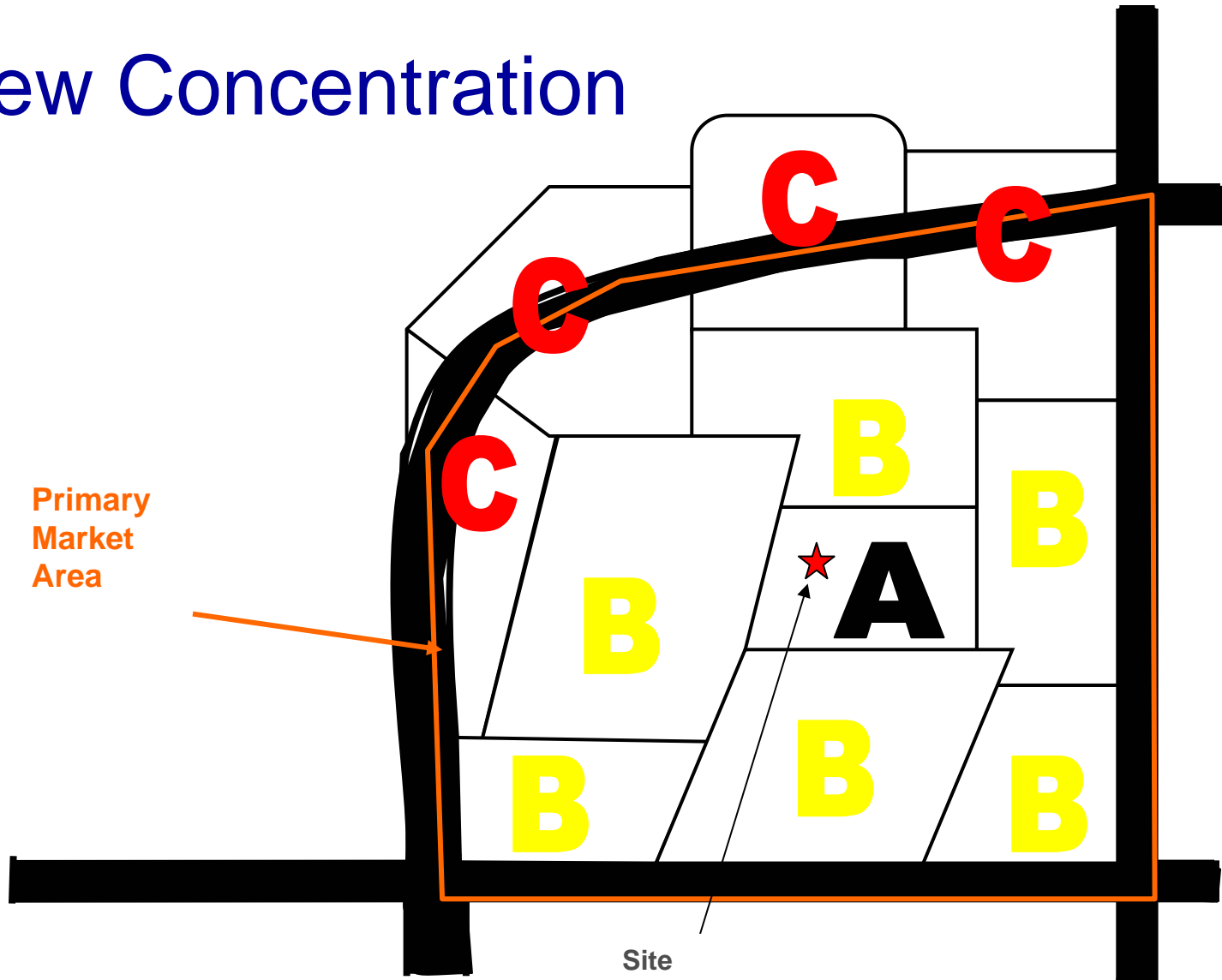
Total income-eligible targeted demand

- **Must be less than 25% in urban area**
- **Must be less than 75% in rural area**
- **Must be less than 75% for elderly**

New Concentration Policy

- ❖ Ratio all rental units (in buildings with 3 units or more) can not exceed 1,432 per square mile for census tract containing site
- ❖ Ratio all rental units (in buildings with 3 units or more) can not exceed 1,000 per square mile on average for all census tracts partially or totally contained in primary market area

