SUPPLEMENTAL

BOARD MEETING OF NOVEMBER 7, 2013

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BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
NOVEMBER 7, 2013

Presentation, Discussion, and Possible Action to adopt the 2014 Multifamily Programs Procedures Manual.

RECOMMENDED ACTION

WHEREAS, the rules relating to multifamily program funding are contained in the Uniform Multifamily Rules, Housing Tax Credit Qualified Allocation Plan and Multifamily Housing Revenue Bond Rules; and

WHEREAS, the Department has created the Multifamily Programs Procedures Manual as a resource guide for applicants; and

WHEREAS, pursuant to Chapter 2306, Texas Government Code the Board shall adopt a manual to provide information regarding the administration of and eligibility for the housing tax credit program;

NOW, therefore, it is hereby,

RESOLVED, the Manual is hereby approved and the publication of the Manual on the Department's website shall occur no later than the date the adoption of the Uniform Multifamily Rules and Housing Tax Credit Allocation Plan is filed for publication in the *Texas Register;* and

FURTHER RESOLVED, the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing and to further amend from time to time as it deems necessary to provide guidance on the filing of multifamily related documents.

BACKGROUND

As part of the annual rule-making process for multifamily-related funding, the Multifamily Finance Division creates a Multifamily Programs Procedures Manual. The purpose of the manual is to provide guidance on the filing of a multifamily application and other multifamily program-related documents. Staff creates this manual as a resource guide which shall contain, to some extent, a reiteration of the rules and include examples where applicable regarding the requirements of the program of which the applicant is applying. From time to time staff may update the manual based on updated

information that may become available or to correct inconsistencies or to clarify information contained therein. The Board's action in approving the adoption of this Manual allows staff the flexibility to provide more detailed instructions and amend it as it deems necessary in order to effectively implement the Department's multifamily program rules once such rules have been adopted. Staff notes that the manual contains the main headings of various categories and/or tabs that will mirror the application and upon adoption of the rules and the finalization of the application staff will finalize this manual with instructions, guidance or re-iteration of the rules.

2014 Multifamily Programs Procedures Manual

221 East 11th Street
Austin, Texas 78701

Table of Contents

Introduction to the 2014 Multifamily Application

Programs

In March 2012, the Texas Department of Housing and Community Affairs' ("TDHCA" or "Department") Governing Board adopted resolution 12-019 which acknowledged the re-organization of the Department and its divisions. This re-organization shifted program staff and responsibilities to more closely align with the Department's mission.

Under the new structure, all multifamily funding programs were officially moved under the Multifamily Finance umbrella. The multifamily components of the HOME, Neighborhood Stabilization Program (NSP), and Housing Trust Fund (HTF) are now administered by Multifamily Finance Division staff. All Single-Family financing for the HOME, NSP, and HTF programs will be administered by their respective divisions, and will not be covered in this manual. The programs administered by the Multifamily Finance Division include;

- 9% Housing Tax Credits
- 4% Housing Tax Credits
- Tax Exempt Bonds
- Multifamily HOME
- Multifamily NSP
- Multifamily HTF

As a result of the Department's re-organization and the subsequent changes to the Uniform Multifamily Rules and Qualified Allocation Plan, staff also updated the Uniform Application in order to effectively administer the Multifamily Programs.

General Organization of the Application

The 2014 Application has fully integrated each of the Multifamily Programs into one coherent application and is divided into six (6) parts listed below, each of which will be briefly explained in this section, and fully explained later in this Manual.

- Administrative
- Development Site
- Development Activities
- Finance
- Organization
- Third Party

The **Administrative** section of the Application collects the most basic information about the proposed Development and the Applicant contact information. The purpose of the administrative section is to identify the program(s) to which the Application is submitted and includes the Applicant and

Developer Certifications. The selections made in these tabs will affect formulas throughout the application.

The **Development Site** section of the Application includes all of the information related to the physical location of the proposed Development site, such as the development address, census tract number, flood zone designation, as well as information about the schools and elected officials in the community.

The **Development Activities** section of the Application includes all of the information about what activity is being proposed, from what is being built to the services provided to the tenants. This section includes the architectural drawings and information regarding existing structures on the development site.

The **Finance** section of the Application includes all of the sources of financing, the development cost schedule, annual operating expenses, and the rent schedule.

The **Organization** section of the Application includes information about the Applicant, Developer, and Non-Profit entities involved with the Application, along with all of their owners, managers, and board members. It includes the organizational charts and evidence of experience as well as credit limit documentation.

The **Third Party** section briefly identifies the entities used for the Environmental Site Assessment, Market Study, and Property Condition Assessment, as well as any other required reports.

Of particular interest is the fact that the application, with respect to the competitive 9% housing tax credit program, is not separated into sections based on eligibility and selection criteria. Instead, items that affect an Application's score are found throughout the application. For instance, scoring criteria that are site-specific, such as Underserved Areas, are located in the Development Site portion of the application, while other scoring criteria, such as the Commitment of Funding from a Local Political Subdivision, area found in the Finance section.

Using this Manual

The purpose of this manual is to provide a brief description of each tab in the application and guidance as to the Department's submission requirements and what is acceptable supporting documentation. While the Department expects that this guide may not contemplate all unforeseen situations, we hope that the information will provide an adequate foundation upon which you may build your understanding of this program. This manual may in certain instances provide examples of documentation that could be submitted to comply with a particular rule or requirement. In some instances the rule may allow for alternative documentation not specifically contemplated herein, and in such instances staff will review such documentation for compliance with the applicable rule.

The Department always stands ready to assist you in understanding the tax credit program and other sources of multifamily financing offered by the Department and the means by which an application is to be presented. The Department will offer direct assistance to any individual that requires this service in the preparation of the multifamily application. However, the Department will not take the responsibility of completing the application package for you.

The Department looks forward to your continuing interest in the Multifamily Finance programs and in the creation of decent, safe, and sanitary affordable housing for the citizens of the State of Texas.

Instructions for Completing the Electronic Application

What you will learn in this section:

- ✓ How to download the Electronic Application Materials (including Pre-Application)
- ✓ How to convert the Excel Application to PDF
- ✓ How to set Bookmarks

If submitting an Application or Pre-Application, all Applicants are required to use the 2014 Uniform Application, Pre-Application, and/or any supplemental files provided by TDHCA located at the following link: (http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm).

1. To download any of the electronic Application files, right-click on the link at the website provided above, select "Save Target As" and choose the storage location on your computer. The Excel file should be named in the following format -- <Application #_Development Name>.xls (e.g. 14001_Austin_Crossing.xls). If an Application number has not been previously assigned then the file should be named as follows -- <Development Name>.xls (e.g. Austin_Crossing.xls).

2. Please do not transfer tabs from one Excel file to another, even if it is for the same Application. If you plan to submit more than one Application, please make additional copies of the 2014 Uniform Application file **after** completing portions of the Application that ***are common*** to all of your Applications and **before** completing any portions that are not common to all of your Applications.

3. Any cell that is highlighted yellow is available to be manipulated by the applicant. All other cells (unless specifically stated) are for Department use only, have been pre-formatted to automatically calculate information provided, and are locked. Applicants may view any formulas within the cells. Applicants may not add additional columns or rows to the spreadsheets, unless otherwise stated.

4. All questions are intended to elicit a response, so please do not leave out any requested information. If references are made by the Applicant to external spreadsheets those references must be removed prior to submission to TDHCA as this may hamper the proper functioning of internal evaluation tools and make pertinent information unavailable to TDHCA.

5. This electronic Application has been designed so that much of the calculations regarding development cost, eligible basis, and eligible point items will automatically compute once

enough information has been entered. If you see a "#VALUE" or "DIV/0" in a cell these values should disappear upon data entry in other tabs.

Tip – Complete the Development Narrative and the Rent Schedule in the Development Activities and Finance Parts of the Application first to take full advantage of the automated calculations.

6. Be sure to save the file as you fill it out!

If you have difficulty downloading the files from the website, contact Jason Burr at (512) 475-3986, or Jason.burr@tdhca.state.tx.us.

Instructions for Converting the Excel file to PDF

Once the Excel Application file is completed and you are ready to convert the file to PDF, follow these instructions.

Tip- Be sure to check all of the Page Breaks in the Excel files before you convert to PDF.

Excel 2007 Users:

Click the **Microsoft Office Button**  , point to the arrow next to **Save As**, and then click **PDF or XPS**.

1. In the **File Name** list, type or select a name for the workbook.

2. In the **Save as type** list, click **PDF**.

3. If you want to open the file immediately after saving it, select the **Open file after publishing** check box. This check box is available only if you have a PDF reader installed on your computer.

4. Next to **Optimize for**, do one of the following, depending on whether file size or print quality is more important to you:
   - If the workbook requires high print quality, click **Standard (publishing online and printing)**.
   - If the print quality is less important than file size, click **Minimum size (publishing online)**.

5. Click **Options**. Under **Publish What** select **Entire Workbook** and click **OK**.

6. Click **Publish**.

Excel 1997-2003 Users:

1. With the Excel file open go to the Adobe PDF drop-down box from the task bar (if using Excel 2007 click on "Acrobat" tab in the task bar)

2. Select "Convert to Adobe PDF" from the drop-down list (Excel 2007- select "Create PDF")

3. The Adobe PDFMaker box will appear. One the left hand side of the box all of the sheets within the Excel file will be listed and you will be prompted to select the sheets you would

like to covert to PDF. Once the sheets you want to convert are selected click on the "Add Sheets" button to move those sheets over to the right-handed side of the Adobe PDFMaker box, this will list the sheets selected to be converted to PDF.

4. Once all sheets you have selected appear on the right-hand side under "Sheets in PDF" click on the "Convert to PDF" button.

5. You will be prompted to create a name and save the PDF file. The PDF file should be named in the following format -- <Application #_Development Name>.pdf (e.g. 14001_Austin_Crossing.pdf). If an Application number has not been previously assigned then the file should be named as follows --<Development Name>.pdf (e.g. Austin_Crossing.pdf)

6. A pop-up box will appear that asks "Do you want to proceed without creating tags?" Click Yes.

Remember that there are forms that require a signature. Once you have executed all required documents scan them and re-insert the scanned forms back into the order required. The Application and Pre-Application submitted should be the electronic copy created from the Excel file, not a scanned copy of the Excel or PDF file. Scanned copies of the Application are difficult to read, and slow down the process for staff and applicants.

Creating Bookmarks

Once the file has been converted to PDF and all executed forms have been re-inserted into their appropriate location within the file, you will need to create Bookmarks. Bookmarks may or may not have already been created as part of the conversion process. You will need to designate or re-set the locations. To correctly set the Bookmark locations you must have the PDF file open in Adobe Acrobat. Click on the Bookmark icon located on the left-hand side of the Adobe Acrobat screen, or go to the task bar and select these options in the following order: **View → Navigation Panels → Bookmarks**.

If a Bookmark has already been created for each tab within the Excel file, simply re-set the bookmarks to the correct locations. To re-set the location for the Bookmarks, go to the first page of each separately labeled form/exhibit. You will then right-click on the corresponding Bookmark for the form/exhibit you are currently viewing. Select **Set Destination** and a pop-up box will appear asking you the following: "Are you sure you want to set the destination of the selected bookmark to the current location?" Select **Yes**.

If Bookmarks were not already created within the Excel file, then you will need to create these Bookmarks. Go to **Document → Add Bookmark.** Right-click on the first Bookmark and re-name it for the appropriate form or exhibit. You will then need to set the location of the Bookmark by going to the first page of each form or exhibit, right click on the corresponding Bookmark and select **Set Destination**. A pop-up box will appear asking you the following: "Are you sure you want to set the destination of the selected bookmark to the current location?" Select **Yes**.

Tabs within the Excel Application workbook have been color coded to distinguish between "Parts" of the Application consistent with this manual. Additionally, beside each bulleted item a label to use for purposes of bookmarking the final PDF Application file is included in parentheses.

If after conversion of the Excel file to PDF you have extra blank pages of any exhibit, you can delete those pages in order to limit the size of the file. To delete any extra, unnecessary pages identify the page number(s) you want deleted. On the Adobe Acrobat Task Bar click on Document and select Delete Pages from the drop down list. A box will appear prompting you to select which page(s) you would like to delete. Enter the page numbers to be deleted and hit OK.

The PDF formatted file must be checked for the following prior to submission:

- ✓ All tabs and/or volumes must be correctly bookmarked
- ✓ Files should average less than 100 kilobytes per page
- ✓ Files must be readable with free PDF file viewers including Adobe Reader and be compatible with Adobe Reader 5.0 and above
- ✓ Files should be saved so that "Fast Web View" (or page at a time downloading) is enabled
- ✓ Text within the PDF file should be searchable using the "Find" command in the PDF viewer

If you have any questions on using or experience difficulties with the Microsoft Excel based application, contact Jean Latsha via email at jean.latsha@tdhca.state.tx.us. In some instances a file may have small variations in bookmarks, file sizes, or readability that are not explicitly cited as requirements in the rule. Staff will use a reasonableness standard in determining when such deviations rise to the level of necessitating termination or other remedy.

Pre-Application (for Competitive HTC only)

What you will learn in this section:

- ✓ Pre-Application delivery instructions
- ✓ Pre-Application assembly instructions
- ✓ Required Pre-Application exhibits

Pre-Application Delivery Instructions

Deliver To: (Overnights)	Multifamily Finance Division Texas Department of Housing and Community Affairs 221 East 11th Street Austin, Texas 78701
Regular Mail:	P.O. Box 13941 Austin, Texas 78711

Please note that the Applicant is solely responsible for proper delivery of the Application. Late deliveries will not be accepted.

Competitive Application Cycle

The Pre-Application must be received by TDHCA no later than 5:00 p.m. on Thursday, January 16, 2014. On January 16, the Department will accept walk-in delivery, and tables will be set up in one of the Department's conference rooms from 8:00 a.m. to 5:00 p.m. Department resources may not be used to copy, format, or assemble the Pre-Application.

Mailed or courier packages must be received by TDHCA on or before 5:00 p.m. Thursday, January 16, 2014. TDHCA shall not be responsible for any delivery failure on the part of the Applicant. If the Applicant chooses to use a postal or courier service to deliver the Pre-Application to TDHCA and such service fails to deliver the Pre-Application by the deadline, then the Pre-Application will be considered untimely and will not be accepted.

Applicants are advised to take any steps necessary to ensure timely delivery of all application materials. In many cases applicants bring multiple copies of the application files, test the files on computers other than the computer used to assemble the files, rely on their legal counsels in or near Austin to retain a copy in the event of unforeseen circumstances, etc. Applicants should not expect to have an opportunity to complete the application materials at TDHCA offices on the final day of the submission period. Failure to timely submit a pre-application may result in an application being ineligible for pre-application points.

