2021 QAP 1st Draft Comments

General Comments:

Lance Windel:

We’ve recently seen an uptick, probably due to the easy availability of open records online, in developers challenging other developers’ applications before and during the board meeting. There have certainly been challenges, or issues pointed out to staff and the board, that we very relevant to the application, but there have also been many frivolous challenges. This is an exceptional drain on OHFA’s staff’s time, the challenged developers time, and an undue burden on the OHFA board. We suggest OHFA develop a formal challenge procedure that has negative consequences for frivolous or unfounded challenges. For example, a challenge that is denied will result in negative points for the developer that initiates the challenge. We are familiar with other states that enjoy 8 to 10 hour board meetings as developers attack each other over and over in order to secure funding. Luckily Oklahoma, and a majority of our developers, exhibit more grace than that. We hope OHFA staff takes measures to cut these frivolous challenges before they get out of hand.

OHFA Response: We appreciate the consciousness displayed towards considering the amount of OHFA Staff’s time and the position of the Board of Trustees with regard to any issue a member of the development community may have when it comes to the thorough review of an Affordable Housing Tax Credit application. However, we must review any challenge brought to us with the same amount of diligence and respect, no matter how frivolous it may seem to other members of the community.

We propose a new point scoring criterion. In 2020 OHFA had a little over $10,500,000 in 9% credits to allocate with $29,500,000 in applications. The program is over subscribed almost 3 to 1. Developers are not doing enough to earn the credits OHFA has available to allocate. OHFA has a goal to “improve the housing stock in Oklahoma,” but they are doing little to assist residents in the 60 to 100 percent “missing middle” AMI category. We suggest a point criterion that awards points to developers for units developed in the same census tract as their AHTC development that serve residents in the 60 to 100 percent AMI category. For example, for every additional 10% of units not in the AHTC program the developer produces in the same census tract as their AHTC development, they will receive 1 extra point, up to 10 points. So, if the developer is proposing a 40 unit AHTC development, and commits to building an additional 40 units targeting 60 to 100 percent AMI residents, the developer receives an additional 10 points. And OHFA produces double the number of units for the state of Oklahoma with the same number of tax credits. And those new units created are targeted to the population that has the least amount of housing subsidy available from OHFA.

OHFA Response: Thank you for the suggestion. The housing of individuals between the 60 to 100 percent Area Median Income (AMI) category is incredibly important, without question. However, we must remember that the goal of the tax credit program is to provide
housing to individuals at 60% or less of AMI, and at times, 80% or less of AMI with the utilization of the Average Income Test. Therefore, we feel implementing a criterion, as suggested, is not prudent at this time.

Belmont:

**Carryover & Final (number of vs. percentage of units clarification)**

We request in all Carryovers and Finals, percentages are used instead of number of units. Examples of this are lower income targeting for points, or the number of three-bedroom units. Owners promise a percentage, rather than a set number of units. If the number of units unexpectedly change, the Owner would still be held to Application requirements, rather than a number, that may or may not still be correct. We only request this to be in the formal Application, because OHFA has handled this inconsistently.

**OHFA Response:** We sincerely apologize for any inconsistencies that might have been displayed in the past. Going forward, we will utilize a percentage instead of a number of units.

Page 1 – Two-year Application

Belmont:

We request that the proposed Application be for 2021 only and not a two-year Application. With COVID-19 concerns, pending CRA Reform and other potential upcoming federal legislation changes; a two-year Application is not feasible at this time.

**Anonymous Reply:**

Concur to keep at one year. Given the current environment, the State must be flexible and agile to respond to rental housing needs. Now is not the time to move planning to every two years. Although Oklahoma has not made significant changes to the QAP, there are always some tweaks realized afterward.

Oklahoma has traditionally treated the QAP aka Application as an annual action plan instead of a broader Strategic Plan to address the State’s rental housing shortage. Developing a strategy takes time, resources, and dialogue. Moving to a two-year plan should involve more in-depth planning that analyzes the State’s housing statistics by demographics, includes review and input from other State agencies serving eligible populations, as well as developers, community planners, and other interested parties.

**Oklahoma Coalition for Affordable Housing (OCAH):**
We request that the proposed QAP be for 2021 only and not a two-year QAP. With COVID-19 concerns, pending CRA Reform and other potential federal legislation changes; a two-year QAP is not feasible at this time.

**OHFA Response:** We have received comments from the development community in the past and have looked to fellow HFA’s in how they administer a 2 year QAP. We did this in an effort to aid the development community in giving them a sense of predictability of what to expect for the upcoming two year period. However, with the amount of uncertainty surrounding COVID-19, we will revert to a one year QAP, with the hope and intent of exploring this option in the future.

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**Page 7 – Application Questions**

Oklahoma Coalition for Affordable Housing (OCAH):

Please include all names and contact information for all new Housing Development Team staff.

**OHFA Response:** This is now reflected in the latest Draft.

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**Page 12 – Preliminary Review Reports**

DeBruler, Inc.:

Suggest staff summarize and explicitly state all questions, requests for documentation, and corrections from their Preliminary Review Report into a concise letter format. The letter, along with the full Review Report, should be sent to applicants for a response.

Summarizing Reviews will result in a set of exact issues to be addressed and provide clarity regarding OHFA’s questions and concerns.

**OHFA Response:** Thank you for the suggestion. OHFA Staff makes every effort to highlight any issue/questions contained within the Preliminary Review Report. However, it is in the applicant’s best interest to review the report in its entirety to clarify any issue they believe needs to be addressed. Therefore, we feel that providing a concise letter addressing all questions contained within the Report is unnecessary at this time.