New Concentration



How To Reach TDHCA Underwriting

- ❖ **Tom Gouris, Director (512) 475-1470**
tom.gouris@tdhca.state.tx.us
- ❖ **Raquel Morales (512) 475-1676**
raquel.morales@tdhca.state.tx.us
- ❖ **Fax: (512) 475-3992**
- ❖ **Web Site (current underwriting reports available)**
<http://www.tdhca.state.tx.us/rea>
- ❖ **Staffing: 6 Underwriting, 3 Cost Certification,**
1 Director

ITEM 3:

Presentation and Discussion of sample issues regarding HOME and Housing Trust Fund (HTF) applications, awards, appeals and amendments

HOME Division

Programs Administered

- ❖ **HOME Investment Partnerships Program**
- ❖ **Housing Trust Fund Program**
- ❖ **Staff Resources**
 - 28 Full-Time Employees including:**
 - ❖ **10 Program Specialists**
 - ❖ **7 Performance Specialists**
 - ❖ **3 Loan Closing Specialists**
 - ❖ **8 Staff providing Division management and support**

HOME Investment Partnerships Program

Purpose

To expand the supply of decent, safe, and affordable housing for extremely low, very low, and low income households, and to alleviate the problems of excessive rent burdens, homelessness, and deteriorating housing stock.

HOME Investment Partnerships Program

Funding

- ❖ Approximately \$41 million in HOME funds annually from HUD
- ❖ Requires HUD-approved Consolidated Plan (5 Years) & One-Year Action Plan
 - ❖ Federal requirements include that 15% of funds be allocated to Community Housing Development Organizations or CHDOs

HOME Investment Partnerships Program

Funding

- ❖ Board Action is taken to approve the funding plan that divides the total allocation between program activities in the One-Year Action Plan.
- ❖ This is the Board's first opportunity to set policy on the programming of HOME funds.

HOME Investment Partnerships Program

Funding continued

- ❖ Statutory Requirements
 - ❖ 95% of funds must be utilized in “non-participating jurisdictions” that do not receive HOME funds directly from HUD.
 - ❖ Remaining 5% must be spent on people with disabilities in any part of the state.
 - ❖ Use of the Regional Allocation Formula (RAF) in distributing funds to 13 regions, each with a rural and urban allocation for first time allocation.
 - ❖ Minimum of \$2 million set-aside annually for Contract for Deed Conversions.
 - ❖ Minimum of \$2 million set-aside annually for the Colonia Model Subdivision Program.

HOME Investment Partnerships Program

Current Activities Approved by the Board*

- ❖ Owner-Occupied Housing Assistance (OCC) \$ 16,000,000
- ❖ Homebuyer Assistance (HBA) \$3,000,000
- ❖ Tenant-Based Rental Assistance (TBRA) \$3,000,000
- ❖ Rental Housing Development (RHD) \$5,000,000

*all numbers are estimates pending Funding Agreement from HUD

HOME Investment Partnerships Program

Set-Asides Required by State*

- ❖ Contract for Deed Conversion, \$2,000,000
- ❖ Colonia Model Subdivision Program, \$2,000,000
- ❖ Community Housing Development Organization (CHDO) Funding (15%), approximately, \$6,000,000
- ❖ Funding Targeted for People with Disabilities, \$2,000,000
 - ❖ Used for Tenant-Based Rental Assistance & Homebuyer Assistance

These activities are **not subject to the RAF*

HOME Investment Partnerships Program

Additional Activities Funded

- ❖ Disaster Relief
 - ❖ Deobligation Policy requires that an amount equal to 5% of annual allocation be reserved from balance of deobligated funds to provide disaster assistance.
 - ❖ Owner-Occupied Housing Assistance (OCC) provided up to \$500,000 for federal and state-declared disasters.
 - ❖ Since deobligated funds, not reflected in funding plan.

HOME Investment Partnerships Program

Population Served

- ❖ Must earn no more than 80% AMFI
- ❖ Through rules Board has encouraged Contract Administrators to serve families earning less than 30% or 60% AMFI
- ❖ Other restrictions may apply based on activity
 - ❖ Primary residency requirement
 - ❖ Affordability period
 - ❖ Construction standards

HOME Investment Partnerships Program

Distribution of Funds

- ❖ Loans and grants available through Notices of Funding Availability (NOFAs) to eligible entities who deliver affordable housing services at local level.
- ❖ Board approves NOFAs prior to publication, providing a second opportunity to set policy on the use of funds.