Pre-Application Assembly Instructions

For each Pre-Application the Applicant must ensure execution of all necessary forms and supporting documentation and place them in the appropriate order according to this manual. All Pre-Application materials must be submitted in electronic format only, unless specifically noted otherwise. The Applicant must deliver by 5:00 p.m. on January 16, 2014:

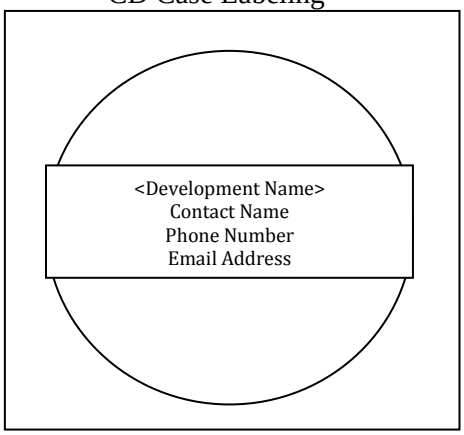
1. One VIRUS-FREE CD-R in a protective hard plastic case containing the following:
   - A complete 2014 Multifamily Pre-Application saved as a Microsoft Excel file; and
   - A complete, executed PDF copy of the 2014 Multifamily Pre-Application file with all attachments and supporting documentation;

2. One complete hard copy of the 2014 Payment Receipt with check attached for the correct Pre-Application Fee, made out to "Texas Department of Housing and Community Affairs"; and

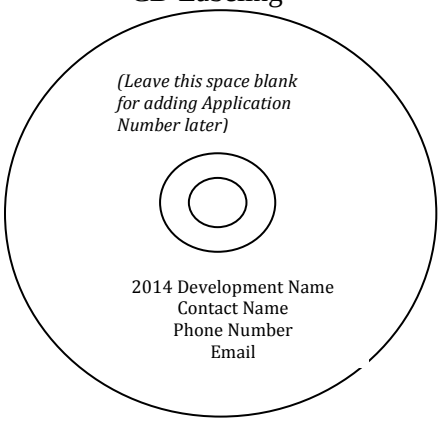
3. One complete and fully executed 2014 Electronic Application Filing Agreement. (The Electronic Filing Agreement may be hard copy or electronic)

Label the CD protective case with a standard label containing the typed-in development name and the Applicant's name with email address to contact. Leave 2" above the label for a TDHCA Project Number label that will be added later by TDHCA. **PLEASE DO NOT ATTACH ADHESIVE LABEL TO THE CD ITSELF.** Rather, write the requested information legibly on the printed side of the CD itself with a felt-tip pen. Refer to labeling illustrations below. **Double-check the CD to verify that it contains the properly named virus-free application files.**

CD Case Labeling



CD Labeling



Required Forms and Exhibits for the Pre-Application

Submission of a Pre-Application is not required; however, submitting a Pre-Application could qualify an Application for six (6) points, if all pre-application threshold requirements are met, notwithstanding the requirements under §11.9(e)(3) of the 2014 Qualified Allocation Plan. These points would not be available otherwise.

During the review process an Administrative Deficiency will be issued to an Applicant in cases where a clarification, correction or non-material missing information is needed to resolve inconsistencies in the original Pre-Application. Applicants should familiarize themselves with the Administrative Deficiency process identified in §10.201(7) of the 2014 Uniform Multifamily Rules. It is important that Applicants take extra care in completing and compiling all required documentation for the Pre-Application submission.

There are nine worksheets in the Pre-Application Excel workbook, representing the nine tabs below. The complete PDF Pre-Application file must be submitted in the order presented in the Excel file and detailed below. Note that some tabs in the workbook act as a placeholder for purposes of reminding Applicants of documents that must be submitted within the Application.

- **Tab 1: Pre-Application Certification**
- **Tab 2: Applicant Information Form**
- **Tab 3: Development Information Form**
- **Tab 4: Self Score Form**
- **Tab 5: Site Control**
- **Tab 6: Multiple Site Information**
- **Tab 7: Certification of Notifications**
- **Tab 8: Elected Officials Form**
- **Tab 9: Neighborhood Organizations Form**

Application

What you will learn in this section:

- ✓ Application delivery instructions
- ✓ Application assembly instructions
- ✓ How to fill out the electronic Application file
- ✓ Required Application exhibits

NOTE: 4% Tax Credit Applications for Bond Financed Developments can be submitted throughout the year. Submission of these Applications is based on the Bond Review Board Priority designation and the 75-day deadlines posted on the Departments website at the following link: http://www.tdhca.state.tx.us/multifamily/htc/index.htm.

Application Delivery Instructions

Deliver To: (overnights)
Multifamily Finance Division
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Regular Mail:
P.O. Box 13941
Austin, Texas 78711

Please note that the Applicant is solely responsible for proper delivery of the Application. Late deliveries will not be accepted.

Competitive Application Cycle

The Application must be received by TDHCA no later than 5:00 p.m. on Friday, February 28, 2014. On February 28, the Department will accept walk-in delivery, and tables will be set up in one of the Department's conference rooms from 8:00 a.m. to 5:00 p.m. Department resources may not be used to copy, format, or assemble the Application. **All required supplemental reports must be submitted simultaneously with the application** (unless otherwise noted).

Mailed or courier packages must be received by TDHCA on or before 5:00 p.m. Friday, February 28, 2014. TDHCA shall not be responsible for any delivery failure on the part of the Applicant. If the Applicant chooses to use a postal or courier service to deliver the Application to TDHCA and such service fails to deliver the Application by the deadline, then the Application will be considered untimely and will not be accepted.

Applicants are advised to take any steps necessary to ensure timely delivery of all application materials. In many cases applicants bring multiple copies of the application files, test the files on computers other than the computer used to assemble the files, rely on their legal counsels in or near

Austin to retain a copy in the event of unforeseen circumstances, etc. Applicants should not expect to have the opportunity to complete the application materials at TDHCA offices on the final day of the submission period.

Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. The submitted Application should be the electronic copy created from the Excel file, ***not*** a scanned copy of the Excel or PDF file. Scanned copies of the Application are difficult to read, and slow down the process for staff and applicants.

All Application materials must be submitted in electronic format only, unless specifically noted otherwise. The Applicant must deliver:

1. One VIRUS-FREE CD-R in a protective hard plastic case containing the following:
   - the completed, active Microsoft Excel based 2014 Multifamily Uniform Application; and
   - the completed, executed PDF copy of the 2014 Multifamily Uniform Application with all attachments;

2. One VIRUS-FREE CD-R in a protective hard plastic case containing a complete, single file, searchable copy of the following 3rd party reports:
   - Phase I Environmental Site Assessment,
   - Property Condition Assessment (where applicable),
   - Appraisal (where applicable)
   - If the Market Study and/or Feasibility Study are available, they may be included on the CD with all other 3rd party reports.

Note: The Department will also accept one CD-R with both the Application and the Third Party Reports on the same disc. Staff appreciates that third party reports may come directly from the report provider and will also accept one third party report per disc. However, the entire Application (both the Excel and the PDF files), regardless of how the third party reports are submitted, must be included on one single disc. Tabs within the Application should not be separated onto separate discs. In addition, each of the two Application files (the Excel and PDF) should be one file; the Application should not be separated into more than one file.

3. Completed hard copy of the 2014 Payment Receipt. Attach check for the correct Application Fee made out to "Texas Department of Housing and Community Affairs"; and

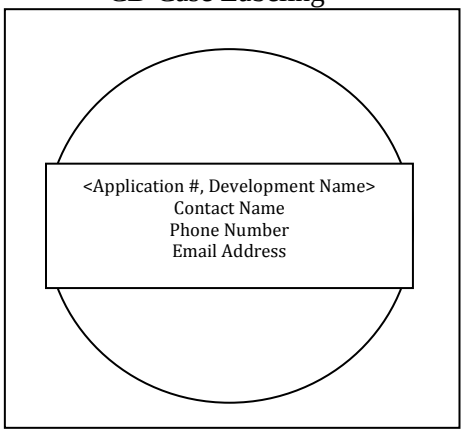
4. Completed and fully executed 2014 Electronic Application Filing Agreement (**ONLY REQUIRED IF NOT SUBMITTED AT PRE-APPLICATION**).

Label the CD protective case with a standard label containing the typed-in development name, application number (if assigned at Pre-Application) and the Applicant's name with email address to contact. If an application number has not previously been assigned or a Pre-Application was not submitted for the same Development Site, leave 2" above the label for a TDHCA Application Number label that will be added later by TDHCA. **PLEASE DO NOT ATTACH ADHESIVE LABLE TO THE CD ITSELF.** Rather, write the requested information legibly on the printed

side of the CD itself with a felt-tip pen. Refer to labeling illustrations below. **Double-check the CD to verify that it contains the properly named virus-free application files.**

CD LABELING INSTRUCTIONS FOR APPLICATION

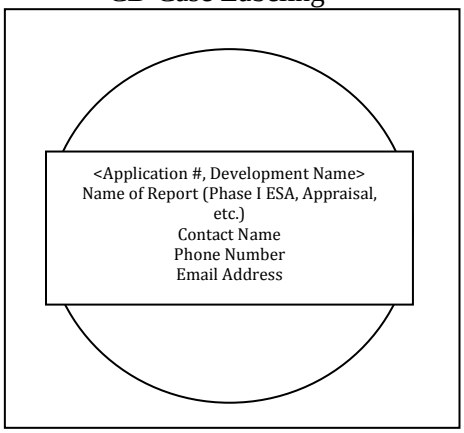
CD Case Labeling



CD Labeling

CD LABELING INSTRUCTIONS FOR THIRD PARTY REPORTS (if applicable)

CD Case Labeling



CD Labeling

Required Forms and Exhibits for the Application

The 2014 Multifamily Housing Application form consists of six (6) parts. Complete all applicable parts. Those cells in which require entry are highlighted yellow. Some of the required information for this form has been entered in a previous tab and will auto fill here as applicable. Please review and ensure all information is accurate. Remember to include any supporting documentation.

Part 1- Administrative Tabs

- **Tab 1 – Application Certification**
- **Tab 2 – Certification of Development Owner**
- **Tab 3 – Certification of Principal**
- **Tab 4 – HOME Development Certification**
- **Tab 5 – Applicant Information Page**
- **Tab 6 – Self-Score (Competitive HTC Only**

Part 2 – Development Site

The blue colored Development Site tabs (8-15) collects all information specific to the physical location of the Development site.

- **Tab 7 – Site Information Form Part I:**
  - **Part 1 – Development Address:**
  - **Part 2 – Census Tract Information:**
  - **Part 3 – Site Characteristics**:
  - **Part 4 – Undesirable Area Features:**
  - **Part 5 – Resolutions:**
  - **Part 6 – Zoning and Flood Zone Designation:**
  - **Part 7 – Educational Excellence:**
  - **Part 8 – Opportunity Index:**
  - **Part 9 – Underserved Area:**
  - **Part 10 – Community Revitalization:**
  - **Part 11 – Declared Disaster Area:**
  - **Part 11 – Input from Community Organizations:**

❖ **Tab 8 – Supporting Documentation for the Site Information Form**

- **Census Tract Map**
- **Site Characteristics Map**
- **Evidence of Department Preclearance of Undesirable Area Features**
- **Evidence of Zoning or Re-zoning in process**
- **Flood Zone Designation**
- **School Attendance Zone Map and/school rating**
- **Evidence of Underserved area**
- **Community Revitalization Plan**
- **Declared Disaster Area**
- **Letters from Community Organizations**

❖ **Tab 9 – Site Information Form Part II**

❖ **Tab 10 – Supporting Documentation from Site Information Part II**

❖ **Tab 11 – Multiple Site Information Form**

❖ **Tab 12 – Elected Officials**

❖ **Tab 13 – Neighborhood Organizations**

❖ **Tab 14 – Certification of Notifications (All Programs)**

Part 3- Development Activities

❖ **Tab 15 – Development Narrative**

- **Part 1 - Construction Type:**
- **Part 2 – Target Population:**
- **Part 3 – Staff Determinations:**
- **Part 4 – Narrative:**
- **Part 5 – Funding Request:**
- **Part 6 – Set-Aside:**
- **Part 7 – Previously Awarded State and Federal Funding:**
- **Part 8 – Qualified Low Income Housing Development Election**:

❖ **Tab 16 – Development Activities**

- **Part 1 – Common Amenities (ALL Multifamily Applications)**
- **Part 2 – Unit Requirements (ALL Multifamily Applications)**
- **Part 3 – Tenant Supportive Services (ALL Multifamily Applications)**
- **Part 4 – Development Accessibility Requirements (ALL Multifamily Applications)**

- **Part 5 – Size and Quality of the Units (competitive HTC Applications only)**
- **Part 6 – Income Levels of the Tenants (competitive HTC Applications only)**
- **Part 7 – Rent Levels of the Tenants (competitive HTC Applications only)**
- **Part 8 – Tenant Services (competitive HTC Applications only)**
- **Part 9 – Tenant Populations with Special Housing Needs (competitive HTC Applications only)**
- **Part 10 – Pre-application Participation (competitive HTC Applications only)**
- **Part 11 – Extended Affordability or Historic Preservation (competitive HTC Applications only)**
- **Part 12 – Right of First Refusal (competitive HTC Applications only)**

❖ **Tab 17 – Acquisition and Rehabilitation Information**

- **Part 1 – At-Risk Set-Aside (Competitive HTC Developments applying under the At-Risk Set-Aside ONLY)**
- **Part 2 – Existing Development Assistance on Housing Rehabilitation Activities**
- **Part 3 – Lead Based Paint (HOME Applications Only).**

❖ **Tab 18 – Occupied Rehabilitation Developments**

❖ **Tab 19 – Architectural Drawings**

- **Site Plan**
- **Building Floor Plans**
- **Unit Floor Plans**
- **Building Elevations**

❖ **Tab 20 – Building/Unit Configuration**

Part 3- Development Financing

❖ **Tab 21 – Rent Schedule**

❖ **Tab 22 – Utility Allowances**

❖ **Tab 23 – Annual Operating Expenses**

❖ **Tab 24 – 15 Year Pro Forma**

❖ **Tab 25 – Offsite Costs Breakdown**

- **Tab 26 – Site Work Costs Breakdown**
- **Tab 27 – Development Cost Schedule**
- **Tab 28 – Financing Narrative and Summary of Sources and Uses**
- **Tab 29 – Financial Capacity and Construction Oversight (HOME Applications only)**
- **Tab 30 – Matching Funds (HOME Applications only)**
- **Tab 31 – Finance Scoring (competitive HTC Applications only)**
- **Tab 32 – Supporting Documentation**

Part 5 – Development Organization

- **Tab 33 – Sponsor Characteristics**
- **Tab 34 – Applicant and Developer Ownership Charts**
- **Tab 35 – List of Organizations and Principals**
- **Tab 36 – Previous Participation and Background Certification**
- **Tab 37 – Nonprofit Participation**
- **Tab 38 – Nonprofit Support Documentation** –
- **Tab 39 – Development Team Members**
- **Tab 40 – HOME Management Plan Certification (HOME Applicants only)**
- **Tab 41 – Architect Certification**

❖ **Tab 42 –Experience Certificate**

- **DUNS Number and CCR Documentation (HOME Applications Only)**
- **Davis Bacon Labor Standards (HOME Applications Only)**
- **Affirmative Marketing Plan (HOME Applications Only)**

❖ **Tab 43 – 9% Applicant Credit Limit Documentation and Certification**

Part 6 – Third Party Reports

All third party reports must be submitted in their entirety by the deadline specified below. Incomplete reports will result in termination of the application. Reports should be submitted in a searchable electronic copy in the format of a single file containing all of the required information and conform to Subchapter D of the Uniform Multifamily Rules. Exhibits should be clearly bookmarked.