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**Page 14 – 4% Applications w/ State Tax Credits (New Construction vs. Rehabilitation)**

Belmont:

- But for State Credits, some Developments will never be rehabilitated. The Law already changed from only Rural Counties to include all 77 Counties. It is not out of the realm of possibility to think rehabs would be accepted now too. In fact, they are not prohibited. Also, possible changes to Bond regulations may open up more opportunities. We suggest removing the unnecessary constraint of only new construction, and allow Rehabilitations with 4% and State Credits.
o With the arbitrary limitation of State Credits used only on 4% new construction Developments, and with priority to new construction and urban in the set-asides generally, Rural rehabilitations are already at big disadvantage.

o The proposed change to rank 4% applications by the lowest number of tax credits per unit is not the best way to determine the allocation of state LIHTCs for 4% developments. The proposed change could increase debt, increase the number of small units (i.e. studios and one bedrooms) and encourage the race to the bottom. It would be more beneficial to add other scoring items.

o The current method of ranking (by highest number of units) also is not the best method. This should be reviewed more in depth.

Lance Windel:

We agree State Credits should only be allowed for new construction. That requirement was changed last year based on the low number of new construction bond requests submitted in 2019. In 2020 that course was reversed and there were several more new construction bond/state credit apps than there were credits to allocate. The State credit was passed by the legislature to provide NEW housing units across the state, not to rehabilitate existing occupied units. This year the legislature voted to cut the state credit in half. It was only narrowly saved by the veto of the Governor after a very messy fight at the Capitol. It would be foolish to give the legislature more talking points (look how few units the State credit is producing) in light of this most recent battle.

DeBruler, Inc.:

Focusing State Tax Credits on new construction ensures spending limited resources to expand the supply of affordable housing.

OHFA Response: The original intent behind the Oklahoma Affordable Housing Tax Credit (OAHTC) was to expand the supply of affordable housing by adding new units. We believe that one way to carry out this intent is to make the OAHTC that is available to 4% applications only available to those applying for new construction activities.

Page 15 – 4% Applications w/ State Tax Credits (Competitiveness)

Belmont:

Bond 4% Tax Credit Developments with State Credits are still competitive and should be processed under strict competitive rules. Even though the 4% Credits are not competitive, the State Credits are a limited resource, so any Application presented with them should follow the same rules. However, we do feel it is appropriate to continue doing everything feasible to help ensure the success of those standard non-competitive 4% bond deals, through exemptions, waivers, extensions, etc.

Lance Windel:
Ranking competitive bond/state credit apps by credits per unit is a repeat of the poor tie breaker OHFA eliminated a few years ago. It is the quintessential race to the bottom. It pushes developers to build cheaper, smaller, with less bedrooms. It removes family developments from the equation. The winner will be building studios and one bedrooms. Similarly, the most units per development was a poor tie breaker (even though it worked out well for us.) It will have the same affect as the credits per unit next cycle.

Brandon Shavers:

There has been much discussion regarding the proposal to rank 4% applications requesting state credits by subsidy per unit instead of total units; and I agree with OCAH’s assessment that this is not the best way to allocate state tax credits.

While the current method may not be ideal, ranking by total units encourages economies of scale which is appropriate to account for the cost and complexity of bond deals.

Some type of request-based ranking makes sense to economize credits on 9% deals, since the total equity funding possible on a 9% deal could exceed what is needed to make it viable.

However, 4% deals often end up with tighter margins even with maximum requests per eligible basis. If subsidy per unit is prioritized on 4% applications, request reduction is likely to take the form of smaller and less desirable housing units.

Moreover, all such applicants would need to cover the added cost of bond deals, so opening this to smaller developments would only yield higher state credit requests per unit; meaning scale is likely to become the deciding factor regardless.

Oklahoma Coalition for Affordable Housing (OCAH):

- The proposed change to rank 4% applications by the lowest number of tax credits per unit is not the best way to determine the allocation of state LIHTCs for 4% developments. The proposed change could increase debt, increase the number of small units (i.e. studios and one bedrooms) and encourage the race to the bottom. It would be more beneficial to add scoring items for other things such as family, location, etc.
- The current method of ranking (by highest number of units) also is not the best method. This should be reviewed more in depth, especially if we are moving to a two-year QAP.
- Controls should be implemented for unit size (potentially including a sq. ft. minimum or minimum number of bedrooms).
- Other considerations would be the amount of debt and the property location.
- The Coalition feels that further discussion is necessary to explore best options.

OHFA RESPONSE: We understand the concern on behalf of the development community. Our goal is to work with the development community on producing the best and most high quality product for low to moderate income Oklahomans. We welcome any and all suggestions/ideas from the development community on how to foster the continuation of providing a quality product for low to moderate income Oklahomans. Additionally, we
welcome further discussion regarding this topic at the formal input session that will be held via Zoom on Thursday August 6th at 9:30 AM CST.

Page 15 – Notice Requirements

Oklahoma Coalition for Affordable Housing (OCAH):

Thank you for removing the notice requirements.

OHFA RESPONSE: You’re Welcome.

Page 16 – Capacity and Prior Performance

Brandon Shavers:

The clause under “Development Team Experience”:

“Development Teams will be evaluated on the experience of their members in Owning/participating in and successfully operating five (5) or more Developments in the LIHTC Program.”

May be interpreted in several mutually exclusive ways, as it reads, and notwithstanding its commonly understood meaning. For instance, it could be referring to: the combined experience of team members or team members individually; evaluation of the team member(s) performance on five developments or the simple fact of having had five successful developments worth of experience.

Considering the list of potential members in the definition of “Development Team” any interpretation which would require all team members to have had five developments of experience would, as it reads, ensure only incumbents may participate in new projects.

No clear distinction is made between General Partner/Managing Member and the Development Team, making it unclear whether the former is a member of the latter. In one instance, the GP/MM is excluded from the definition of Development Team (which includes "Owner") but included in a similar list under Documentation Requirements; furthermore, Development Team Member experience is defined as “owning/participating in…[LIHTC] Developments”.

Moreover, it is implied but never explicitly stated that one of two conditions must be met: the GP/MM must have five or more developments of experience; or the provisions for supplementing experience with that of Development Team Members must suffice.