HOME Investment Partnerships Program

Eligible Applicants

- ❖ Units of general local government
- ❖ Public Housing Authorities (PHAs)
- ❖ CHDOs and other Nonprofit Organizations
- ❖ For-Profits

HOME Investment Partnerships Program

HOME Open Application Cycle

- ❖ In 2008, most HOME funds will be distributed through a first-come, first-served open application cycle.
- ❖ Applicants must still meet threshold criteria and will be delineated in the NOFA.
- ❖ Will allow TDHCA to provide rural and nonprofit applicants more technical assistance during the application process itself.
- ❖ Used successfully in past for HOME multifamily funds.

HOME Investment Partnerships Program

Recent Developments/Changes:

- ❖ Reconstitution and reorganization of the HOME Division – full administration of the program under one division and addition of Performance Team. Independent contract monitoring conducted by the Portfolio Management and Compliance Division.
- ❖ Board-approved rule to change the form of assistance for the OCC Program from grants to loans in February 2006.
- ❖ Two-year funding cycle in 2006 resulted in decreased contract awards in 2007 but spread out funds with reduced contract amounts.

Texas Housing Trust Fund

Purpose

To finance, acquire, rehabilitate, and develop decent, safe, and sanitary housing for low income households.

Only state-funded affordable housing program.

Texas Housing Trust Fund

Funding

- ❖ State General Revenue
- ❖ Loan Repayments
- ❖ Transfers from other programs (example, residual bond funds)
- ❖ Can accept gifts and donations

Texas Housing Trust Fund

Funding

- ❖ \$5.8 million per year for each year of biennium
 - ❖ Includes anticipated \$900,000 in loan repayments
- ❖ Department must develop an Annual Plan outlining proposed funding (Rider 10).
- ❖ Board Action is taken to approve the funding plan for proposed program activities in the Annual Plan.
- ❖ This is the Board's first opportunity to set policy on the programming of Housing Trust Fund funds.

Texas Housing Trust Fund

Funding

- ❖ Restrictions
 - ❖ First \$2.6 million made available in a biennium set-aside for local government, public housing authorities and nonprofits.
 - ❖ At least 45% of remaining funds must be made available to nonprofits.

Texas Housing Trust Fund

Funding

❖ Restrictions

- ❖ Must be allocated through RAF if over \$3 million after set-asides.
- ❖ TDHCA applies \$3 million per year for Texas Bootstrap Loan Program to meet requirements of 2306.

Texas Housing Trust Fund

Activities Funded

- ❖ Very flexible
 - ❖ Single and multifamily housing activities that benefit low and very low income households
 - ❖ Activities that encourage leveraging of funds

Texas Housing Trust Fund

Activities Funded

- ❖ 2007 Activities Approved by the Board*
 - ❖ Texas Grow Homes Demonstration Program, \$250,000
 - ❖ Texas Veteran's Housing Support Program, \$1,000,000
 - ❖ Foreclosure Prevention Training, \$100,000
 - ❖ Self-help loans (Bootstrap), \$3,500,000

*Comprised of local revenues which includes program income from the repayment of existing HTF loans, interest payments, funds from deobligated contracts and funds from activities not committed.

Texas Housing Trust Fund

Activities Funded

- ❖ 2008 Activities Approved by the Board
 - ❖ Texas Bootstrap Loan Program (self-help loans), \$3,000,000
 - ❖ Disaster Recovery Homeowner Repair Gap Financing Program, \$1,000,000
 - ❖ Rental Production Program, primarily in rural areas, \$844,397
 - ❖ Homeownership SuperNOFA (homebuyer assistance, mortgage assistance, and barrier removal in single family homes for persons with disabilities), \$1,000,000

Texas Housing Trust Fund

Population Served

- ❖ Households earning up to 80% AMFI
- ❖ Typically target lower income households
 - ❖ The Bootstrap Program serves families up to 60%AMFI with a \$30,000 maximum loan amount from Department.
 - ❖ Some initiatives in 2008 Annual Plan encourage awardees to serve families earning no more than 30% AMFI.

Housing Trust Fund

Distribution of Funds

- ❖ Loans and grants available through Notices of Funding Availability (NOFAs) to eligible entities who deliver affordable housing services at local level.
- ❖ Board approves NOFAs prior to publication, providing a second opportunity to set policy on the use of funds.