❖ **Tab 44 – Third Party:** The required **Environmental Site Assessment** (ESA) must be submitted to the Department no later than 5pm CST on **February 28, 2014**.

- The required **Market Analysis** must be submitted to the Department no later than 5pm CST on **April 1, 2014. The Market Analysis Summary must be submitted with the Application no later than 5pm CST on February 28, 2014.**
- If applicable, the **Property Condition Assessment** (PCA) must be submitted to the Department no later than 5pm CST on **February 28, 2014**.
- If applicable, the **Appraisal** must be submitted to the Department no later than 5pm CST on **February 28, 2014**.
- If applicable, the **Site Design and Development Feasibility Report** must be submitted to the Department no later than 5pm CST on **February 28, 2014**

HOME/CHDO Information

Application Delivery Instructions

HOME Program Information

CHDO Overview

Supplemental Information

Public Viewing of Pre-Applications and Applications

The Department will allow the public to view any Pre-Applications or Applications that have been submitted to the Department in an electronic format. These electronic versions will be available within approximately two weeks of the close of the Application Acceptance Period. An Applicant may request via an open records request an electronic copy between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday. There may be an associated cost with requesting this information. To submit an open records request or to coordinate the viewing of a Pre-Application or Application please contact Misael Arroyo in the Multifamily Finance Division at misael.arroyo@tdhca.state.tx.us.

Applicable Rules and Reference Materials

2014 SITE DEMOGRAPHIC CHARACTERISTICS REPORT

2014 UNIFORM MULTIFAMILY RULES

2014 QUALIFIED ALLOCATION PLAN

TEXAS GOVERNMENT CODE CHAPTER 2306

INTERNAL REVENUE CODE SECTION 42

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BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

NOVEMBER 7, 2013

Presentation, Discussion, and Possible Action on an order adopting amendments to 10 TAC Chapter 12, §§12.1, 12.4 – 12.6, 12.10, concerning the Multifamily Housing Revenue Bond Rules, and directing its publication in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") is authorized to issue multifamily housing revenue bonds for the State of Texas; and

WHEREAS, the Department has developed the Multifamily Housing Revenue Bond Rules to establish the procedures and requirements relating to an issuance of bonds; and

WHEREAS, the proposed amendments were presented and approved at the September 12, 2013, Board Meeting and published in the October 4, 2013 issue of the *Texas Register* for public comment; and

WHEREAS, the public comment period ended on October 25, 2013, and no comments were received specifically directed to these amendments; and

WHEREAS, public comment was received relating to the Uniform Multifamily Rules that were concurrently proposed and affect the provisions of this rule;

NOW, therefore, it is hereby

RESOLVED, that the final order adopting the proposed amendments to 10 TAC Chapter 12, regarding the Multifamily Housing Revenue Bond Rules, are hereby ordered and approved, together with the preamble presented to this meeting, for publication in the *Texas Register*;

FURTHER RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the adopted amendments to the Multifamily Housing Revenue Bond Rules, together with the preamble in the form presented to this meeting, to be published in the *Texas Register* and, in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing; and

FURTHER RESOLVED, changes to the amendments are further authorized to the extent necessary to maintain consistency with Chapter 10, the Uniform Multifamily Rules and Chapter 11, the Qualified Allocation Plan as finally approved by the Governor.

BACKGROUND

The Board approved the proposed amendments to the Multifamily Housing Revenue Bond Rules (the "Bond Rules") at the September 12, 2013, Board meeting to be published in order to receive public comment. The amendments were published in the *Texas Register* on October 4, 2013.

The Department did not receive any comments specific to the proposed amendments; however, there were comments received in response to the Housing Tax Credit Qualified Allocation Plan (the "QAP") and Uniform Multifamily Rules that impact the amendments and are being presented at this meeting. A summary of those comments are indicated below and an index of the commenter's is included in this presentation. The adoption of the QAP and Uniform Multifamily Rules as recommended by staff will result in the adoption of those changes in the amendments to the Multifamily Housing Revenue Bond Rules as well to maintain consistency among the programs.

Preamble, Reasoned Response, and Amendments to Chapter 12 Multifamily Housing Revenue Bond Rules

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 12, §§12.1, 12.4, 12.5 and 12.6 concerning the Multifamily Housing Revenue Bond Rules with changes to the proposed text as published in the October 4, 2013 issue of the *Texas Register* (38 TexReg 6797). Section §12.10 is adopted without change and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the amendment will result in implementing changes that will improve the Private Activity Bond Program and achieve consistency with other multifamily programs.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

Comments were accepted from October 4, 2013 through October 25, 2013, with comments received from: (1) Texas Affiliation of Affordable Housing Providers (TAAHP); (18) Robbye Meyer, Arx Advantage; (21) Barry Palmer, Coats Rose; (22) Sarah Anderson, S. Anderson Consulting; (23) Valentin DeLeon, DMA Development Company; (28) Alyssa Carpenter, S. Anderson Consulting; (34) Donna Rickenbacker, Marque Real Estate Consultants; (35) Sean Brady, REA Ventures; (39) John Henneberger (Texas Low Income Housing Information Service and Madison Sloan (Texas Appleseed); (40) Stuart Shaw, Bonner Carrington and (42) Claire Palmer.

1. §12.1(e) – Waivers (21)

COMMENT SUMMARY: Commenter (21) suggested this section be revised to remove the requirement that a waiver may only be requested at or prior to submission of the pre-application or application. Commenter (21) asserted that sometimes it is unknown whether a waiver will be required until staff has evaluated an application because it will often be an issue of interpretation of the rules.

STAFF RESPONSE: Staff believes that the majority of waivers necessary for an application to be considered eligible can be contemplated by the applicant before the application is submitted since they often involve issues surrounding the development site and/or design features. Most often, when there is question about interpretation of a rule, those questions can be resolved through the appeals process. Staff also believes that the relatively high threshold of proving that a waiver is necessary for the Department to fulfill some purpose of law warrants those issues being addressed early in the development process. Staff does, however, believe that unexpected issues may arise in the development process subsequent to award and has suggested modifications to §10.207 that would accommodate such uncertainties and the possible need for a waiver after an award is approved. Staff recommends the following change to this section:

> "(e) Waivers. Requests for waivers of program rules or pre-clearance relating to Undesirable Area Features pursuant to §10.101(a)(4) of this title (relating to Site and Development Requirements and Restrictions) must be made in accordance with §10.207 of this title (relating to Waiver of Rules or Pre-clearance for Applications). ~~with the exception of the deadline for submission. Any requests for waivers or pre-clearance must be requested at the time the pre-application is submitted.~~"

2. §12.4(c) – Scoring and Ranking - Tie Breaker Factors (35), (39), (42)

COMMENT SUMMARY: Commenter (35) proposed the following additional items be considered as alternative tie breakers: lower tax credit request, part of completion of an adopted redevelopment plan, substantial experience along with good compliance record from previous developments, general partner or co-general partner is a non-profit or quasi-governmental entity, and/or highest market demand based on submitted market studies. Commenter (42) suggested an additional tie breaker be added based on the most significant development in competition with other developments under the same local jurisdiction.

Commenter (39) suggested the current tie breaker factors may aggravate the existing tax credit developments and these units being located on the peripheral edges of populated areas. Commenter (39) recommended the de-concentration tie-breaker instead be calculated as the application with the tract lower concentration index, where the index is calculated as the (existing tax credit units + proposed tax credit units)/households). Because it may still be a possibility that two applications in the same census tract could tie, commenter (39) suggested the final tie breaker be the lower linear distance to the nearest post office; such tie breaker would be uniquely available for every address in the state and would encourage units closer to, rather than farther away, from services.

STAFF RESPONSE:
The tie breakers reflected in the QAP were approved as part of the court ordered Remedial Plan. While applied statewide and not just to the remedial area, staff believes these tie breakers operate to support development in high opportunity areas throughout the state. The second tie breaker builds on the first by prioritizing high opportunity developments in areas that may be the most underserved. Other provisions of the QAP operate to ensure that any such housing is located within proximity to community assets, such as grocery stores, schools, etc.

Staff recommends no changes.

3. §12.5(10) – Pre-Application Threshold Requirements – Notifications (1), (22), (28), (35)

COMMENT SUMMARY: Commenters (1), (22), (28), (35) recommended language in this section be revised to reflect that re-notification is necessary if there is an increase (instead of change) in the total units of greater than 10%. Commenter (35) further elaborated that such modification would allow for unforeseen zoning requirements that may force a smaller project than originally contemplated.

STAFF RESPONSE:

Staff agrees with the commenter and is recommending the change.

4. §12.6(8)–Pre-Application Scoring Criteria –Underserved Area (1), (18), (23), (28), (34), (40), (42)

COMMENT SUMMARY: Commenter (1) recommended the following revision to this scoring item:

> "(8) Underserved Area. An Application may qualify to receive two (2) points for general population Developments or one (1) point for Qualified Elderly Developments, if the Development Site is located in a Colonia, an Economically Distressed Area, or Place, or

if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population."

Commenters (34), (40), (42) similarly agreed with the modification proposed by commenter (1) regarding a place that contains an active tax credit development that serves the same target population as the proposed. Commenter (23) agreed with the suggested revision by Commenter (1) regarding the point for Qualified Elderly Developments and further explained that given the new language under §11.3(e) of the QAP which limits the location of elderly developments, it is not necessary to further penalize elderly developments in the scoring criteria in areas of the state where elderly applications are eligible.

Commenter (18) indicated that there are many first quartile census tracts that have strong market potential; however, there is an older HTC property in the census tract. Commenter (18) recommended the following modification to this scoring item.

"…a Place – never received an allocation serving the same population as propose or has not received an allocation in the last 10 years."~~, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development; or~~

Commenter (28) indicated that since there are a limited number of places and census tracts with tax credit developments that have only 1 or 2 units, developments located in such a Place should exclude existing tax credit developments with less than 4 units.

Commenter (34) requested clarification on what is required to be submitted in the application to evidence whether a development site is located in a colonia or economically distressed area in order to qualify for the points under this scoring item.

STAFF RESPONSE:

Several Commenters recommend a change to allow one point for Qualified Elderly Developments. Staff does not recommend such a change. The rule as drafted simply provides an incentive to those applicants that are not proposing age restrictions that would require denial of a tenant application based solely on age. The rule is also consistent with the Fair Housing Act insofar as the Fair Housing Act specifically protects families, regardless of age, rights to housing opportunities.

In response to Commenters (1), (18), (28), (34), (40), and (42) with respect to only considering developments that serve the same target population or that are a certain number of units, staff believes this is not consistent with the statutory requirement which reads, "…*locate the development in a census tract in which there are no existing developments supported by housing tax credits.*" It does not distinguish between developments with only one unit, or less than 50 units, or serving the same target population.

In response to Commenter (34), staff will provide examples of acceptable documentation in the manual.

Staff recommends no changes.

5. §12.6(6)–Pre-Application Scoring Criteria – Common Amenities (1), (34)

COMMENT SUMMARY: Commenter (1) suggested that fewer Limited Green Amenities should be required for developments with 41 units or more or more items should be made available. Commenter (1) further questioned how rehabilitation developments are expected to meet these requirements and suggested they be required to meet fewer items.

Commenter (34) recommended that developments with more than 80-units (instead of the required 41-units) be required to meet at least 2 of the threshold points under §10.101(b)(5)(C)(xxxi) relating to Limited Green Amenities and that a development satisfies the threshold requirement if it meets at least 3 (instead of the required 6) items. Given the cost consequences to the proposed development, commenter (34) believes this threshold requirement should be limited to 3 green amenities and should only be applicable to developments in urban areas.

STAFF RESPONSE: Staff recommends options for smaller and rehabilitation developments. Staff believes that this section of the rules would benefit from continued work and discussion with architects, developer, general contractors, and the general public and will endeavor to facilitate discussions over the coming months. While the specific amenities are not stated in this rule, they reference §10.101(b)(5). The reasoned response for that rule contains the changes being recommended by staff.

6. §12.6(11)–Pre-Application Scoring Criteria – Declared Disaster Areas

Staff notes that the change in this section is being made to be consistent with the language under §11.9(d)(3) of the Qualified Allocation Plan.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code, §2306.053 which authorizes the Department to adopt rules.

§12.1.General.

(a) Authority. The rules in this chapter apply to the issuance of multifamily housing revenue bonds (Bonds) by the Texas Department of Housing and Community Affairs (the "Department"). The Department is authorized to issue such Bonds pursuant to Texas Government Code, Chapter 2306. Notwithstanding anything in this chapter to the contrary, Bonds which are issued to finance the Development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Texas Government Code, Chapters 1372 and 2306, and federal law pursuant to the requirements of Internal Revenue Code (the "Code"), §142.

(b) General. The purpose of this chapter is to state the Department's requirements for issuing Bonds, the procedures for applying for Bonds and the regulatory and land use restrictions imposed upon Bond financed Developments. The provisions contained in this chapter are separate from the rules relating to the Department's administration of the Housing Tax Credit program. Applicants seeking a Housing Tax Credit Allocation should consult Chapter 11 of this title (relating to the Housing Tax Credit Program Qualified Allocation Plan) and Chapter 10 of this title (relating to Uniform Multifamily Rules) for the current program year. In general, the Applicant will be required to satisfy the requirements of the Qualified Allocation Plan (QAP) and Uniform Multifamily Rules in effect at the time the Certificate of Reservation is issued by the Texas Bond Review Board. If the applicable QAP or Uniform Multifamily Rules contradict rules set forth in this chapter, the applicable QAP or Uniform Multifamily Rules will take precedence over the rules in this chapter. The Department encourages participation in the Bond program by working directly with Applicants, lenders, Bond Trustees, legal counsels, local and state officials and the general public to conduct business in an open, transparent and straightforward manner.

(c) Costs of Issuance. The Applicant shall be responsible for payment of all costs associated with the preparation and submission of the pre-application and Application, including but not limited to, costs associated with the publication and posting of required public notices and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any stage during the process, the Applicant is solely responsible for determining whether to proceed with the Application and the Department disclaims any and all responsibility and liability in this regard.

(d) Taxable Bonds. The Department may issue taxable Bonds and the requirements associated with such Bonds, including occupancy requirements, shall be determined by the Department on a case by case basis.