Proposed Revision (added, revised, or relocated text in blue):

**Experience in Oklahoma**

General partners/managing members, Developers, and principals of each, who are not new to Oklahoma’s AHTC Program, may not have open, at any one time, more than five (5) Oklahoma
AHTC Developments. Open means from Tax Credit award to the last Building Placed-In-Service date. Staff will measure open Developments at the time preliminary Review Responses are due.

**Development Team Experience**

- “Development Team” or its "Members" means the Applicant, architect, attorney, Consultant, Developer, co-Developer, general contractor, General Partner/Managing Member, market analyst/appraiser, property management company, co-management company, management consultant, Owner, tax professional, and the principals of each.

- To meet threshold requirements, the General Partner/Managing Member, or principals thereof, must have experience in five (5) or more successful LIHTC developments, or;

- For General Partner/Managing Members who do not have experience in five (5) or more successful LIHTC Developments, each of the attorney, consultant, Developer, general contractor, tax professional or architect who has experience in five (5) or more successful LIHTC Developments will be counted as one (1) Development worth of experience for the General Partner/Managing Member.

- If any Development Team Member, whose experience supplements that of the General Partner/Managing Member, is to be replaced; such person must be replaced with someone of equal or greater experience in terms of successful LIHTC Developments.

- Experience in successful LIHTC Developments outside the State of Oklahoma will apply toward threshold requirements.

**Management Experience**

- To meet threshold requirements, the Management Company, or principals thereof, or in combination with a Co-Management Company and/or Management Consultant, must have experience providing management services for five (5) or more successful LIHTC developments.

- For the experience of a management company, co-management company, or a management consulting company to apply toward threshold requirements, the entity must have been formed no later than two (2) years prior to application; have been providing management services for at least two (2) years; and have participated in a lease-up; regardless of any partnership with an experienced company or the experience of its partners or principals.

**Experience Conditions**

- For Developments in all states, a Development will meet the “successful” condition for experience only if 8609’s have been issued for the Development, and the Development is operating in compliance with the Code.

- Additionally, for Oklahoma Developments, OHFA Compliance Staff must have completed the first compliance monitoring.
**Documentation Requirement:** Please verify which team members need to submit which documents. …

**OHFA RESPONSE:** Thank you for the comments. We have incorporated your suggested language, in addition to changing the management experience requirement from two (2) years to three (3) years to match compliance monitoring.

**Page 18 – Management Experience**

**Belmont:**

- Please add a phrase such as “or meet OREC exemptions as defined by Title 59 Section 858-301 by the Oklahoma Real Estate License Code as Amended Through November 1, 2019.”
- Can one person qualify a whole company? Does that person have to live in OK as a part of the Real Estate Commission requirements?
- Page 19, top of page, is a general license with Real Estate a standard form? Or will this be a matter of interpretation?

**Jim Rice:**

Please add a phrase such as “or meet applicable OREC exemptions as defined by Title 59 Section 858-301 by the Oklahoma Real Estate License Code as Amended Through November 1, 2019 or later date.”

**Oklahoma Coalition for Affordable Housing (OCAH):**

Please add a phrase such as “or meet OREC exemptions as defined by Title 59 Section 858-301 by the Oklahoma Real Estate License Code as Amended Through November 1, 2019.”

**Lance Windel:**

As a licensed real estate broker, I support OHFA requiring applicants to follow state statutes. I also recognize the request by other commenters that the OREC exception for owner/manager properties is appropriate in certain circumstances. For example, a small non-profit housing authority with 50 units should probably be exempt from this OHFA requirement in accordance with OREC exemptions. BUT, OHFA does has the ability, and exercises it often, to require developers to do more than the bare minimum; fair housing training is a good example. In this case I think it would be appropriate for OHFA to require management companies that managed more than 150 units to be licensed regardless of ownership interest. Developers that are growing and making this their livelihood should earn the professional accreditations of their craft, or at a minimum, hire staff that has earned those accreditations.

**Michael Tibbetts:**

New rule states:
"Management Companies must be licensed with the Oklahoma Real Estate Commission at the time of application."

This is not required in the State for Owners that manage their own properties and this would be an undue burden on the Developers that own and manage their own developments.

The new rule should state:

"Management companies that are not directly related to the owners of a development, (as certified in attachment #5 Identity of interest), must be licensed with the Oklahoma Real Estate Commission at the time of application."

Belmont Reply:

- Please add a phrase such as “or meet OREC exemptions as defined by Title 59 Section 858-301 by the Oklahoma Real Estate License Code as Amended Through November 1, 2019.”
- Can one person qualify a whole company? Does that person have to live in OK as a part of the Real Estate Commission requirements?
- Page 19, top of page, is a general license with Real Estate a standard form? Or will this be a matter of interpretation?

Ryan Hackett Reply:

I agree that owner/managers, which is allowable under Oklahoma law should be allowed to continue as is and OHFA should not have to be different than what the law allows or disallows.

OHFA RESPONSE: Thank you for the comments regarding this topic. OHFA cannot make the determination as to whether one person can qualify an entire company, or whether that individual must live in the state of Oklahoma. We will follow the requirements as listed by the OREC. Additionally, the following phrase has been added to the latest draft of the QAP “or meet applicable OREC exemptions as defined by Title 59 Section 858-301 by the Oklahoma Real Estate License Code as Amended Through November 1, 2019 or a later date.”

Page 19 – Experience in Oklahoma

Oklahoma Coalition for Affordable Housing (OCAH):

- Why is the Previous Participation List of the principals no longer required?
- If OHFA does not require a list of previous participation, how will you determine important items such as: the number of open developments, negative points, license requirements, etc.
- Why was this requirement removed? The Coalition believes it should remain.
Belmont:

- Why is the Previous Participation list of the principals no longer required?
- If OHFA does not require an organizational chart, how will you determine important items such as: the number of open developments, negative points, license requirements, etc.
- Why was this requirement removed? The Coalition believes it should remain.

OHFA Response: We felt that this requirement placed an unnecessary burden on the development community. However, it has been added back to the latest draft.