Texas Housing Trust Fund

Distribution of Funds

Eligible Applicants

- ❖ Varies by program design
- ❖ Includes
 - ❖ Units of general local government
 - ❖ Public Housing Authorities (PHAs)
 - ❖ CHDOs and other Nonprofit Organizations
 - ❖ For-Profits

Texas Housing Trust Fund

Additional Notes

- ❖ Some HTF activities administered by other Divisions
 - ❖ Texas Bootstrap Loan Program – Office of Colonia Initiatives
 - ❖ 2008 Hurricane Home Repair Gap Financing – Disaster Recovery Division
 - ❖ Foreclosure Prevention Training – Texas Homeownership Division
- ❖ HTF requirements discussed apply to all HTF activities

HOME Division

Contact Information

Jeannie Arellano

Director

(512) 463-6164

jeannie.arellano@tdhca.state.tx.us

Website: <http://www.tdhca.state.tx.us/home-division/index.htm>

ITEM 4:

Discussion of governance structure of the Board for
future Board Meetings

ITEM 5:

Presentation and Discussion of sample issues regarding compliance and enforcement actions



Texas Administrative Code

Chapter 60, subchapter A,
Compliance Monitoring Rules

Portfolio Management & Compliance Staff

PMC Department has 35 FTE's
Responsible for monitoring:

- Construction
- The long term affordability requirements for all the rental housing programs
- The 4 activities of the HOME program

Why do we have rules?

- Section 42(m) requires State HFAs to have a Qualified Allocation plan which “provides a procedure the agency will follow in monitoring for compliance”.
- Certain sections of Chapter 2306 of the Texas Government Code also require the Department to adopt rules.
- Rules are put out for public comment and puts those affected by the rules on notice and the opportunity to comment.
- Rules reflect the policy decisions of the TDHCA Board.
- Our compliance monitoring rules are enforceable whereas our manuals or training materials are not.

- PMC rules by themselves cannot create a totally new requirement.
 - i.e. Rules could not require owners to refuse to lease to felons UNLESS 2306, Section 42 or HUD or some other entity prohibited that.
- Rules enable effective administration of the programs.
 - Example, Treasury Reg 1.42-5 requires an annual report but does not say when it's due. PMC rules provide submission deadline.

Chapter 60

- Chapter 60 has 3 subchapters:
 - Subchapter A, compliance monitoring rules
 - Subchapter B: Accessibility and 504
 - Subchapter C: Enforcement penalties
- Subchapters A and C effective December 2, 2007
- Subchapter B effective February 3, 2008.



Notable definition

- **Substantial construction:**
 - New= has building permits, foundations of all residential buildings and clubhouse in place, 50% of framing complete and 20% of construction contract expended.
 - Rehab= Building permits or letter from city that they are not required, certification of no unreasonably foreseen delay, 20% of construction contract expended
- HTC properties must commence substantial construction no later than 12/1 of year following award. Deadline in QAP. Definition in PMC rules.

- Many properties need extensions to meet substantial construction.
- Board approves extension requests.

60.109 Utility Allowances

- All programs with the exception of the FDIC's Affordable Housing Program have a utility allowance
- Rent paid by the resident plus a “utility allowance” cannot exceed the published rent limit.
 - Example: Rent Limit: \$500
 - » Utility Allowance: \$100
 - » Tenant Paid rent cannot exceed \$400

60.113 Onsite monitoring

- In general, onsite monitoring visits conducted at least once every three years
- Department can conduct unannounced visit if there is a complaint
- While onsite staff reviews 20% of the Low income files and confirms
 - Income eligibility
 - Rent restricted
 - Annual certification
 - Student rules

60.116 Property condition standards

- All properties funded by the Department must comply with Uniform Physical Condition Standards
- The FDIC's Affordable Housing Properties are not "funded" by the Department. Those LURAs do not specify any property condition requirements.

Property condition standards

- Properties must also comply with local health, safety and building codes.
- The Annual Owner Compliance Report requires owners to inform Department if there were any building code violations.

Property condition standards

- UPCS reports will be reviewed to determine if:
 - There are no findings of noncompliance (property scores a 100)
 - There are administrative reporting of violations
 - There is a pattern of Minor Violations
 - There are Major violations or
 - There are major and minor violations

Major violations

- Uncorrected life threatening health, safety or fire hazards (other than smoke detectors and blocked egresses) are reported on the Notification of Exigent and fire safety hazards observed form in any building exterior, building system, common area, site or dwelling unit
- 20% or more of the buildings or units inspected have any level 3 violation
- Overall score is less than a 60

Minor Violations

- 20% or more of the buildings or dwelling units inspected have any level 2 violation or
- Property scores between a 60% and 79%

60.117 Notices to owners

- TDHCA supplies a written notice of noncompliance
- A 90 day corrective action period is provided
- Corrective action period can be extended for an additional 90 days with good cause.