(e) Waivers. Requests for waivers of program rules or pre-clearance relating to Undesirable Area Features pursuant to §10.101(a)(4) of this title (relating to Site and Development Requirements and Restrictions) must be made in accordance with §10.207 of this title (relating to Waiver of Rules or Pre-clearance for Applications). ~~with the exception of the deadline for submission. Any requests for waivers or pre-clearance must be requested at the time the pre-application is submitted.~~

§12.4.Pre-Application Process and Evaluation.

(a) Pre-Inducement Questionnaire. Prior to the filing of a pre-application, the Applicant shall submit the Pre-Inducement Questionnaire, in the form prescribed by the Department, so the Department can get a

preliminary understanding of the proposed Development plan before a pre-application and corresponding fees are submitted. Information requested by the Department in the questionnaire includes, but is not limited to, the financing structure, borrower and key principals, previous housing tax credit or private activity bond experience, related party or identity of interest relationships and contemplated scope of work (if proposing Rehabilitation). After reviewing the pre-inducement questionnaire, Department staff will follow-up with the Applicant to discuss the next steps in the process and may schedule a pre-inducement conference call. Prior to the submission of a pre-application, it is important that the Department and Applicant communicate regarding the Department's objectives and policies in the development of affordable housing throughout the State using Bond financing. The acceptance of the questionnaire by the Department does not constitute a pre-application or Application and does not bind the Department to any formal action regarding an inducement resolution.

(b) Pre-Application Process. An Applicant who intends to pursue Bond financing from the Department shall submit a pre-application by the corresponding pre-application submission deadline, as prescribed by the Department. The required pre-application fee as described in §12.10 of this chapter (relating to Fees) must be submitted with the pre-application in order for the pre-application to be accepted by the Department. Department review at the time of the pre-application is limited and not all issues of eligibility and documentation submission requirements pursuant to Chapter 10 of this title (relating to Uniform Multifamily Rules) are reviewed. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or other deficiencies at the time of pre-application. If the Development meets the criteria as described in §12.5 of this chapter (relating to Pre-Application Threshold Requirements), the pre-application will be scored and ranked according to the selection criteria as described in §12.6 of this chapter (relating to Pre-Application Scoring Criteria).

(c) Scoring and Ranking. The Department will rank the pre-application according to score within each priority defined by Texas Government Code, §1372.0321. All Priority 1 pre-applications will be ranked above all Priority 2 pre-applications which will be ranked above all Priority 3 pre-applications. This priority ranking will be used throughout the calendar year. The selection criteria, as further described in §12.6 of this chapter, reflect a structure which gives priority consideration to specific criteria as outlined in Texas Government Code, §2306.359. In the event two or more pre-applications receive the same score, the Department will use the following tie breaker factors in the order they are presented to determine which pre-application will receive preference in consideration of a Certificate of Reservation.

(1) Applications that meet any of the criteria under §11.9(c)(4) of this title (relating to Competitive HTC Selection Criteria).

(2) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. The linear measurement will be performed from the closest boundary to closest boundary.

(d) Inducement Resolution. After the pre-applications have been scored and ranked, the pre-application and proposed financing structure will be presented to the Department's Board for consideration of an inducement resolution declaring the Department's initial intent to issue Bonds with respect to the Development. Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff may recommend that the Board not approve an inducement resolution for a pre-application. Because each Development is unique, making the final determination to

issue Bonds is often dependent on the issues presented at the time the full Application is presented to the Board.

§12.5.Pre-Application Threshold Requirements.

The threshold requirements of a pre-application include the criteria listed in paragraphs (1) - (10) of this section. As the Department reviews the pre-application the assumptions as reflected in Chapter 10, Subchapter D of this title (relating to Underwriting and Loan Policy) will be utilized even if not reflected by the Applicant in the pre-application.

(1) Submission of the multifamily bond pre-application in the form prescribed by the Department;

(2) Completed Bond Review Board Residential Rental Attachment for the current program year;

(3) Site Control, evidenced by the documentation required under §10.204(10) of this title (relating to Required Documentation for Application Submission). The Site Control must be valid through the date of the Board meeting at which the inducement resolution is considered and must meet the requirements of §10.204(10) of this title at the time of Application;

(4) Zoning evidenced by the documentation required under §10.204(11) of this title;

(5) Boundary survey or plat clearly identifying the location and boundaries of the subject Property;

(6) Current market information (must support affordable rents);

(7) Local area map that shows the location of the Development Site and the location of at least six (6) community assets within a one mile radius (two miles if in a Rural Area). Only one community asset of each type will count towards the number of assets required. The mandatory community assets are identified in §10.101(a)(2) of this title (relating to Site and Development Requirements and Restrictions);

(8) Organization Chart showing the structure of the Development Owner and of any Developer or Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner or the Developer or Guarantor, as applicable;

(9) Evidence of Entity Registration or Reservation with the Texas Office of the Secretary of State;

(10) A certification, as provided in the pre-application, that the Applicant met the requirements and deadlines for public notifications as identified in §10.203 of this title (relating to Public Notifications (§2306.5705(9))). Notifications must not be older than three (3) months prior to the date of Application submission. Re-notification will be required by Applicants who have submitted a change in the Application, whether from pre-application to Application or as a result of an Administrative Deficiency that reflects a total Unit ~~change~~ increase of greater than 10 percent.

§12.6.Pre-Application Scoring Criteria.

The section identifies the scoring criteria used in evaluating and ranking pre-applications. The criteria identified below include those items required under Texas Government Code, §2306.359 and other criteria considered important by the Department. Any scoring items that require supplemental information to substantiate points must be submitted in the pre-application, as further outlined in the Multifamily Bond Pre-Application Procedures Manual. Applicants proposing multiple sites will be required to submit a separate pre-application for each Development Site. Each Development Site will be scored on its own merits and the final score will be determined based on an average of all of the individual scores.

(1) Income and Rent Levels of the Tenants. Pre-applications may qualify for up to (10 points) for this item.

(A) Priority 1 designation includes one of clauses (i) - (iii) of this subparagraph. (10 points)

(i) Set aside 50 percent of Units rent capped at 50 percent AMGI and the remaining 50 percent of units rents capped at 60 percent AMGI; or

(ii) Set aside 15 percent of units rent capped at 30 percent AMGI and the remaining 85 percent of units rent capped at 60 percent AMGI; or

(iii) Set aside 100 percent of units rent capped at 60 percent AMGI for Developments located in a census tract with a median income that is higher than the median income of the county, MSA or PMSA in which the census tract is located.

(B) Priority 2 designation requires the set aside of at least 80 percent of the Units capped at 60 percent AMGI. (7 points)

(C) Priority 3 designation. Includes any qualified residential rental development. Market rate units can be included under this priority. (5 points)

(2) Cost of the Development by Square Foot. (1 point) For this item, costs shall be defined as Hard Costs as represented in the Development Cost Schedule provided in the pre-application. This calculation does not include indirect construction costs. Pre-applications that do not exceed $95 per square foot of Net Rentable Area will receive one (1) point. Rehabilitation will automatically receive (1 point).

(3) Unit Sizes. (5 points) The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction).

(A) five-hundred-fifty (550) square feet for an Efficiency Unit;

(B) six-hundred-fifty (650) square feet for a one Bedroom Unit;

(C) eight-hundred-fifty (850) square feet for a two Bedroom Unit;

(D) one-thousand-fifty (1,050) square feet for a three Bedroom Unit; and

(E) one-thousand, two-hundred-fifty (1,250) square feet for a four Bedroom Unit.

(4) Extended Affordability. (2 points) A pre-application may qualify for points under this item for Development Owners that are willing to extend the Affordability Period for a Development to a total of thirty-five (35) years.

(5) Unit and Development Features. A minimum of (7 points) must be selected, as certified in the pre-application, for providing specific amenity and quality features in every Unit at no extra charge to the tenant. The amenities and corresponding point structure is provided in §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions). The amenities selected at pre-application may change at Application so long as the overall point structure remains the same. The points selected at pre-application and/or Application and corresponding list of amenities will be required to be identified in the LURA and the points selected must be maintained throughout the Compliance Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to receive points. Rehabilitation Developments will start with a base score of (3 points).

(6) Common Amenities. All Developments must provide at least the minimum threshold of points for common amenities based on the total number of Units in the Development as provided in subparagraphs (A) - (F) of this paragraph. The common amenities include those listed in §10.101(b)(5) of this title. For Developments with 41 Units or more, at least two (2) of the required threshold points must come from the Green Building Features as identified in §10.101(b)(5)(C)(xxxi) of this title. The amenities must be for the benefit of all tenants and made available throughout normal business hours. If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the threshold requirement. All amenities must meet accessibility standards and spaces for activities must be sized appropriately to serve the proposed Target Population. Some amenities may be restricted to a specific Target Population. An amenity can only receive points once; therefore combined functions (a library which is part of a community room) can only receive points under one category. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the threshold test applied based on the number of Units per individual site, and will have to identify in the LURA which amenities are at each individual site.

(A) Developments with 16 to 40 Units must qualify for (4 points);

(B) Developments with 41 to 76 Units must qualify for (7 points);

(C) Developments with 77 to 99 Units must qualify for (10 points);

(D) Developments with 100 to 149 Units must qualify for (14 points);

(E) Developments with 150 to 199 Units must qualify for (18 points); or

(F) Developments with 200 or more Units must qualify for (22 points).

(7) Tenant Services. (8 points) By electing points, the Applicant certifies that the Development will provide supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there will be adequate space for the intended services. The provision and complete list

of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

(8) Underserved Area. An Application may qualify to receive up to (2 points) for general population Developments located in a Colonia, Economically Distressed Area, or Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development.

(9) Development Support/Opposition. (Maximum +24 to -24 points) Each letter will receive a maximum of +3 to -3 and must be received ten (10) business days prior to the date of the Board meeting at which the pre-application will be considered. Letters must clearly state support or opposition to the specific Development. State Representatives or Senators as well as local elected officials to be considered are those in office at the time the pre-application is submitted and represent the district containing the proposed Development Site. Letters of support from State or local elected officials that do not represent the district containing the proposed Development Site will not qualify for points under this exhibit. Neutral letters, letters that do not specifically refer to the Development or do not explicitly state support will receive (zero (0) points). A letter that does not directly express support but expresses it indirectly by inference (i.e., a letter that says "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral letter.

(A) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(B) Mayor of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(C) All elected members of the Governing Body of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(D) Presiding officer of the Governing Body of the county in which the Development Site is located;

(E) All elected members of the Governing Body of the county in which the Development Site is located;

(F) Superintendent of the school district in which the Development Site is located; and

(G) Presiding officer of the board of trustees of the school district in which the Development Site is located.

(10) Preservation Initiative. (10 points) Preservation Developments, including rehabilitation proposals on properties which are nearing expiration of an existing affordability requirement within the next two (2) years or for which there has been a rent restriction requirement in the past ten (10) years may qualify for points under this item. Evidence must be submitted in the pre-application.

(11) Declared Disaster Areas. (7 points) If at the time the complete pre-application is submitted or at any time within the two-year period preceding the date of submission, the proposed Development Site is located in an area declared to be a disaster area under Texas Government Code, §418.014. This includes federal, state, and Governor declared disaster areas.~~; however, it excludes disaster declarations that are pre-emptive in nature.~~

§12.10.Fees.

(a) Pre-Application Fees. The Applicant is required to submit, at the time of pre-application, the following fees: $1,000 (payable to TDHCA), $2,500 (payable to Bracewell & Giuliani, the Department's bond counsel) and $5,000 (payable to the Texas Bond Review Board (BRB) pursuant to Texas Government Code, §1372.006(a)). These fees cover the costs of pre-application review by the Department, its bond counsel and filing fees to the BRB.

(b) Application Fees. At the time of Application the Applicant is required to submit a tax credit application fee of $30/unit and $10,000 for the bond application fee (for multiple site Applications the application fee shall be $10,000 or $30/unit, whichever is greater). Such fees cover the costs associated with Application review and the Department's expenses in connection with providing financing for a Development. For Developments proposed to be structured as part of a portfolio such application fees may be reduced on a case by case basis at the discretion of the Executive Director.

(c) Closing Fees. The closing fee for Bonds, other than refunding Bonds is equal to 50 basis points (0.005) of the issued principal amount of the Bonds. The Applicant will also be required to pay at closing of the Bonds the first two years of the administration fee equal to 20 basis points (0.002) of the issued principal amount of the Bonds and a Bond compliance fee equal to $25/unit (such compliance fee shall be applied to the third year following closing).

(d) Application and Issuance Fees for Refunding Applications. For refunding Applications the application fee will be $10,000 unless the refunding is not required to have a public hearing, in which case the fee will be $5,000. The closing fee for refunding Bonds is equal to 25 basis points (0.0025) of the issued principal amount of the refunding Bonds. If applicable, administration and compliance fees due at closing may be prorated based on the current billing period of such fees. If additional volume cap is being requested other fees may be required as further described in the Bond Refunding Applications Procedures Manual.

(e) Administration Fee. The annual administration fee is equal to 10 basis points (0.001) of the outstanding bond amount on its date of calculation and is paid as long as the Bonds are outstanding.

(f) Bond Compliance Fee. The Bond compliance monitoring fee is equal to $25/Unit.

INDEX OF COMMENTERS

(1) Texas Affiliation of Affordable Housing Providers (TAAHP)
(18) Robbye Meyer, Arx Advantage
(21) Barry Palmer, Coats Rose
(22) Sarah Anderson, S. Anderson Consulting
(23) Valentin DeLeon, DMA Development Company
(28) Alyssa Carpenter, S. Anderson Consulting
(34) Donna Rickenbacker, Marque Real Estate Consultants
(35) Sean Brady, REA Ventures
(39) John Henneberger (Texas Low Income Housing Information Service and Madison Sloan (Texas Appleseed)
(40) Stuart Shaw, Bonner Carrington
(42) Claire Palmer

Public Comment

(1) Texas Affiliation of Affordable Housing Providers (“TAAHP”)

TAAHP
TEXAS AFFILIATION OF AFFORDABLE HOUSING PROVIDERS | 221 E. 9th street, ste. 408 | Austin, TX 78701
tel 512.476.9901 fax 512.476.9903 taahp.org texashousingconference.org

October 10, 2013

Board of Directors
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Dear Chairman Oxer & Members of the Board:

On behalf of the Texas Affiliation of Affordable Housing Providers (TAAHP), we would like to submit several recommendations for modifications to the 2014 Multifamily Program Rules and Qualified Allocation Plan (QAP) that are being suggested by our membership. TAAHP has more than 300 members including affordable housing professionals active in the development, ownership and management of affordable housing in the State of Texas.