Page 20 – Financial Feasibility

Oklahoma Coalition for Affordable Housing (OCAH):

- Construction budget. Please clarify the intent of the language added: “Provided from the General Contractor listed in Tab 1.”

Jim Rice:

Construction budget. Please clarify the intent of the language added: “Provided from the General Contractor listed in Tab 1.” Do you just want a budget signed by the GC or are you just specifying that it should go in Tab 1 or both?

Belmont:

- Please clarify the intent of the language added: “Provided from the General Contractor listed in Tab 1.”
- We suggest providing the construction budget signed by a representative of the General Contractor.

OHFA Response: We would like a construction budget that is signed off on by the GC that is listed in Tab 1.

Page 21/Page 59 – Appraisal

Belmont:

We again strongly request an Appraisal not be required at Application. We suggest it be a Carryover Packet item. By requiring it at Application, this adds extra costs to a Development because multiple Appraisals have to be ordered before closing, due to timing. The amount of Credits may be reduced either at Carryover application or final application if the Appraisal does not show the necessary value. This statement could be added to the Certification Attachment (proposed as #7), and provided at Application.

OHFA Response: We will continue to require appraisals in related party transactions at time of application to aid in the determination that the development is being acquired at a fair price, and not being over-subsidized.
Oklahoma Coalition for Affordable Housing (OCAH):

- Please update the dates of the Oklahoma Coalition for Affordable Housing – Housing Conference, to be held May 2021.
- Please indicate that for Round 1 2021 applications, proof of Fair Housing training will not be required at the time of application, but rather at carryover.
- Please confirm in the QAP that the training provided at the OCAH 2018 Housing Conference (8 hours) is good through May 2021. This original course was designed to fulfill a three-year requirement.
- In lieu of listing these specific and exclusive courses, please consider issuing a list of requirements (including course length and subjects/points covered) in order to fulfill the requirements. The Coalition will work on alternate language to present.
- Please define a “live” class. Is live required to be in person or via internet/live broadcast? With many trainings being moved to online versions, some educational providers and licensing entities have provided further guidance and requirements to ensure training is completed (i.e. course monitors with participants participating via video, polling of participants, etc).
- It may be confusing that the OCAH Housing Conference is listed in the paragraph describing management required training; however, it is not listed in the bullet point approved courses.

Belmont:

- Was there a specific intention including the term “live” class, or was this just copied language? With so many trainings being moved to online versions (even those previously in-person), we would suggest removing this term. With the way things are now, and likely will be for some time, we would strongly suggest more flexibility for this requirement.
- It may be confusing that the OCAH Housing Conference is listed in the paragraph describing management required training, however, it isn’t listed in the bullet point approved courses.
- Please update the dates of the Oklahoma Coalition for Affordable Housing – Housing Conference, to be held May 2021.
- Please indicate that for Round 1 2021 applications, proof of Fair Housing training will not be required at the time of application, but rather at carryover.
- Please confirm in the Application that the training provided at the OCAH 2018 Housing Conference (8 hours) is good through May 2021. This original course was designed to fulfill a three-year requirement.
- We suggest this section be broad, generic, and list multiple options due to Corona and changes it will have on the training industry.

DeBruler Reply:

Specify the training instruction instead of endorsing specific businesses. In addition to E&A, we have learned of Grace Hill and others.
Why is Fair Housing Accessibility First limited to live training only? They offer webinars the same as E&A. Additionally, HUD is updating the HUD Exchange fair housing page: www.hudexchange.info/programs/fair-housing/

Include all training in the bulleted list instead of identifying the housing conference in a separate paragraph above.

Ryan Hackett Reply:

The important thing is that we have the Fair Housing Training. Because of the "live" requirement it becomes restrictive to certain dates. We would suggest that OHFA just require the training and allow online training. Allow everyone to attend the training and make it available for all.

OHFA Response: We will remove the “live” requirement as it pertains to certain trainings. However, we will continue with the approved list of trainings, and will clarify that the OCAH training from the 2018 Housing Conference will be acceptable through May 2021.

Page 26 – 2 Year Award

Brandon Shavers:

The 2-year award criterion is over-constrained, meaning there appears to be overlapping means of qualifying which may contradict or at least make it unclear whether a development qualifies for these points. First, “…in a city or town…” and second, “…within a three (3) mile radius…”. It is unclear whether the 3-mile radius stipulation is independent of city/town, which would mean the city/town qualifier is redundant; or if it is a condition on the city/town qualifier, such that two developments couldn’t be across the street from each other even if technically in different towns.

In either interpretation of the qualifiers, this criterion encourages developers to spread out new developments regardless of real supply and demand conditions. Even if it were simplified to a three-mile radius standard, a three-mile radius in one city is not equivalent to the same radius in another, as areas throughout Oklahoma differ greatly in population density and relative demand for housing. Over time, the likely result is over-supply in some areas and under-supply in others, avoiding which appears to be the original intent of this criterion.

Proposed Revision:

• **2-year award Prior Awards** – Points will be awarded to each proposed Development located in a city or town by address, or a census tract, in which no other development of the same tenant category (family or elderly) has received a 9% Low-Income Housing Tax Credit award during the last four (4) award cycles, including any interim awards, as of the proposed Development's application deadline. To receive points, Applicants must provide: a map showing the location of the proposed Development within the area (city or town, or census tract) used to qualify for points (https://www.huduser.gov/portal/sadda/sadda_qct.html); and prior award data showing the
addresses of each 9% development awarded within the last four (4) cycles including interim awards. Points will not be awarded if the nearest such other development is within one (1) mile, by the shortest road route for an automobile, of the proposed Development; regardless of city or town, or census tract. **3 points.**

The idea is that urban areas may have several small, densely populated census tracts within one city, but rural areas may have several small towns within one geographically large census tract. So with this revision, there can be several new developments within the same rural area if they are in different towns or there could be several new developments in the same city as long as they're in different census tracts, which are essentially based on population. The only distance-based qualifier is only to prevent developments that are technically in different areas from straddling the boundary right next to each other. Moreover, basing the time period on award cycles is much more definitive.