60.119 Notices to IRS

- TDHCA must file form 8823 no later than 45 days after the end of the corrective action period.
- 8823 filed whether or not the noncompliance is corrected.
- Copies of 8823s sent to the owner

60.121 Material noncompliance methodology

- If a property has received more than one source of Department funding, it will have more than one LURA. If either score exceeds the allowable threshold under wither program, property in MNC
- Issues are not scored until owner has been notified of issue and provided a corrective action deadline.

Material Noncompliance

HTC	30 or higher
Non-HTC	1 to 50 LI units: 30
	51 to 200 LI Units: 50
	201 or more: 80

Material Noncompliance

- A property's score will be reduced by the number of points to be one point below the MNC threshold under the following circumstances:
 - The property has no uncorrected events of noncompliance
 - All noncompliance events were corrected during the corrective action period
 - All corrective action was supplied during the corrective action period.

- Review Highlights of Noncompliance events

Previous Participation reviews

- If the requesting entity has any property in Material Noncompliance, their application will be terminated.
- Board can grant appeal

Dates of determining MNC

- For HTC applications: 5/1 of the year the application is submitted
- For carryovers: 10/1 of the year the award is made
- All other requests: As the review is being conducted.

8823 Audit Guide

- In January of 2007, the IRS released the 8823 Audit Guide for revenue agents, owners and managers of HTC properties and State Allocating agencies
- Staff has strictly implemented the Guide
- Not all States have adopted the entire Guide

8823 Audit Guide Issues

- General Public Use requirements
 - Treasury Reg 1.42-9 requires HTC properties comply with Federal Fair Housing Act and be available to the general public.
 - This impacts farm worker housing, artist housing, housing for people in the military, assisted living, properties for special needs populations, HTC properties on tribal lands
 - Not all States are conforming to the Guide

Possible Board Issues related to PMC

Requests for waivers of Material Noncompliance

- It is possible for a property to have corrected all issues of noncompliance, but still have a score over the allowable threshold
- Board has approved waivers of Material Noncompliance in the past.

Possible Board Issues related to PMC

- Requests for Release of LURA
 - Under the HTC program, a LURA terminates for one of three reasons
 - Completion of the affordability period (typically 30 years)
 - Foreclosure
 - Department unable to present a “qualified contract” to the owner
- Section 42 (h)(6)(B)(ii) states that low income tenants (prospective, former or present) must have the right to enforce the LURA. If prospective residents are a party to the LURA, can it be released?

ITEM 6:

Presentation and Discussion of issues related to Weatherization (WAP), Low Income Home Energy Assistance Program (LIHEAP) and Community Service Block Grant (CSBG) awards, appeals and amendments

Community Affairs Division

- **Comprehensive Energy Assistance Program (CEAP)**
- **Weatherization Assistance Program (WAP)**
- **Community Services Block Grant (CSBG)**
- **Emergency Shelter Grants Program (ESGP)**
- **Staffing:**
 - 31 FTE's
 - 13 Contracts and Planning
 - 16 Monitoring and Training
 - 2 Managers

Energy Assistance Section Programs

Comprehensive Energy Assistance Program (CEAP)

Purpose: To address the energy needs of low income households by providing utility assistance; repair, replacement and retrofitting of inefficient appliances; and client education.

- Funded by U.S. Dept. of Health and Human Services for \$36 Million

Weatherization Assistance Program (WAP)

Purpose: To increase the energy efficiency of dwellings owned or occupied by low-income persons, reduce their total residential expenditures, and improve their health and safety.

- Funded by US Dept. of Health and Human Services \$7.0 Million
- Funded by Department of Energy \$5.5 Million
- Funded by Investor Owned Utility companies \$1.2 Million
(Swepeco, El Paso Electric, and Southwest Public Services)

Energy Assistance Section Funding

➤ U.S. Dept. of Health and Human Services

Low Income Home Energy Assistance Program (LIHEAP)

Approximately \$45 Million per year

Board Review and approval of draft plan in June prior to web posting and public hearing

Final approval from Board in July

Plan submitted to USDHHS by September 1

➤ Department of Energy (DOE)

Weatherization Assistance Program (WAP)

Approximately \$5.5 Million per year

Executive Team review of draft plan prior to web posting and public hearing

Final approval from Board in February or March

Plan submitted to DOE by March 1

➤ Investor Owned Utility (IOU) Companies

SWEPCO, El Paso Electric, & Southwest Public Services

Approximately \$1.2 Million per year for WAP

Review and approval of allocation by Board in November or December

Energy Assistance Section Formula

- Public Comment on the formula is provided each year in the LIHEAP and DOE plans public hearings.
- The Department's existing formula was designed in 1998 with input from Subrecipients. The formula allocates funds based on the number of low-income households in a service area and the special needs of individual service areas. This formula is at the Boards discretion.
- The elderly poor and non elderly poor populations are given priority by sharing 80% of the weight of the formula. A weather factor based on heating and cooling degree days is given 10% of the weight of the formula. The extra expense in delivering services in sparsely populated areas is assigned 5% and poorer counties (as determined by the county median income factor) receive 5%.