It is TAAHP's policy to submit only recommendations that represent consensus opinions from the membership. Please note that there are several important provisions of the QAP that are not addressed in these consensus comments because the diverse TAAHP Membership has different views on the best ways to address those issues. TAAHP Members will be raising those issues for which there is no consensus individually. TAAHP's recommendations were developed at a meeting with the TAAHP Membership on September 26, 2013 in response to the QAP and Multifamily Rules approved by the TDHCA Governing Board on September 12, 2013.

Chapter 11. State of Texas 2013 Qualified Allocation Plan Housing Tax Credit Program:

RECOMMENDATION #1
§11.2 Program Calendar for Competitive Housing Tax Credits.
TAAHP recommends that:

- the Market Analysis Summary requirement be deleted and that the final Market Analysis Delivery Date remain on 04/01/2014; and
- the Site Design and Development Feasibility Report and ALL of the resolutions including those necessary under §11.3 of this chapter related to Housing De-Concentration Factors be due on 04/01/2014.

We understand that one of the primary reasons for requesting the market summary or market study earlier than April 1 is that State Representatives may want to see market information before submitting their letters. The developers in our membership report that they do not usually get requests for market information from State Representatives. Rather than impose additional and earlier requirements for market studies for all applications, we recommend leaving it to the State Representatives to request the information that they want with respect to each application from the developer for that particular application.

In addition, all resolutions should be due April 1 because the February 28 deadline will most likely result in only having the opportunity to try to get on the agenda for one council and/or commissioners' court meeting. This means that an applicant may be in a position where it fails to get a resolution if (i) the council needs to table the motion to give council an opportunity to get more information or (ii) there is not a quorum for the meeting.

RECOMMENDATION #2
§11.3(e) Developments in Certain Sub-Regions and Counties.
TAAHP recommends that the prohibition of Qualified Elderly Developments in the urban counties listed, as well as Regions five (5); six (6); and (8) be deleted. If the prohibition continues then TAAHP's recommendation is to limit that not more than 65% of the tax credits available in the sub region be awarded to senior developments and elderly developments should not be ineligible in sub-regions where there are only enough tax credits for one allocation.

RECOMMENDATION #3
§11.4(a)(4) Tax Credit Request and Award Limits.
TAAHP recommends the following revision:

> *(4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for ~~Qualified~~ non-profit developments defined under federal, state, or local codes) to be paid or $150,000, whichever is greater.*

RECOMMENDATION #4
§11.5(3)(b)At Risk Set-Aside.
TAAHP supports public housing developments converting their assistance to long term project based Section 8 rental assistance contracts under HUD's Rental Assistance Demonstration (RAD) Program and those developments should be included to qualify to apply in the at-risk set aside. Pursuant to the legislation, the at-risk set aside is intended for public housing units disposed of or demolished by a housing authority and retaining operating subsidy for the development. The RAD program uses public housing funding, maintains the same tenants and requires PHA ownership. It is HUD's intention that the RAD program "is a central part of the Department's rental housing preservation strategy". Therefore, developments under the RAD program should qualify for the HTC At-Risk Set Aside.

RECOMMENDATION #5
§11.9(c)(4)(B) Opportunity Index.
TAAHP recommends the following revision:

> *(i)The Development Site is located within the attendance zone and within one linear mile of an elementary, middle or high ~~-~~school with a MET Standard rating (3 points);*
>
> *(ii) The Development Site is within one linear mile of a school-age before or after-school program that meets the minimum standards established by the appropriate federal, state or local agencies for such programs ~~Department of Family and Protective Services~~ for such programs (2 points);*

AND

> *(iv) The Development Site is located within one linear mile of a child-care ~~center~~ provider that is licensed by the Department of Family and Protective Services and provides day care for children ages 6 months through 5 years, at a minimum (2 points);*

RECOMMENDATION #6
§11.9(c)(5) Educational Excellence.
TAAHP recommends revising clause (B) and adding the following clause (C):

> *(B) The Development Site is within the attendance zone of an elementary school and either a middle or high school with the appropriate rating (2~~1~~ points);*
>
> *(C) The Development Site is within the attendance zone of an elementary school with the appropriate rating (1 point).~~;~~*

RECOMMENDATION #7
§11.9(c)(6) Underserved Area.
TAAHP recommends the following revision:

(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive two (2) points for general population or Supportive Housing Developments or one (1) point for Qualified Elderly Developments, if the Development Site is located in one of the areas described in subparagraphs (A) – (D) of this paragraph.

RECOMMENDATION #8
§11.9(c)(6)(C) Underserved Area.
TAAHP recommends the following revision:

(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population;

RECOMMENDATION #9
§11.9(c)(7) Tenant Populations with Special Housing Needs.

The Section 811 Project Rental Assistance Demonstration Program is just a pilot program and, as provided in §11.9(c)(7)(B), HUD has not yet released Section 811 Program Guidelines. For these reasons participation in the Section 811 Program should not be required but should be optional. All applicants should have the option to meet the requirements under subparagraphs (A) or (C) of this paragraph. In addition, if an applicant elects to participate in the Section 811 Program, the applicant should have the option to opt out of the Section 811 Program and meet the requirements under subparagraph of (C) of this paragraph after the applicant has been given the opportunity to review the HUD Section 811 Program Guidelines and any agreements between the Department and HUD related to the Section 811 Program.

RECOMMENDATION #10
§11.9(c)(8) Location Outside of "Food Deserts".
TAAHP recommends deleting this scoring item because of the lack of quantifiable comprehensive valid data.

RECOMMENDATION #11
§11.9(d)(2)(B)
TAAHP recommends the following revisions:

(B) Applications will qualify for points based on the amount of funds at the levels described in clauses (i) – (iv) of this subparagraph. For the purpose of this calculation, the Department will use the population of the Place from which the Development Site's Rural or Urban Area designation is derived.

(i) eleven (11) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.075~~15~~ in funding per Low Income Unit or ~~$15,07~~7,500 in funding per Low Income Unit;

(ii) ten (10) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.05~~10~~ in funding per Low Income Unit or ~~$10~~5,000 in funding per Low Income Unit;

(iii) nine (9) points for a commitment by a Local Political Subdivision of the lesser of population of the Place multiplied by a factor of 0.05~~2~~5 in funding per Low Income Unit or ~~$5,02~~2,500 in fundingper Low Income Unit;

(iv) eight (8) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.0125 in funding per Low Income Unit or ~~$1,050~~ $1,0500 in funding per Low Income Unit; or

(v) seven (7) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.005~~1~~ in funding per Low Income Unit or ~~$50~~$50250 in funding per Low Income Unit.

(vi) seven (7) points for a resolution of support from the Governing Body of the city (if located in a city) or county (if not located within a city) in which the Development is located stating that the city or county would provide development funding but has no development funding available due to budgetary or fiscal constraints and despite reasonable efforts, has been unable to identify and secure any such funding. The resolution must be submitted with the Application and dated prior to February 28, 2014. A general letter of support does not qualify.

We recommend the reduction in funding levels referenced above because we are working in an environment in which the funds available to local political subdivisions for housing have been reduced significantly.

RECOMMENDATION #12
§11.9(d)(4)(C) Point Value for Quantifiable Community Participation.

TAAHP recommends the following adjustment in points that an application may qualify for under subparagraph (C)(iv) of this paragraph, which reduces the total points received from five (5) points to four (4) points, but allows those applications that qualify for the points under this subparagraph to earn additional points under §11.9(d)(6)(A) – Input from Community Organizations:

(iv) four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection:

RECOMMENDATION #13
§11.9(d)(6)(A) Input from Community Organizations.

TAAHP recommends the following adjustments in points that an application may qualify for under subparagraphs (A), (B) or (C) of this paragraph, and to allow applicants to receive the points if (i) if they received points under §11.9(d)(4)(C) for the equivalent of neutrality or lack of objection from a Neighborhood Organization, or (ii) if the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization:

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located.....

(B) An Application may receive four (4) points for a letter of support from a property owners association...

(C) An Application may receive four (4) points for a letter of support from a Special Management District...

TAAHP believe that the point adjustment in subparagraph (A) will put smaller Urban and Rural areas where there are less community and civic organizations on a level playing field with larger metropolitan market areas. The adjustment in points under subparagraphs (B) and (C) is recognition that property owners associations and Special Management Districts serve very similar functions as a Neighborhood Organization and therefore should be given equal or similar weight in points.

RECOMMENDATION #14
§11.9(d)(7)(C)(I)(II) and (III) For Developments Located in a Rural Area.
TAAHP recommends the following revisions:

(I) New paved roadway (may include paving an existing non-paved road but excludes overlays or other limited improvements) or expansion of existing paved roadways by at least one lane (excluding very limited improvements such as new turn lanes or restriping), in which a portion of the new road or expansion is within one ~~quarter~~ (1/4) mile of the Development Site;

(II) New water service line (or new extension) of at least 500 feet, in which a portion of the new line is within one ~~quarter~~ (1/4) mile of the Development Site;

(III) New wastewater service line (or new extension) of at least 500 feet, in which a portion of the new line is within one ~~quarter~~ (1/4) mile of the Development Site;

RECOMMENDATION #15
§11.9(d)(8) Transit Oriented Development Developments.
TAAHP recommends adding the following section and point category:

(8) Transit Oriented Development. An Application may qualify to receive one (1) point if the proposed site of the Development is within 1/2 mile of light rail transit, commuter rail, rapid bus transit or other high capacity transit. The distance will be measured from the development to the nearest transit station.

RECOMMENDATION #16
§11.9(e)(2)(B-F) Cost of Development per Square Foot.
Due to the significant and continuing increase in construction costs in Urban and Rural areas, TAAHP recommends the following revisions:

(A) A high cost development is a Development that meets one of the following conditions:

(iv) The Development Site qualifies for five (5) or seven (7) points under subsection (c)(4) of this section, related to Opportunity Index ~~and is located in an Urban Area~~.

(B) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

(i) The Building Cost per square foot is less than $~~6~~70 per square foot;
(ii) The Building Cost per square foot is less than $~~6~~75 per square foot, and the Development is a meets the definition of a high cost development;
(iii) The Hard Cost per square foot is less than $~~8~~90 per square foot; or
(iv) The Hard Cost per square foot is less than $~~9~~100 per square foot, and the Development meets the definition of high cost development.

(C) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:

(i) The Building Cost per square foot is less than $~~6~~75 per square foot;
(ii) The Building Cost per square foot is less than $~~7~~80 per square foot, and the Development meets the definition of a high cost development;
(iii) The Hard Cost per square foot is less than $~~8~~95 per square foot; or
(iv) The Hard Cost per square foot is less than $~~9~~105 per square foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for nine (9) points if one of the following conditions is met:

(i) The Building Cost is less than $890 per square foot; or

(ii) The Hard Cost is less than $1100 per square foot.

(E) Applications proposing Rehabilitation (excluding Reconstruction) will be eligible for points if oneof the following conditions is met:

(i) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $1010 per square foot;

(ii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $1430 per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $1430 per square foot.

AND delete (F) because it appears that this additional one (1) point rewards luck rather than merit.

~~*(F) Applications proposing New Construction or Reconstruction will be eligible for one (1) point, in addition to those under subparagraph (B) or (C) of this paragraph, if the Hard Cost per square foot is within 5 percent of the mean cost per square foot. The mean will be calculated separately for high cost developments.*~~

RECOMMENDATION #17
§11.9(e)(3)(A) Pre-application Participation.
TAAHP recommends the following revisions:

(A) The total number of Units does not ~~change~~ increase by more than ten (10) percent from pre-application to Application;

RECOMMENDATION #18
§11.9(e)(4)(A)(ii-iv) Leveraging of Private, State, and Federal Resources.
TAAHP recommends the following revisions:

(ii) If the Housing Tax Credit funding request is less than ~~7~~8 percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than ~~8~~9 percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than ~~9~~10 percent of the Total Housing Development Cost (1 point).

Chapter 10. Subchapter B – Site and Development Requirements and Restrictions:

RECOMMENDATION #19
§10.101(b)(5)(C)(xxxi)(I) Limited Green Amenities.
Some of the items listed in this section will be difficult to verify at cost certification and during compliance without expensive third party reports by environmental experts. For example, 20% of the water required for irrigation will vary from year to year depending on rainfall, temperature and other factors. Using rainwater for potable uses is very problematic from a health and safety standpoint and probably prohibited by most municipalities. Native trees and plants in Texarkana are different than native trees in El Paso and this option is very vague in scope of landscaping. Are two trees sufficient? What if the site is fully forested before development? How will urban infill or rehabilitation properties meet these requirements?

TAAHP suggests that the variable requirements hard to measure should be removed and replaced with simple requirements that can be verified.

Additionally, Developments that consist of 41 units or more must include at least 2 points "worth" of Green Building Features and to obtain these mandatory 2 points, 6 of 9 items under Limited Green Amenities must be chosen (or an applicant must commit to Enterprise Green Communities, LEED, or National Green Building Standards). Either fewer Limited Green Amenities items should be required or more items should be made available. Rehabilitation projects should have fewer items required (for example, buildings cannot be reoriented).

TAAHP suggest the following changes to the current Limited Green Amenities items:

(-a-) Site irrigation – change to "Rain water harvesting collection system provided for irrigation." Leave the details to the design team.
(-b-) Native trees and plants – remove this option as it is too vague. Replace with "Native landscaping that reduces irrigation requirements as certified by design team at cost certification."
(-c-) verifiable as currently written
(-d-) "... as certified by the design team at cost certification".
(-e-) verifiable as as currently written
(-f-) verifiable as as currently written
(-g-) verifiable as as currently written
(-h-) verifiable as as currently written
(-i-) Add – "... if the local trash provider offers recycling service." This isn't available in some rural areas.

TAAHP also suggests adding additional Limited Green Amenities items, such as:

(-j-) construction waste management system provided by contractor that meets LEEDs minimum standards
(-k-) at least 25% by cost FSC certified salvaged wood products
(-l-) Energy Star rated bath exhaust fans vented to the outside
(-m-) Energy Star rated kitchen exhaust fans vented to the outside
(-n-) clothes dryers vented to the outside
(-o-) maintain a no-smoking policy within 20 feet of all buildings

RECOMMENDATION #20
§10.101(b)(6)(B)(xi) Unit Requirements.
TAAHP recommends the following revision:

(xi) Greater than 30% percent masonry on all building exteriors (includes stone, cultured stone, stucco, and brick but excludes cementitious siding); the percentage calculation may exclude exterior glass entirely (2 points);

Chapter 10. Subchapter C – Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rues or Pre-clearance for Applications:

RECOMMENDATION #21
§10.203 (11)(C) Requesting a Zoning Change.

(C) Requesting a Zoning Change. The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate is in the process of seeking a zoning change and must~~(may~~ include an acknowledgement that a zoning application was received by the political subdivision~~)~~ and that the jurisdiction received a release agreeing to hold the political subdivision and all other parties harmless in the event the

appropriate zoning is denied. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice.

Thank you for your service to Texas.