**OHFA Response:** Thank you for the suggestion. The 3-mile radius stipulation is independent of city/town. We feel that the language at this time is sufficient. However, language has been added clarifying that at least 50% of the proposed development must be located outside of the 3-mile radius.

**Page 27 – Tenant Targeted Populations**

**Mental Health Association Oklahoma:**

Applicants receive up to 8 points by setting aside 10% of the units to provide affordable housing to persons that are homeless, persons with mental or physical disabilities, Veterans, or Youth between the ages of 18-24 aging out of foster care. Yet if the applicant can’t find a targeted population renter for the unit within 90 days, OHFA allows renting the unit to anyone that does not have the designated need. Given the affordable housing needs of these populations, rarely should these units set-aside for specific populations be consumed by non-qualifying tenants. To allow applicants that chose this option to not fulfill their promise is unfair to the tenant targeted populations and to competing applicants who may have received the award had the applicant not received the 8 points.

To ensure applicants that elect this option are able to fulfill their promise, to receive points require the submittal of documentation with local agencies serving the targeted populations (letter of intent, referral agreement, cooperation letter, MOU, etc.) or include the property management outreach plan to the targeted populations. In order to ensure eligible referrals, an MOU with the local Continuum of Care (CoC) and the Coordinated Entry System of the CoC should be required and will ensure a pipeline of qualifying households. This will assist with the outreach to locate homeless and/or disabled families looking for units of affordable housing. Each of the 8 CoCs in the state of Oklahoma manages the Homeless Management Information System and maintains a list of homeless families, individuals, veterans and youth who would qualify.

**Progressive Independence:**
We appreciate the opportunity to comment on the State’s proposed application for Low Income Housing Tax Credits.

Progressive Independence is a nonprofit organization where people with disabilities experience full inclusion and opportunities in all aspects of society. As a Center for Independent Living, Progressive Independence is a consumer-controlled, community-based, cross-disability, nonresidential, private, non-profit agency designed and operated by individuals with disabilities to provide an array of independent living services. Our primary service area is central Oklahoma, comprised of the following counties: Canadian, Cleveland, McClain, Oklahoma, and Pottawatomie.

We support the State’s emphasis to award points to developments that promise to provide affordable rental housing to tenant targeted populations.

Progressive Independence would like to encourage OHFA to recommend the development community reach out to us, Center for Independent Living, Metropolitan Fair Housing Council, and others to help fill properties and provide supportive services to people with disabilities. We also want to request the State maintain a system to track tax credit properties that commit units to serve tenant targeted populations, which includes people with disabilities. This system should be available to the public and easily accessed online.

DeBruler, Inc.:

Applicants receive up to 8 points by setting aside 10% of the units to provide affordable housing to persons that are homeless, persons with mental or physical disabilities, Veterans, or Youth between the ages of 18-24 aging out of foster care. Yet if the applicant can’t find a targeted population renter for the unit within 90 days, OHFA allows renting the unit to anyone income-eligible that does not meet the designated population. Permitting applicants that chose this option not to fulfill their promise is unfair to the tenant targeted people and competing applicants who may have received the award had the applicant not received the 8 points. Given the affordable housing needs of these populations, rarely should these units set-aside for specific people be consumed by non-qualifying tenants.

How many applicants awarded points are serving the intended populations? How many units within the Tax credit portfolio are set-aside for the targeted households? Are the organizations serving these populations aware of the tax credit set-asides? If everyone is serving the intended demographic, why is there a blanket allowance of renting to others after 90 days?

Applicants that elect this option must ensure they fulfill their elected promise. Any deviation should follow typical protocols of applicants requesting an exception to their commitment and specifically document outreach and feedback from local agencies serving the targeted populations. OHFA should assure that developments choosing to help the tenant target populations connect with the local nonprofits that serve them. Such organizations include Progressive Independence, Areawide Aging, Community Action Agencies, Centers for Independent Living, the Continuum of Care, Homeless Alliance, Volunteers of America, Salvation Army, Catholic Charities, Mental Health network, etc.
OHFA Response: Thank you for the suggestions. Chapter 3 of OHFA’s LIHTC Compliance Manual states that if a unit is vacant for more than 90 days, and is not rented to a targeted population, then it is strictly monitored to ensure ongoing marketing to the targeted population is taking place. However, language has been added to state that if an applicant claims these points, they must provide an MOU with the local Continuum of Care (CoC).

Page 28 – Tenant Ownership

DeBruler, Inc.:

OHFA embraced the concept of Rent-to-Own in 1999 loosely modeling after the Cleveland Housing Network, one of the first in the nation in 1987 to link the LIHTC with homeownership opportunities for low-income families. Promoting rent-to-own design was during a time when local governments were widely stereotyping low-income housing tax credit developments as harbingers of increased crime. By linking rental to eventual homeownership, tax credit developments became more palatable to local elected officials tasked with issuing Resolutions of Development Support often in the face of citizen opposition.

Twenty-one years later, did this experiment work in Oklahoma? If yes, where are the lessons learned? If not, what was missing? How will OHFA ensure going forward that the rent to own concept promoted to residents and communities succeeds?

OHFA should examine and adopt the Cleveland Housing Network’s researched approach in the deployment of the rent-to-own structure and monitor the outcomes. Path to Homeownership, A Guide to Single Family Lease Purchase Projects funded with 9% Tax Credits, describes how to use the LIHTC program for homeownership. The guide explains how to develop and execute the plan to sustain a financially viable housing program and critical considerations to address early so that the program is successful for the families, as well as for the developer and owner. The Network’s guide is at:


Homeownership opportunity is an essential choice for families and the rent-to-own concept should result in the intended goal. Failure to do so should result in re-evaluating points or modifying requirements to ensure tenant ownership.

The State should continue to promote the development of single-family units as “rental” or strive to guarantee residents purchase units under the rent-to-own model.