Energy Assistance Section Programs

Eligibility for Energy Assistance Programs: The Board has set household income at or below 125% of federal poverty guidelines for participation. States are permitted to provide services up to 150% of federal poverty guidelines.

Priority Populations: Are established in the LIHEAP Statute and the DOE Final Rule and are not subject to local change. The priority populations are residences with elderly, disabled, children, high energy users, or residences with high energy burden.

Board Actions include: Plans for LIHEAP and DOE, Contract awards for CEAP, WAP (DOE and LIHEAP) and IOU contracts.

Energy Assistance Section Programs

Weatherization Policy Advisory Council

- Mandated by DOE in 10 CFR Part 440.
- Historically, TDHCA staff recommends appointee's who serve at the discretion of the Executive Director who appoints the 9 members which represent 3 groups:
 - weatherization providers,
 - energy conservation interests, and
 - consumer related interests.
- The Board could approve these appointments if desired.

Energy Assistance Section Allocation and Performance

Subrecipients:

- Currently 49 **CEAP** Subrecipients serve all 254 Texas counties
- Currently 33 **WAP** Subrecipients serve all 254 Texas counties

Performance:

- 51,500 households per year receive CEAP services
- 2,960 units are weatherized per year

Community Services Block Grant

Purpose: To provide administrative support in the effort to reduce poverty, empower low-income individuals to become self-sufficient, and effectively coordinate with other like programs.

U.S. Department of Health and Human Services

- Through the Office of Community Services (OCS).
- CSBG State Plan due on Sept. 1, 2009 for 2010 and 2011 after Public Hearings and Board review and approval.
- \$30 million per year received on a quarterly basis.
- 90% of the funds must be provided to CSBG eligible entities according to Federal law. Most entities received their eligible entity status in the original Economic Opportunity Act of 1964 and new eligible entities must be designated by the Governor.
- CSBG Annual Report submitted on March 31st

Community Services Block Grant

The formula is detailed each year in the CSBG state plan which is available for Public Comment and submitted to the Board for review and approval.

- Currently, no subrecipient receives less than \$150,000 (5 subrecipients receive this minimum). The remaining subrecipients receive a \$50,000 base and the remaining funding is allocated by the formula.
- The current formula is primarily based on poverty population (98%) and provides a factor (2%) to address the extra expense in delivering services in sparsely populated areas.
- Eligibility - Currently, the Department uses household income at or below 125% of federal poverty guidelines. The program allows the states to provide services up to 150% of federal poverty guidelines.
- Board Actions include CSBG Annual Plan, and the Contract Awards.

Community Services Block Grant

Subrecipients:

- 46 “eligible entities” serve all 254 Texas counties.
- 90% of CSBG funds (by formula) are awarded to those subrecipients
- 5% Discretionary
 - Beginning in 2009, the discretionary funds will be allocated through a competitive Request for Application (RFA). Current projects eligible for discretionary awards include:
 - Disaster Assistance
 - Migrant Seasonal Farm Workers
 - Innovative, Statewide and Special Demonstration Projects
- However, the Board may through policy provide additional discretionary activities or delete any of these activities.

PY 2006 Performance:

- 481,598 persons per year receive services
- 3,087 persons transitioned out of poverty each year

Community Services Block Grant

CSBG funds are used as Administrative Funding in support of:

Case Management

Information and Referral Services

Self-Sufficiency Programs

Education Programs (such as ABE, GED, Head Start, ESL)

Nutrition (senior nutrition programs such as Meals-on-Wheels)

Disaster Assistance

Transportation (multi-purpose, rural, and medical)

Emergency services (food, utility, rent, medical, clothing, etc.)

Utility Assistance

Weatherization

Health Services (family planning, rural health clinics, health screening)

Housing Services

Budgeting Classes

Youth Projects

Employment Programs and Services (such as WIA, job search, job skills)