Sincerely,

Debra Guerrero by Frank Jackson
Debra Guerrero
Co-Chair TAAHP QAP Committee

David Koogler by Frank Jackson
David Koogler
Co-Chair TAAHP QAP Committee

cc: Tim Irvine – TDHCA Executive Director
Cameron Dorsey – TDHCA Staff
Jean Latsha – TDHCA Staff
TAAHP Membership

(18) Robbye Meyer
Arx Advantage

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October 18, 2013

Texas Department of Housing and Community Affairs
Attention: Mr. Cameron Dorsey
Director of Multifamily Finance
221 E. 11th Street
Austin, Texas 78701

Dear Mr. Dorsey:

§11.2 Program Calendar for Competitive Housing Tax Credits
We support staff's proposal to have a Market Analysis Summary due February 28th with the full application submission and the Full Market Analysis due April 1st.

§11.9(c)(4) Opportunity Index
The developments proposed in the At-Risk set aside are virtually predestined in their location; therefore, the "opportunity" of location is not available for the majority of the existing housing stock. Many rural developers have reviewed their inventory and have determined that the majority of their properties are located in third and fourth quartile income census tracts. We request that At-Risk/USDA developments be exempt from the Opportunity Index scoring item.

§11.9(c)(4) Opportunity Index
We request that the distance for proximity to community assets to be increased from one mile to two miles. Amenities in rural areas are usually spread out and most residents use their own vehicles to move around due to the lack of public transportation.

§11.9(c)(5) Educational Excellence
We request having a point for each high performing school so that there is more of a graduated scale for this point item instead of three points for all schools and one point for the elementary and either of the other schools. One point for elementary, one point for middle and one point for high school. That is simple

§11.9(c)(6) Underserved Area
There are many first quartile census tracts that have strong market potential; however, there is an older HTC property in the census tract. The bottom line still comes down to real estate and many of these areas will make better long term real estate deals.
(C) A Place – never received an allocation serving the same population as propose or has not received an allocation in the last 10 years.

(D) For Rural Areas Only – a census tract that has no more than fifty (50) units serving the same population.

§11.9(c)(8) Location Outside of Food Deserts
We request this section be removed due to lack of reliable data.

§11.9(d)(6)(A) Input from Community Organizations
We request the points for each letter be two points as they have been in previous years. It is difficult to locate these organizations in rural communities. Some rural communities may not have four organizations that will qualify for these letters.

§11.9(e)(4)(A) Leveraging of Private, State and Federal Resources
We request that the percentages for Housing Tax Credit funding requests be increased from 7%, 8% and 9% to 8%, 9% and 10%. In last year's cycle, many applications increased the number of market units in the developments to be able to fit within these percentages. Thus, putting their development at risk or deeming it high risk on syndication market.

Sincerely,

Robbye G. Meyer

Robbye G. Meyer
President

(21) Barry Palmer
Coats Rose

COATS | ROSE

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BARRY J. PALMER

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October 21, 2013

Texas Department of Housing
And Community Affairs
221 East 11th Street
Austin, Texas 78701

RE: Comments on Draft 2014 Qualified Allocation Plan and Draft 2014 Uniform Multifamily Rules.

Ladies and Gentlemen:

Thank you for providing this opportunity to provide our comments on the draft versions of the 2014 Qualified Allocation Plan ("QAP") and the 2014 Uniform Multifamily Rules ("Rules") which were released September 20, 2013 and posted on the TDHCA Website.

GENERALLY:

1. Support for TAAHP Consensus Recommendations

Initially, we wish to indicate our support for the recommendations discussed in the TAAHP letter to the TDHCA Board of Directors dated October 10, 2013.

QAP:

2. Subsection 11.3(f)

Subsection 11.3(f) requires that a subsequent phase of a development be deferred until a prior, adjacent or contiguous phase or third party development serving the same Target Population has reached 90% occupancy for a minimum of six months. While this would appear to be a logical requirement for a new development, it does not make as much sense when applied to the redevelopment of an existing project through multiple phases, since the new phase will be drawing its tenants from existing tax credit units that are being replaced. Accordingly, we recommend that Subsection 11.3(f) be revised by adding as a final sentence:

> **This Subsection does not apply to applications where the Development or phases of the Development replaces in part or in whole an existing tax credit Development.**

3. **Subsection 11.4(c)(1)**

A. Eliminate exception for New Construction and Adaptive Reuse. Draft language would deny the 30% boost to a New Construction or Adaptive Reuse Development located in a QCT with more than 20 percent Housing Tax Credit Units per total households. We believe that 42(d)(5)(B)(i)(I) and (II) of the Internal Revenue Code makes the boost mandatory in a QCT (regardless of the percentage of tax credit units in place) for a new building and for rehabilitation expenditures for an existing building. We further conclude that the State housing credit agency's ability to designate what developments will qualify for the boost under 42(d)(5)(B)(v) of the Code is a right granted to the housing credit agency **in addition to, and not replacing or mitigating** the Code's specification in 42(d)(5)(B)(i). **Accordingly, we recommend that the boost be made available for any Development in a QCT.**

B. Clarify that resolution will qualify any Development in a QCT. In the event that the TDHCA disagrees with us on this point, then we recommend that 11.4(c)(1) be revised in the following manner, to (i) clarify that any development, even if it is New Construction or Adaptive Reuse, can qualify for the 30% increase in Eligible Basis if the Governing Body of the appropriate municipality or county resolved by a vote to support the Development's qualification for a boost; and (ii) clarify that the pertinent sentence only applies to QCTs and not to any census tract with a tax credit units in excess of 20% of the total households. This can be accomplished by replacing the fourth sentence in 11.4(c)(1) with the following:

> **For any Development, including New Construction and Adaptive Reuse Developments, located in a QCT with 20 percent or greater Housing Tax Credit Units per total households, the Development is eligible for the boost if a resolution is submitted.**

4. **Subsection11.5(3)(A)**

The final sentence in 11.5(3)(A) should be harmonized with Subsection 11.5(2) by revising it to clarify that New Construction USDA applications awarded in the sub-region are aggregated with the At-Risk USDA applications in order to meet the USDA Set-Aside. We suggest the following modification:

> **Up to 5 percent of the State Housing Credit Ceiling associated with this set-aside may be given priority to Rehabilitation Developments under the USDA Set-Aside, to the extent necessary to meet the USDA Set-Aside, taking into consideration allocations made to both At-Risk and New Construction applications financed through USDA.**

5. **Subsection 11.5(3)(D)**

This subsection has been revised in such a way that it no longer makes sense, insofar as it requires that no less than 25% of the proposed Units be public housing units. The difficulty is that 2306.6702(a)(5)(B) of the Government Code does not describe public housing projects that are owned and operated by public housing authorities. It describes projects with HOME funds, or 221(d)(3) or (d)(4) financing. Public housing projects do not "terminate". Projects that are described under 2306.6702(a)(5)(B) are unlikely to have public housing units (even though their units may be subsidized). **Accordingly, we recommend that you go back to the 2013**

language, which does reference public housing units, but not in a way that creates problems with non-public housing subsidized units.

6. **New Subsection 11.5(3)(G)**

TAAHP has recommended that developments participating in HUD's Rental Assistance Demonstration (RAD) Program be qualified for the At-Risk Set-Aside, which we support. We recommend that this be implemented by the following new language:

> **(G) A public housing development that has applied to be included in HUD's Rental Assistance Demonstration (RAD) Program is qualified for the At-Risk Set-Aside, provided that the public housing development does actually convert its rental assistance to long term project-based Section 8 rental assistance contract.**

RULES:

7. **Subsection 10.207(a)**

This subsection deals with the general waiver process, and in particular, the requirement that a waiver may only be requested at or prior to submission of the pre-application or the application. Sometimes it is unknown whether a waiver will be required until the TDHCA Staff has evaluated an application because the question in point will turn on an interpretation of the QAP or the Rules. We think that it is unfair to deny an applicant the opportunity to request a waiver under such circumstances, and request that this restriction be eliminated. **This can be done most readily by deleting the second and third sentences in the subsection.**

8. **Subsection 10.207(d)**

This subsection confirms the Board's right to waive any one or more of the rules in Subchapters B, C, E and G, at its discretion. **The Board's right to waive any one or more of the rules in Chapter 11 and Chapter 12, which are also covered by the General Waiver Process set out in Subsection 10.207(a), should be added to this provision.**

Thank you for the opportunity to comment on the draft 2014 QAP and Rules. If you have any questions concerning our comments, please do not hesitate to call.

Very truly yours,

Barry J. Palmer

(22) Sarah Anderson
S. Anderson Consulting

S. Anderson Consulting, LLC 2014 QAP Comments

Section 10.3 Definitions (43) Economically Distressed Area
Currently, the Rules require that an economically distressed area have an income that is 75 percent or less of the statewide median household income as well as be located "in a census tract is in the fourth quartile of median household income for the MSA, if located in an MSA, or county, if not located in an MSA." I propose that the requirement that the area be in a census tract that is in the fourth quartile be removed. The Texas Water Development Board (TWDB) requires an income that is 75 percent of less of the statewide median income for the EDA program and makes no reference to the quartile of an area. Because of this, some areas that have been assisted through the EDA program at 75 percent of less than the median could be considered third quartile according to TDHCA's data. In such a case, it could be an inconsistency for TDHCA to not recognize such an area as an EDA when in fact it met the TWDB requirement of being 75 percent or less than the statewide median income. I propose that the income of the census tract only require that it is 75 percent or less of the statewide median household income with no regard to TDHCA quartile in order to mirror TWDB's requirements and not inadvertently exclude any areas that would be EDAs under the TWDB program.

Section 11.9(d)(2) Commitment of Development Funding by Local Political Subdivision
I propose that the funding amount multipliers based on population be lowered. A city such as Frisco will not have the same financial resources as a city such as Dallas; however, they would need the same amount of funding under this point item as currently proposed. A multiplier of 0.075 would require a city of 200,000 to contribute $15,000 per unit, which would make more sense than a city of 100,000 at a multiplier of 0.15. See proposed multipliers below:

- 11 points: .075
- 10 points: .05
- 9 points: .025
- 8 points: .0125
- 7 points: .005

Section 11.3(f) Additional Phase
I propose that an additional phase or adjacent development to an existing tax credit development or award serving the same population be permitted if (a) the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development and (b) the additional units are supported by a market study.

If this is not acceptable, then I propose that it be limited to an additional phase that is being done to replace units that had previously been demolished, with the second phase adding the same number or less than what was originally there. This circumstance might occur because of the credit limitations in some regions where there simply are not enough credits in a particular year to replace all of the demolished units.

Section 11.9(e)(3) Pre-Application Participation
The current draft states that "The total number of Units does not change by more than ten (10) percent from pre-application to Application." I propose that this reverts back to the previous years' language that the total number of units cannot increase by more than 10 percent

Section 11.10 Challenges to Competitive HTC Applications
I propose that if a challenge is not reviewed by staff for any reason or if, as stated in this section, "A matter, even if raised as a challenge, that staff determines should be treated as an Administrative Deficiency will be treated and handled as an Administrative Deficiency, not as a challenge," then the challenge fee should be refunded to the challenger.

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2014 Additional comment

11.4.C.1 Tax Credit Request and Award Limits. We recommend no change to the following section:

(1)The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20 percent Housing Tax Credit Units per Households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20 percent Housing Tax Credits Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the development site pursuant to 42(d)(5) of the code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply 30 percent boost in its underwriting evaluation. <u>For any development located in a census tract with 20 percent or greater Housing Tax Credit Units per total households, the development is eligible for the boost if a resolution is submitted. The Governing Body of the appropriate municipality or county containing the Development has by vote specially allowed the construction of the new Development and submits to the Department a resolution referencing this rule</u>……."

*****(Underlined section is strongly recommended)*

XXXXXX supports keeping current QAP language for the following reasons;

1. 30% Basis Boost is required to finance 4% bond projects and RAD projects with current inflation of interest rates and expenses.
2. RAD and Housing Authority projects being developed now or in the future are highly likely to be located in a census tracts with greater than 20 percent Housing Tax Credit Units per Household.
3. The additional 30% basis boost would not reduce any tax credit availability from TDHCA since 4% credits availability is unlimited at the state level.
4. Since a resolution from the Governing Body is required for the 30% basis boost, the project definitively has support from the local authority to be constructed.
5. Current language will deliver additionally units to the State of Texas.

(23) Valentin DeLeon
DMA Development Company

DMA DEVELOPMENT COMPANY, LLC

October 21, 2013

VIA EMAIL (cameron.dorsey@tdhca.state.tx.us)

Cameron Dorsey
Director, Multifamily Finance
TDHCA
221 E. 11th Street
Austin, TX 78701

Re: DMA comments on TDHCA Board Approved Draft of the Qualified Allocation Plan Chapter 11 of the Texas Administrative Code

Dear Mr. Dorsey:

Please see and accept the following comments on the draft QAP, approved by the Department's Governing Board on September 12, 2013. Should you have any questions, we would be happy to discuss further.

DMA would like to make the following comments/suggestions for the proposed 2014 QAP;

§11.4(a)(4) Tax Credit Request and Award Limits.
DMA suggests a revision to the language discussing the amount of consulting or developer fee an organization may receive without the allocation applying to the consultant's or developer's annual credit limitation. Suggested language:

> *(4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments, developments Controlled by a housing authority organized under Local Government Code chapter 392, developments Controlled by a housing authority Affiliate, or developments Controlled by any non-profit organized under Texas Government Code or Local Government Code) to be paid or $150,000, whichever is greater.*

§11.4(c)(1) Tax Credit Request and Award Limits.
"For any development located in a census tract with 20 percent or greater Housing Tax Credit Units per total households, the development is eligible for the [30 percent] boost if a resolution is submitted." DMA supports keeping current language.

§11.9(c)(4) Opportunity Index.
DMA suggests increasing senior points under the opportunity index to five (5) as allowed in 2013.
Suggested Language:
Any Development, regardless of population served is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable and the Site is in the attendance zone of an elementary school that has a Met Standard Rating and has achieved a 77 or greater on index 1 of the performance index related to student achievement (5 points)

§11.9(c)(6)(C) Underserved Area.

The new language under §11.3(e) limits the location of applications for elderly developments in those parts of the state that have a disproportionate number of existing elderly developments. Given this new ineligibility item, it is not necessary to further penalize elderly developments in the scoring criteria in areas of the state where elderly applications are eligible. Suggested language:

> (6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive two (2) points for general population or Supportive Housing Developments or one (1) point for Qualified Elderly Developments, if the Development Site is located in one of the areas described in subparagraphs (A) – (D) of this paragraph.

§11.9(c)(8) Location Outside of "Food Deserts."

Eliminate this scoring item. However, should the scoring item not be removed, we suggest the Department create a process for identifying full service grocery stores not identified in USDA data.

§11.9(d)(6) Input from Community Organizations.

Allow developments that are in the boundaries of a neighborhood organization to access these points if the neighborhood organization does not provide input or provides a neutral letter.