OHFA Response: Thank you for the suggestion. At this time, OHFA is gathering data regarding the Tenant Ownership component of the AHTC program, and we feel that it is currently too early to tell how effective the criteria is, and will monitor it closely in the coming months/years to determine its effectiveness and whether it will require any future changes.

Page 30 – Historic Nature
Kevin Wilson:

We do not understand the value of limiting Historic Nature points to properties that were placed in service at least 30 years ago. If a property is eligible on the National Register then it should receive 5 points for Historic Nature. The leverage provided by Historic credits should be a priority point item regardless of a previous PIS date.

OHFA Response: Thank you for the suggestion. The language has been adjusted to state 16 years. However, the point total for this criterion remains at 3.

Pages 30-31 – Subsidy per Unit

Brandon Shavers:

The points granted for subsidy per unit are analog (they can vary infinitely between whole numbers) and carried out to 4 digits; it is statistically inappropriate to combine such a number with whole-number points items for ranking. Instead, other analog ranking factors could be considered for combining with subsidy per unit; such as a number of points calculated based on the implied capture rate; LIHTC rent market advantage; the degree to which area poverty rate is below, or area median income above, the state average; or similar.

As is, the subsidy per unit criterion becomes the primary ranking factor in many cases, as a single whole point can be the difference between the top or bottom of the applicant pool. With respect to certain set-asides, this has the effect of causing all other points items to be effectively required for an application to be remotely competitive. One possible way to take the onus off each, singular points item (including team members with negative points) would be to re-imagine points as a proper threshold criterion.

For instance, all 9% applicants could be required to have at least 45 points or some fraction of the total points available, or some otherwise reasonable threshold, which may even differ by set-aside. Perhaps points from analog criteria could be added to help meet such a threshold; but critically, ranking should only be done by analog criteria. This would benefit the program in several ways:

1. The points items elected on each application would be proper bonuses and the combination of them truly voluntary on the part of the applicant and appropriate to the development.

2. New points items could be added, and applicants would be inclined to see them as new options rather than feel pressured to meet tighter requirements.

3. Negative points from an otherwise sound and trusted team member could be compensated with additional points items, rather than be grounds for substituting team members.

4. The criteria by which applicants are ranked could reflect the inherent measurable qualities of the proposed developments themselves, including demand, need, and viability.
Belmont:

We continue to strongly encourage OHFA, in coordination with the Development community, to develop a better system. Originally as the tiebreaker, and now as a scoring item (while remaining the de facto tiebreaker), the long-term effect is narrowly funded Developments and less quality of housing for Oklahomans.

Michael Tibbetts:

Another comment made a good point about having the Subsidy Per Unit scoring item go down to 4 decimal places essentially made all other scoring items a requirement rather than an actual competitive factor in scoring projects. Having all scoring item's be considered in whole numbers would reinstate the competitive spirit of the other scoring items and still provide the state with the desired result of getting more housing out of each credit.

Rather than revamping the entire scoring system however, I would prefer to see the "Subsidy Per Unit" become a ranged scoring item where different whole number scores become incorporated.

For Example:

Subsidy Per Unit:

$4,000-6,000 = 10 Points
$6,001-8,000 = 9 Points
$8,001-10,000 = 8 Points
$10,001-12,000 = 7 Points
$12,001-14,000 = 6 Points
$14,001-16,000 = 5 Points
$16,001-18,000 = 4 Points
$18,001-20,000 = 3 Points
$20,001-22,000 = 2 Points
$22,001-24,000 = 1 Point
$24,001-30,000 = 0 Points

This would allow Subsidy Per Unit to remain a major factor in scoring each project without
creating a situation where all other scoring items become requirements. The tiebreaker could then further take the subsidy per unit into account and become the deciding factor between 2 projects with the same score.

Belmont Reply:

We continue to strongly encourage OHFA, in coordination with the Development community, to develop a better system. Originally as the tiebreaker, and now as a scoring item (while remaining the de facto tiebreaker), the long-term effect is narrowly funded Developments and less quality of housing for Oklahomans.

DeBruler Reply:

We encourage the Agency to increase the SPU ranges to adjust for cost increases in the marketplace. Since some Oklahoma developments use the FHLB of Topeka's AHP funds, an easy method would be to use their SPU rental factor, which has been reinforced by their local advisory council. Here is their Rental SPU Scoring Formula. Points awarded = 
\[\frac{50,001 - X}{44,000} \times 7.5\], where \(X = \text{SPU requested}\). NOTE: SPU rental has a range of $50,000 to $6,000. Applications with SPU less than or equal to the minimum SPU will receive 7.5 points. The minimum score is 0.

OHFA Response: Thank you for the comments/suggestions. We feel that this point criterion does not require any revisions at this time.

Page 36/Page 57 – Capture Rate

Oklahoma Coalition for Affordable Housing (OCAH):

We have a consensus that providing a hard rule for a required capture rate is a good thing, however, there is not a consensus on what that actual number should be. More discussion between industry advocates, market analysts and OHFA is required. Some distinction between urban vs. rural may be necessary.

Lance Windel:

We agree with the hard number for the capture rate and agree with the proposed rates. We’ve listened to concerns that those numbers are too low. But also recognize that the 9% credit is a very limited resource and OHFA should be allocating it to areas with the most need. It’s hard to justify funding a development that has a 19% capture rate when there are other developments in communities with 4% capture rates. We don’t disagree with a few market study experts that propose capture rate might not be the best indicator of actual need. We’re not opposed to exploring some other indicator, but strongly believe community need for more affordable units should be a strong point criterion.

To that note we would suggest another point scoring criterion that is controversial. Several years ago OHFA removed a resolution of support from threshold, and community support from points.
We supported that decision at the time. Recently, though, in dealing with municipalities that are less than inviting, it seems OHFA should reconsider allocating millions of dollars of housing and economic benefit to municipalities that aren’t friendly to the developments. It would be difficult, and cause a lot of discontent from advocates and developers, but it would send a strong signal to Oklahoma municipalities that if you want OHFA funds to help solve your housing crisis, you better find ways to be friendlier to our developments and their developers. A simple resolution signed by the city manager or mayor, promising an AHTC developer friendly municipality, would indicate which municipalities viewed our developments as a benefit to their town, while a lack thereof would indicate another Stillwater or Duncan.