§11.9(d)(7)(c)(i)(I) Community Revitalization For Developments Located in a Rural Area.

We suggest that the following be added to acceptable forms of rural revitalization.

> (I) New paved roadway (may include paving an existing non-paved road but excludes overlays or other limited improvements) or expansion of existing paved roadways by at least one lane (excluding very limited improvements such as ~~new turn lanes or~~ re-striping), *or addition of non-traversable raised medians and/or dedicated left or right turn lanes* in which a portion of the new road, expansion, *median or turn lanes* is within one ~~quarter (1/4)~~ mile of the Development Site;

DMA also suggests increasing the distance from ¼ mile to 1 mile for section (I) – (III).

§11.9(e)(2)(B)-(F) Cost of Development per Square Foot.

Due to the significant and continuing increase in construction costs in Urban and Rural areas, DMA recommends the following revisions:

> *(B) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:*
>
> *(i) The Building Cost per square foot is less than ~~$60~~ $70 per square foot;*
>
> *(ii) The Building Cost per square foot is less than ~~$65~~ $75 per square foot, and the Development is a meets the definition of a high cost development;*
>
> *(iii) The Hard Cost per square foot is less than ~~$80~~ $90 per square foot; or*
>
> *(iv) The Hard Cost per square foot is less than ~~$90~~ $100 per square foot, and the Development meets the definition of high cost development.*
>
> *(C) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:*

(i) The Building Cost per square foot is less than ~~$65~~ $75 per square foot;

(ii) The Building Cost per square foot is less than ~~$70~~ $80 per square foot, and the Development meets the definition of a high cost development;

(iii) The Hard Cost per square foot is less than ~~$85~~ $95 per square foot; or

(iv) The Hard Cost per square foot is less than ~~$95~~ $105 per square foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for nine (9) points if one of the following conditions is met:

(i) The Building Cost is less than ~~$80~~ $90 per square foot; or

(ii) The Hard Cost is less than ~~$100~~ $110 per square foot.

(E) Applications proposing Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than ~~$100~~ $110 per square foot;

(ii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than ~~$130~~ $140 per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than ~~$130~~ $140 per square foot.

AND: Delete clause (F). It appears that this additional one (1) point rewards luck rather than merit.

§11.9(e)(4)(A)(ii)-(iv) Leveraging of Private, State, and Federal Resources.

DMA recommends the following revisions:

(ii) If the Housing Tax Credit funding request is less than ~~7~~ 8 percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than ~~8~~ 9 percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than ~~9~~ 10 percent of the Total Housing Development Cost (1 point).

§11.9(e)(7) Development Size.

We suggest the elimination of this scoring item. Limiting the number of HTC units to 50 and the credit request to $500,000 does not improve the quality of the housing provided and in many cases results in less feasible developments.

Sincerely,

DMA DEVELOPMENT, LLC

Valentin DeLeon
Development Coordinator
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512-328-3232 Ext. 4514

cc: Diana McIver
JoEllen Smith
Janine Sisak
Audrey Martin

(28) Alyssa Carpenter
S. Anderson Consulting

October 21, 2013

Teresa Morales
Texas Department of Housing and Community Affairs
221 E 11th St
Austin, TX 78701

RE: Comments on Proposed 2014 Multifamily Rules and QAP

Dear Ms. Morales:

Thank you for the opportunity to provide comment on the proposed 2014 TDHCA Multifamily Rules and QAP. Please see my comments and suggestions below.

Section 10.3 Definitions (43) Economically Distressed Area
Currently, the Rules require that an economically distressed area have an income that is 75 percent or less of the statewide median household income as well as be located "in a census tract is in the fourth quartile of median household income for the MSA, if located in an MSA, or county, if not located in an MSA." I propose that the requirement that the area be in a census tract that is in the fourth quartile be removed. The Texas Water Development Board (TWDB) requires an income that is 75 percent of less of the statewide median income for the EDA program and makes no reference to the quartile of an area. Because of this, some areas that have been assisted through the EDA program at 75 percent of less than the median could be considered third quartile according to TDHCA's data. In such a case, it could be an inconsistency for TDHCA to not recognize such an area as an EDA when in fact it met the TWDB requirement of being 75 percent or less than the statewide median income. I propose that the income of the census tract only require that it is 75 percent or less of the statewide median household income with no regard to TDHCA quartile in order to mirror TWDB's requirements and not inadvertently exclude any areas that would be EDAs under the TWDB program.

Section 10.101(a)(2)(T) Designated Public Transportation Stop
Currently, under the Mandatory Community Assets item, the Rules allow a designated public transportation stop on a regular, scheduled basis to qualify as a community asset. Across the state in smaller urban areas, there are public transportation providers that have regular scheduled bus routes, but instead of having designated bus stops along the routes, passengers are instructed to find a convenient place along the route and wave to the bus driver to stop. These are mapped and schedule routes that have published times for intersections along the route, but there are no designated stops; instead, the passenger determines where he or she would like to board the bus and waves to the bus driver. I believe that such a transportation route meets the intent of this section in that the transportation service is on a regular and scheduled basis and the bus driver makes stops along the route for passengers. I propose that the Rules include this type of bus route to qualify as a community asset as long as the development site is located within 1 mile of the route.

Section 10.101(b)(1) Ineligible Developments
I propose that any development that has the characteristics of a senior development be categorized as a Qualified Elderly Development or the application be deemed ineligible. For example, an application that is 70 percent one-bedroom units and 30 percent two-bedroom units is unable to serve family households. In addition, amenity choices such as bocce ball courts and putting greens are typically associated with seniors and are not amenities for children. I understand that the bedroom unit requirements were removed to accommodate central business district developments that would not necessarily have a high percentage of families with children; however, I urge staff to develop language that would prohibit developments that have a unit mix and site plan that looks like a senior development from being called "general"

developments. I believe that this is especially important considering the proposed prohibitions on elderly developments in several regions and counties.

Section 10.201(1)(C) General Requirements
Currently, this section requires that the application be "in a single file and individually bookmarked in the order as required by the Multifamily Programs Procedures Manual." I propose that this section also includes the requirement that the file be a searchable PDF, which is stated in the Manual.

Section 10.204(6) Experience Requirement
Currently, this section states that experience documentation must be provided in the application; however, an experience certificate issued in the past two years is no longer an option to establish experience. I propose that a past experience certificate that confirms the development or placement in service of 150 units or more be accepted in the application to establish the required experience. If an experience certification was issued previously, I do not see any reason why staff time needs to be spent to re-review the same documentation every year.

Section 10.204(8)(E)(ii) Off-Site Costs
This section requires that off-site costs be included on the Off-Site Cost Breakdown form and then also requires that "The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes." Could staff provide an area on the Off-Site Cost Breakdown form where the engineer can describe the necessity of the improvements and the requirements of the local jurisdiction?

Section 10.204(11)(C) Requesting a Zoning Change
Currently, this section states that, "The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate is in the process of seeking a zoning change (may include an acknowledgement that a zoning application was received by the political subdivision)." This is not clear as to whether the applicant must have already submitted an application for a zoning change to the local jurisdiction. "In the process of seeking a zoning change" could include simply inquiring about the process or requesting an application. I propose that the application require proof that the application has submitted a zoning change application and that the zoning change application be included with the Application.

Section 11.3(f) Additional Phase
I propose that an additional phase or adjacent development to an existing tax credit development or award serving the same population be permitted if (a) the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development and (b) the additional units are supported by a market study.

Section 11.8(b)(2)(A) Notifications Certification
This section currently states that, "The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the local elected officials, or that the Applicant has knowledge of as of the date of pre-application submission." Should the statement "as provided by the local elected officials" be included here now that the requirement to request a list of neighborhood groups from the local elected officials has been removed?

Section 11.9(c)(4)(B) Rural Opportunity Index
I have a few comments on this item. First, I think that option (i) that awards 3 points for being within one liner mile of an elementary school with a Met Standard rating should not be expanded to include middle

and high schools. Children in middle and high schools are typically more independent and would not need to rely on a parent for transportation to a school that is more than 1 mile away. For school districts that split elementary grades into different campuses, I propose that any school that serves elementary grades (typically K-5 or K-6) with a Met Standard rating should qualify regardless of the number of grades served at the campus (for example, some school districts may have a separate kindergarten or fifth-grade campus).

Second, items (ii) and (iv) pertaining to childcare should be clarified. For example, item (ii) requires that the program meet the minimum standards while item (iv) requires that the center be licensed. From my research, it would appear that licensed facilities meet the minimum standards, so I wonder if item (ii) should use the same language as item (iv). In addition, according to the Department of Family and Protective Services search for Child Care Centers, there appear to be licensed centers, licensed childcare homes, and registered childcare homes. I propose that items (ii) and (iv) allow for licensed centers and licensed childcare homes to qualify for this item, as the difference in those appears to be the number of children at total capacity. I am not sure that registered childcare homes have the same requirements and therefore am not sure that they should be included.

Finally, items (ii) and (iv) pertaining to childcare should be available to General Developments only and not to Qualified Elderly Developments.

Section 11.9(c)(5) Educational Excellence
I have encountered some school districts that have a dedicated sixth grade campus. Could staff please clarify whether a sixth grade campus should be included with the elementary rating or with the middle school rating? Otherwise, I believe that the 3-point and 1-point language should remain as written.

Section 11.9(c)(6) Underserved Area
There are a limited number of places and census tracts with tax credit developments that have only 1 or 2 units. I propose that items (C) and (D) exclude existing tax credit development that have less than 4 units.

Section 11.9(c)(8) Location Outside of Food Deserts
The current draft includes a point for applications located outside of "Food Deserts." I believe that this item should be deleted. The USDA website appears to use data that is different than the newest 5-year ACS data that TDHCA is using for application purposes, and in some cases this data is contradictory between years. For example, census tract 48085031657 in Plano is a USDA Food Desert for being low income and low access; however, according to the newest ACS data, this tract has an income of $60,313 and a poverty of 6.7%, which would not make it a Food Desert based on this lower poverty rate. In addition, there is a Walmart Supercenter grocery store that is located 1600 feet from the boundary of this census tract. Another example is census tract 48389950400 in Pecos. This tract is also considered a USDA Food Desert; however, the tract is a First Quartile tract with the highest income in the county at $49,286 and the lowest poverty rate in the county at 23.8 percent. Furthermore, the town's main grocery store, La Tienda, is located 600 feet from the boundary of the census tract and all residents of the census tract would be within the USDA's 10-mile rural distance of the grocery store. I do not believe it would be appropriate for TDHCA to effectively penalize a census tract in a county with the highest income and the lowest poverty, especially when the grocery store is less than 1 mile of most of its residents. I propose that this scoring item be deleted due to inconsistencies in the data. If staff proposes to keep this item, then I would propose that an applicant be able to elect a point for this item if it can show that (a) the census tract is not "low income" per the newest census data that is used by TDHCA or (b) that the development site is within 1 mile of a grocery store for urban developments or 2 miles of a grocery store for rural developments.

Section 11.9(d)(2) Commitment of Development Funding by Local Political Subdivision
I propose that the funding amount multipliers based on population be lowered. A city such as Frisco will not have the same financial resources as a city such as Dallas; however, they would need the same amount of funding under this point item as currently proposed. A multiplier of 0.06 would require a city of 250,000 to contribute $15,000 per unit, which would make more sense than a city of 100,000 at a multiplier of 0.15.

Section 11.9(d)(5) Community Support from State Representative
In the prior application round, there was at least one instance where a state legislator was allowed to withdraw a letter of support even though the QAP stated that "Once a letter is submitted to the Department it may not be changed or withdrawn." If staff is going to allow a representative to withdraw a letter for any reason, then this language should be deleted from the 2014 QAP.

Section 11.9(e)(3) Pre-Application Participation
The current draft states that "The total number of Units does not change by more than ten (10) percent from pre-application to Application." I propose that this reverts back to the previous years' language that the total number of units cannot increase by more than 10 percent.

Section 11.10 Challenges to Competitive HTC Applications
I understand that a fee is associated with a challenge. I propose that if a challenge is not reviewed by staff for any reason or if, as stated in this section, "A matter, even if raised as a challenge, that staff determines should be treated as an Administrative Deficiency will be treated and handled as an Administrative Deficiency, not as a challenge," then the challenge fee should be refunded to the challenger.

Thank you for your consideration. Please contact me with any questions.

Regards,

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October 19, 2013

Mr. J. Paul Oxer, Chairman and
Board Members of the
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Draft 2014 QAP and Uniform Multifamily Rules (9.12.13 Release Date)

Dear Chairman Oxer and Members of the TDHCA Governing Board:

Please accept the following as our formal comments and recommended changes to the Draft of the 2014 QAP and Uniform Multifamily Rules (Rules) approved by the TDHCA Governing Board on September 12, 2013.

A. Draft 2014 QAP:

1. ***§11.2 Program Calendar for Competitive Housing Tax Credits.*** If the Department is going to allow 4/1/14 to be the deadline for delivery of Resolutions for Local Government Support as is currently drafted, then we recommend that the deadline for delivery of all other Resolutions be moved from 2/28/14 to 4/1/14, including those necessary under §11.3 relating to Housing De-Concentration Factors. Municipalities will not want to piece meal these resolutions and will want to consider all resolutions at the same time in their deliberation of a particular project.

2. ***§11.9(c)(5) Educational Excellence.*** We recommend that this scoring item be amended as follows:

(i) 3 points if all 3 school types (elementary, middle, and high school) qualify;
(ii) 2 points if elementary plus one (middle or high school) school types qualify; and
(iii) 1 point if only the elementary school type qualifies.

As currently drafted, a site located in an attendance zone with 2 out of 3 good schools will only receive 1 point. The above described point adjustment will enhance the remedial plan objectives by incentivizing Developments targeting the general population that are located in the attendance zones of 2 out of 3 schools with the appropriate rating. This adjustment will also give better treatment to Developments targeting the general population that may not qualify for HOA points but are located in areas that are successfully working to improve the quality of their schools.

3. ***§11.9(c)(6) Underserved Area.*** We recommend that this scoring item be amended as follows:

> "(C) A Place, or if outside the boundaries of a Place, a county that has never received a competitive tax credit application or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population."

This scoring category provides points to general population and Supportive Housing Developments if located in what is defined as an ***Underserved Area***. The intent of the change is to recognize that a Place in an Urban Area is underserved if an age restricted elderly development is the only active tax credit development in such area. This recommendation is already available to Rural Area developments under subparagraph (D) of this scoring item.

We also recommend that the Department define what is required to be submitted in the Application to evidence whether a Development Site is located in a Colonia or an Economically Distressed Area under Subparagraph (A) or (B) respectively, in order to qualify for Underserved Area points.

4. ***§11.9(c)(7) Tenant Population with Special Housing Needs.*** We recommend that an applicant have the option of qualifying for points under this scoring category if meeting the requirements of either subparagraph (A) or (C). The Section 811 Program (Subparagraph (A)) is currently a pilot program with undefined guidelines and requirements. It would be unfair to impose the uncertainty of this program on general population and Supportive Housing developments located in focused MSA areas of our State.