Jim Rice:

We have a consensus that providing a hard rule for a required capture rate is a good thing, however, there is not a consensus on what that actual number should be. More discussion between industry advocates, market analysts and OHFA is required. Some distinction between urban vs. rural may be necessary.

I suggest that the 10%/15% shown is acceptable for urban locations but that 15%/20% would be more appropriate for rural locations. The lower number of renters in rural areas will increase capture rate and does not consider non-renters in substandard housing.

Belmont:

- We appreciate a hard rule for a required capture rate. However, the proposed percentages are too low. We suggest 15% for family and 20% for Elderly.
- We also support the Coalition’s request to develop more fully with interested parties.

DeBruler Reply:

Setting a threshold capture rate is helpful to applicants. Determining the rate should involve discussions with interested parties and industry professionals. Has OHFA funded previous projects with a high capture rate? Did the developments have concerns or issues, i.e. slow lease-up, vacancies, etc.?

OHFA Response: Thank you for the comments/suggestions. We want to ensure that affordable housing is being built in areas of need; and we believe that the capture rate of a development is one of the most efficient metrics to help insure this. Therefore, we have decided to not revise the stated capture rates of 10% for family and 15% for elderly, irrespective of their location within the state of Oklahoma.

Page 47 – Attachment #10 Capital Needs Assessment

Tim Henderson:

The Capital Needs Certification needs to stipulate that the only the owner can certify that the tenant that continue to reside in the property must qualify under the Tax Credit Program. The CNA provider can not certify to this statement since the information of the tenants is not available to the CNA provider after the report is complete.
Belmont:

The new language is inappropriate for this Certification. The parties signing this Attachment will not necessarily involved in the new Ownership and/or Management, and cannot certify to the added statement. We suggest it be added instead to the Certification Attachment (proposed as #7).

**OHFA Response: We agree and have moved the statement to Attachment #7.**

**Page 50 – Attachment #12 Self Score Sheet & Certification**

Belmont:

Explain the statement at the bottom of the page, “substitutions must be approved by OHFA”.

**OHFA Response: This pertains to the Energy Efficiency point criterion.**

**Page 58 – Basis Boost**

Jim Rice:

- 130% Boost – Please add Opportunity Zones the list of areas that are eligible for a 130% basis boost.
- 4% Basis Boost – Please reword or amend to account for any potential changes to IRC Section 42 or federal law. **Suggested wording: 4% Applications can only qualify for QCT or DDA Eligible Basis increase unless otherwise allowed by Internal Revenue Code.**

Belmont:

Please reword or amend to account for any potential changes to IRC Section 42 or federal law.

**Oklahoma Coalition for Affordable Housing (OCAH):**

- 130% Boost – Please add Opportunity Zones the list of areas that are eligible for a 130% basis boost.
- 4% Basis Boost – Please reword or amend to account for any potential changes to IRC Section 42 or federal law.

**Lance Windel:**

Please remove the restriction 4% applications can only qualify for QCT or DDA eligible basis boost. That doesn’t belong in the QAP. It is currently federal law. But if the law changes, Oklahoma shouldn’t be held back because OHFA enumerated it for no intentional reason in their QAP.
OHFA Response: We have revised the language in this section to allow any potential changes to the Internal Revenue Code or federal law regarding the 4% basis boost. Additionally, language has been added to allow proposed 9% developments located in Opportunity Zones to be eligible for the 130% basis boost.

Page 59 – Cost per Square Foot

Oklahoma Coalition for Affordable Housing (OCAH):

The current maximum of $180 per square foot was established some time ago. There has been no increase to this despite rising construction costs, inflation, etc. The cost per square foot should be indexed to allow for rising costs. OHFA could also review the most recent cost certifications to see what is most relevant.

Belmont:

The current maximum of $180 per square foot was established some time ago. There has been no increase to this despite rising construction costs, inflation, and now COVID-19, etc. The cost per square foot should be indexed to allow for rising costs.

OHFA Response: We have compiled an average for the most recent final cost certifications submitted to OHFA, for Developments placed in service in 2018, the average cost per square foot was $152.79, and for Developments placed in service in 2019, the average cost per square foot was $149.46. Therefore, we feel that the maximum cost per square foot requirement does not require a revision at this time.

Page 63 – Construction Start Date

Belmont:

We would ask again the construction start date be the same date the Carryover Packet is due. This would be one less due date for Staff to track. In addition, Staff time could be saved by not having to extend the deadline, based on Developer’s requests.

OHFA Response: We understand and appreciate that Developers have to adhere to many deadlines and requirements throughout the development process. However, administratively, from our side, we need to ensure that construction on a project begins in a timely manner.

Page 65 – General Contractor Cost Certification

Oklahoma Coalition for Affordable Housing (OCAH):

- Coalition members do not agree with the addition of this new requirement.
- This new requirement will add costs and increase spending.
- Why would a cost cert be required if a GC has a fixed cost contract?
Lance Windel:

We understand this might be a best practice from NCSHA, and it might be a good practice in a union state like New Jersey, but this will only increase costs in Oklahoma. As a GC, we offer fixed price contracts, as most lenders and syndicators require them. We bid a job as cost effectively as we can in order to win the bid with the expectation that if we perform well, we reap the benefit of our hard work. If we knew we were going to cost cert, we would not offer a fixed price contract and would have a negative incentive to save the development money as saving the development money would actually decrease our profit. The only way to account for this is to increase our bid prices IF we were to offer a fixed price contract that we know would require a cost cert. When we GC for ourselves as the developer we do cost cert the GC side as an identity of interest exists. Requiring we use a different accounting firm for a separate GC cost cert is offensive and calls in to question the ethics of the accounting firm we use. If OHFA questions the ethics of accounting firms that are providing cost certs for their developments they should just disqualify those firms. They shouldn’t artificially add an extra $8000 to $10,000 to the cost of each development.

Belmont:

- We agree with the Coalition that this new requirement will add costs to the total of providing affordable housing. In addition, we feel this is unnecessary.
- Alternatively, if OHFA leaves this as a requirement, we would request the language be clarified. The same third party, independent accountant should be able to perform both reports.
- Would a cost cert be required if a GC has a fixed cost contract?
- The certification would need to be added to final checklists.
- Will OHFA be providing a specific format for these cost certs similar to the final cost cert?

Jim Rice:

- Coalition members do not agree with the addition of this new requirement.
- This new requirement will add costs and increase spending.
- Why would a cost cert be required if a GC has a fixed cost contract?
- It is understood that this is an NCSHA recommendation. However, no one in the OCAH meeting was able to come up with any explanation for the purpose. There is already an almost overriding incentive to control costs due to the tie breaker and cost limits.
- I note that I don’t believe that is necessary to change anything, since the owner/developer is already holding costs to the minimum just to be at all competitive in allocation. However –
- The purpose of this recommendation is unclear as to OHFA and NCSHA intent. If the hard cost contract is for fixed cost, the only thing for the auditor to certify is that the contractor was paid the amount reported and then the amount of soft costs paid by the owner/developer. There would be no benefit in requiring the GC to cost certify as well. If the contract is cost-plus, then there might be merit in requiring that cost certification should extend to the invoice level, which would require a GC cost cert.
However, many (most?) general partners/developers act as IOI general contractors. In that case, the cost certification should already extend to the invoice level. There would be no reason or even ability to cost certify the related (identical) parties separately. The purpose of this requirement, I believe, is just to ensure that the IOI entity does not merely present the construction contract payments without the backup invoices. The requirement then, would just be that any IOI cost certification also audit the underlying invoices.

In either the fixed price non-IOI or the IOI case, there is no information to be gained from requiring 2 cost certs. Only in the instance of the cost-plus independent GC would there be a need for 2 cost certs - 1 at the hard cost GC level and one for the owner/developer paid soft costs.

Also, in the OCAH discussion, it appeared that some have read the phrase “independent accountants” for the cost certification purposes to mean that the cost certs for the owner and the GC would need to be prepared by different firms. I don’t think that was the intent as it makes no sense to assume that if you can’t trust the work of one auditor that you could trust the work of two and especially when there is only one entity to be audited. “Independent accountants” was, in my mind, just meant to show that the auditor performing the cost cert was separate and independent from the audited party. For clarification, that should be changed to just say that all cost certs be prepared by fully independent and licensed Certified Public Accountants.

OHFA Response: Thank you for the comments/suggestions. We understand that this may add an additional cost to the Development. However, we have taken a directive from NCSHA to aid in cost containment and due diligence between the owner/developer and the GC of LIHTC developments, and requiring a General Contractor cost certification has been a noted way of effectively doing this. Additionally, OHFA has received phone calls in the past from subcontractors who have not been paid/reimbursed for work/materials provided to a Development. We believe that this requirement will be a mitigating factor and we reserve the right to require invoices be provided with the GC cost certification to verify costs. If an Identity of Interest exists between the owner/developer and the GC, then the cost certifications may be performed by the same auditor.

Page 65 – Additional Credits

Oklahoma Coalition for Affordable Housing (OCAH):

Please clarify the intent. This appears to indicate that all awardees 4% and 9% may be able to request additional state and federal credits. If the intention is to just allocate any remaining state tax credits, please clarify in the language.

Jim Rice:

Please clarify the intent. This appears to indicate that all awardees 4% and 9% may be able to request additional state and federal credits. If the intention is to just allocate any remaining state tax credits, please clarify in the language. **In that case, it should be clear that this only applies to 4% deals using state credits. If the agency contemplates that Covid or supply/labor**
disruptions may lead to feasibility issues, the board already has the ability to provide additional credits (albeit with a price).

Belmont:

- Please clarify the intent. This appears to indicate that all awardees 4% and 9% may be able to request additional state and federal credits. If the intention is to just allocate any remaining state tax credits, please clarify in the language.
- We suggest the language be changed also to reflect the Rules and Application in place at time of award, rather than request. This provides Staff and the Owner with only one set of requirements for the Development.

DeBruler Reply:

Please state the parameters for additional credits so that all applicants are fully aware and understand when they are available and allocated. If this only applies to 4% and State Tax Credits, then be explicit in the statement.

OHFA Response: Thank you for the comments/suggestions. At this time, we prefer not to state specific parameters regarding the allocation of additional credits, because it will provide both the development community and OHFA with flexibility for any situation that arises wherein additional credits will be available and/or needed.

Page 72 – Final Cost Certification Deadline

Belmont:

We would again request that changes to the Final Cost Certification deadline be made. Either four months after the last Building is Placed in Service, later in the year, and/or, allow drafts of the certifications. This will be especially important if the General Contractor requirement is added.

OHFA Response: We understand that every development is different, and certain documents may not be available at certain times. However, we must stay involved in the project, and ensure that it is progressing forward in a timely fashion. We believe the current deadlines in place enable staff to do this.

Page 72 – Carryover Agreement

Belmont:

We would request that an original Carryover Agreement not be required. We understand it is the official Allocating document, and as such it is important. However, syndicators, lenders, attorneys, and others accept the electronic version of this document for their due diligence. Requiring an original seems to be an unneeded requirement. This language is in two different places in Attachment G.
OHFA Response: Thank you for the suggestion. OHFA will begin accepting electronic versions of the Carryover Agreement.

Page 72 – Carryover Packet

Belmont:

Since some Carryovers, as modified, allow for more than one year to submit the Packet, the language should be changed to “the date in the Carryover Agreement.”

OHFA Response: Thank you for the suggestion. The language in the latest Draft has been revised to allow for this.