5. ***§11.9(d)(2) Commitment of Development Funding by Local Political Subdivision.*** Please clarify when the firm commitment of funds in the form of a resolution from the LPS is to be submitted to the Department.

6. ***§11.9(d)(4) Quantifiable Community Participation.*** We recommend that the points that an application may qualify for under subparagraphs (C)(iii) and (iv) be reduced to 4 points but allow those applications that qualify for points under these subparagraphs be eligible to earn additional points under *§11.9(d)(6)(A) – Input from Community Organizations*. As currently drafted, subparagraphs (C)(iii) and (iv) allow an Application to receive points for statements of neutrality or the equivalent from a Neighborhood Organization whose boundaries include the Development Site. The intent of the change is to provide applications that receive statements of neutrality or the equivalent from a Neighborhood Organization the opportunity to achieve the same points as an Application that is located in an area where no Neighborhood Organization is in existence when combined with points under *§11.9(d)(6)(A) – Input from Community Organizations*.

7. ***§11.9(d)(6) Input from Community Organizations.*** We recommend that Developments that do not fall within the boundaries of any qualified Neighborhood Organization, or that

qualify for points under subparagraphs (C)(iii) and (iv) of *§11.9(d)(4) Quantifiable Community Participation* be eligible for points under this scoring item, and that the points in the following subparagraphs be adjusted as follows:

(A) 2 points for each letter of support submitted from a community or civic organization that serves the community;
(B) 4 points for a letter of support from a property owners association whose boundaries include the Development Site; and
(C) 4 points for a letter of support from a Special Management District whose boundaries include the Development Site.

Property Owners Associations and Special Management Districts serve very similar functions as Neighborhood Organizations in terms of supporting and controlling development uses within their boundaries and therefore should be given equal or similar weight in points.

8. ***§11.9(e)(2) Cost of a Development per Square Foot.*** We recommend the following changes to this scoring item:

(i) a high cost development should include Development Sites located in Rural Area under subparagraph (A)(iv) of this scoring item;

(ii) Building Costs and Hard Costs in each of subparagraphs (B) (i)-(iv) should be increased by $10, and applicable adjustments should be made to subparagraphs (C) and (D) accordingly;

(iii) Applications proposing Adaptive Reuse should be eligible for points under subparagraph (E); and

(iv) Subparagraph (F) should be deleted. Applicants are already limited by the amount of tax credits that can be awarded to a project at a time when construction costs have reached and are exceeding pre-recession levels.

9. ***§11.9(e)(4) Levering of Private, State and Federal Resources.*** We recommend that the percentages in clauses (ii)-(iv) of this scoring category be increased by 1 percent, such that 3 points be awarded if the Housing Tax Credit funding request is less than 8 percent of the Total Housing Development Costs; 2 points be awarded if the Housing Tax Credit funding request is less than 9 percent of the Total Housing Development Costs; and 1 points be awarded if the Housing Tax Credit funding request is less than 9 percent of the Total Housing Development Costs. We feel that these levels will create more viable projects while still recognizing the Department's intent to encourage Applicants to leverage their transactions with non-tax credit subsidies.

10. ***§11.9(e)(5) Extended Affordability or Historic Preservation.*** We recommend that points under subparagraph (A) of this scoring category for an Application that extends the 15-year compliance period for an additional 15-year extended use period be reduced to 1 point, and that points under subparagraph (B) that are applicable to an Application proposing the use of historic (rehabilitation) tax credits be eligible to receive the maximum 2 points in this scoring item. In light of recent legislative action intended to stimulate historic preservation projects through the granting of state historic tax credits, we recommend that those Applicants proposing historic preservation projects receive additional points under this scoring category. In most instances these types of projects are located in urban core areas that would not in most instances be eligible for HOA points.

11. ***§11.9(e)(7) Development Size.*** This scoring item provides a point to those Applications that propose no more than 50 HTC units and request no more than $500,000 in tax credits. We recommend that this scoring category be deleted. We question whether those Applications that selected this point in 2013 and were awarded tax credits as a result will prove to be quality and financially viable developments over the life of the compliance period especially in light of escalating building and other construction costs not contemplated in their application.

Also, this scoring item causes sub-regions to lose tax credits that were meant to be used in such sub-region especially in sub-regions where only one transaction will be funded if an Applicant seeks the point and request no more than $500,000.

12. ***§11.9(e)(8) Transit Oriented Developments***. We support TAAHP's recommendation that an Application be eligible for 1 point if the Development Site is located within ½ mile of light rail, commuter rail, raid bus transit or other high capacity transit. This scoring item would not be a new concept since the Multifamily Rules already provides for and encourage the location of Developments near public transportation, including §10.101(a)(2) Mandatory Community Assets and (7) Tenant Supportive Services of the Rules.

B. **Draft 2014 Rules.**

Subchapter B - §10.101. Site and Development Requirements and Restrictions. We recommend the following changes to Subchapter B:

(i) ***§10.101(a)(3) – Undesirable Site Features.*** We recommend that Adaptive Re-Use Developments be allowed to request an exemption from the Board if located within applicable distances from an Undesirable Site Features in the same manner as is currently allowed for Rehabilitation Developments.

(ii) ***§10.101(b)(4) – Mandatory Development Amenities.*** We recommend that Adaptive Re-Use Developments be exempt from the same amenities as Rehabilitation Developments.

(iii) ***§10.101(b)(5)(A) - Common Amenities.*** We recommend that Developments with more than 80-units (instead of 41-units as currently drafted) be required to meet at least 2

of the threshold points under subparagraph (C)(xxxi) relating to providing Limited Green Amenities, and that a Development satisfies the threshold requirement if it meets at least 3 (instead of the required 6) items. We agree with the Department's efforts to promote energy and water conservation but given the cost consequences to the proposed development believe that this threshold requirement should be limited to providing 3 of the listed green amenities and should be only applicable to Developments in Urban areas.

(iv) ***§10.101(b)(6) - Unit Requirements.*** We recommend that Adaptive Re-Use developments receive the same treatment under this Paragraph with respect to unit sizes (subparagraph (A)) and unit and development features (subparagraph (B)).

We appreciate the Board's consideration of these comments and recommended changes to the draft of the 2014 QAP and Rules. Thank you very much for all of the hard work that you do for the affordable housing program in Texas.

Sincerely,

Donna Rickenbacker

Donna Rickenbacker

cc: Tim Irvine, Executive Director
Cameron Dorsey, Director of Housing Tax Credits
Jean Latsha, Competitive HTC Program Manager

(35) Sean Brady
REA Ventures

ReaVentures GROUP, LLC

October 18, 2013

Texas Department of Housing and Community Affairs
Attention: Cameron Dorsey
P O Box 13941
Austin, Texas 78711-3941

RE: Comments on Draft 2014 Qualified Allocation Plan

Dear Mr. Dorsey:

Thank you for this opportunity to submit our comments on the draft 2014 Texas Qualified Allocation Plan (QAP) to the Texas Department of Housing and Community Affairs (TDHCA).

Section 11.2. Program Calendar. We support the restoration of the due date for the Market Analysis to April 1, 2014 to allow time following full application submittals for the market analyst to adjust for other projects submitted in the market area.

Section 11.3(e). Development in Certain Sub-Regions and Counties. We request that elderly developments not be explicitly prohibited in any county. Elderly developments are already more challenging to fund, given the scoring disadvantage (not able to claim points for Opportunity Index in Urban areas or in Underserved Area) versus a general population development. This scoring disadvantage makes an elderly development extremely difficult to compete for 9% credits and therefore point scoring already drives developers toward general population developments. Non-competitive 4% credit projects are financially difficult to close without the higher rents available to general population deals and therefore financing needs also drive those developers toward general population targeting. An explicit prohibition is not needed to discourage elderly development on either 9% or 4% credit projects.

Section 11.9(c)(4)(B)(i). Opportunity Index. We recommend adding middle and high schools to the options available for points in rural areas. In most rural areas, facilities are often spread out with the high school located in one town and the elementary school located in another town. Yet each of these school types will serve the same target population over time. Proximity to any public school is a valuable amenity to residents with children and therefore should be scored equally.

Section 11.9(c)(4)(B)(i-vii). Opportunity Index. In keeping with the threshold distances for community amenities in rural areas, we request that the distances for proximity to schools, after-school programs, grocery stores, child-care centers, senior centers, and health facilities all be increased to 2 miles for rural areas. The difference between 1 mile and 2 miles to a rural resident is insignificant since most residents in rural areas would need to use a car to reach these locations due to a lack of public infrastructure (sidewalks, transit, etc.). Also, amenities are more spread out in rural areas and not often clustered together within a tight 1-mile radius of the other community facilities.

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Section 11.9(c)(5). Educational Excellence. We suggest more point gradation for high-performing schools. Communities served by an elementary, middle school, and high school that are all high-performing schools are extremely rare, especially in rural areas. A site served by only a high-performing elementary school should score 1 point, a site served by two high-performing school levels (elementary, middle, or high school) should score 2 points, and a site served by three school levels that are all high-performing should score 3 points.

Section 11.9(c)(8). Location Outside of "Food Deserts." We support removing this scoring item due to lack of reliable data to map these areas.

Section 11.9(d)(6)(A). Input from Community Organizations. We request that 2 points be restored for each letter of support from a community or civic organization to put rural sites on a more even competitive footing with urban sites where more organizations will exist. Acquiring four letters of support from different non-profit organizations may prove impossible in many rural communities, as there may simply not be 4 different non-profit organizations in existence that serve the community.

Section 11.9(e)(3)(A). Pre-Application Participation. We request that TDHCA only cap the increase in units between pre-application and full application, to allow for unforeseen zoning requirements during project development that may force a smaller project than originally contemplated.

Section 11.9(e)(4)(A)(ii-iv). Leveraging of Private, State, and Federal Resources. We suggest that the maximum percentages for Housing Tax Credit funding requests (as a percentage of the total housing development cost) be increased to 8% to 10% from the current range of 7% to 9%. This scoring category is the primary reason that affordable developments included a sizable proportion of market rate units in the 2013 competitive round in order to drop their percentage from around 8% to below 7%. A smaller, pure tax credit development won't get below 7% even at 48 units and operational costs hurt the financial feasibility of projects smaller than 64 units in most areas (especially rural). If TDHCA still desires to lower market rate risk on 2014 applications, it should increase its minimum number to 8% to reduce the pressure on developers to add more market rate units to a project concept.

Section 11.9(e)(7). Development Size. We request that TDHCA keep the affordable unit cap at fifty (50) units but replace the additional cap of $500,000 on the housing tax credit funding request with a new cap based on the total credits available in a region to help improve the financial feasibility of 2014 projects that are funded. Other scoring categories already control development cost and the percent of credits requested to the total cost, which by themselves effectively limit a project's credit request to about $500,000 to $600,000. If a region has $550,000 in credits available, the additional $50,000 credits gained by this change would not often result in TDHCA being able to fund another project but would make a significant difference in the financial viability of the project funded in that region. The 2013 round saw many developers forced to make aggressive financial decisions that would not otherwise do in order to secure enough points to be funded, only to then experience unusual difficulty in attracting investors and closing their projects with a deal that still made financial sense. Rising interest rates following full

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application submittal (an occurrence that can be expected to continue) further complicated matters, with rates jumping almost 100 basis points. We appreciate TDHCA's desire to stretch its resources as far as possible but we encourage a softening of the funding cap to produce more financially viable projects going forward as financial risk and uncertainty can be expected to continue this coming year.

Thank you again for this opportunity to submit comments on the draft 2014 QAP. We appreciate all the hard work of TDHCA in developing quality affordable housing in Texas and are proud to be a part of the team.

Sincerely,

Sean M. Brady, LEED AP
Vice President of Development

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(39) John Henneberger
Texas Low Income Housing
Information Service and
Madison Sloan
(“Texas Appleseed”)

Texas
APPLESEED

Texas Low Income Housing
Information Service

October 21, 2013

Mr. Cameron Dorsey
Director of Multifamily Finance
Texas Department of Housing and
Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Dear Mr. Dorsey:

We offer these recommendations regarding the 2014 State of Texas Qualified Allocation Plan (QAP) for allocation of Low Income Housing Tax Credits (LIHTC).

§11.3. Housing De-Concentration Factors.
We strongly support the Housing De-Concentration goal of this section. Sections 11.3(b) and 11.3(d)(2) reference resolutions by local governing bodies that would exempt applications from certain limits addressing De-Concentration. We suggest that such resolutions be required to contain a statement that that governing body has examined the concentration of housing supported by low income housing tax credits in that jurisdiction, and that concentration does not constitute a barrier to fair housing choice, is consistent with local fair housing plans and will affirmatively further fair housing.

We support the language in section 11.3(e). Over-funding of elderly units in certain areas of the state limits the fair housing choice of families with children – a protected class under the Fair Housing Act - and the state has an obligation to affirmatively further fair housing for this population.

§11.4. Tax Credit Request and Award Limits.
11.4(c)(2)(A): Historically, all rural applications were made eligible for the 30% boost because it was difficult for rural deals to compete for the High Opportunity boost. However, High Opportunity points in rural areas are now calculated in a manner specifically targeting the unique nature of rural deals. Given this, we suggest the blanket availability of the 30% boost for rural deals is no longer needed, and undercuts the purpose of the rural high-opportunity points. We suggest removing the blanket rural boost and encouraging rural deals to compete

for the boost via the rural opportunity point calculation.

§11.5. Competitive HTC Set-Asides

The At-Risk Set-Aside (@ 11.5(3): The addition to section (C) of the option to relocate existing units in an otherwise qualifying At-Risk Development instead of rebuilding those units on site is an important and necessary change to the QAP.

First, while the preservation of affordable housing is both laudable and needed, the increasing amount of older subsidized housing that needs recapitalization and rehabilitation means that these incentives can have the effect of preserving affordable housing in neighborhoods that 1) have less need for affordable housing because families can easily use Housing Choice Vouchers to rent units and/or market rents are affordable to low-income families; and 2) are not high-opportunity, while allowing units in higher opportunity areas to be converted to market rate units. Public funds should not be used to lock-in historical patterns that have located affordable housing in segregated low-income areas.

Second, the existing location of the at-risk development may not comply with the Fair Housing Act. Rehabilitating or rebuilding developments in areas that are not high-opportunity, particularly in areas with high levels of racial segregation and concentrated poverty, violates the State and local governments' obligations to affirmatively further fair housing by investing public funds in a way that perpetuates and furthers racial segregation and denies housing to other protected classes including families with children and persons with disabilities.

Third, some existing LIHTC developments are located in areas with high levels of environmental risk. For example, the Prince Hall Village development in Port Arthur, Texas is located on the fenceline of the largest refinery in North America, close to two public housing developments. These developments are currently being relocated, in part because of the environmental risks to the families that live there. In an August 2011 letter, the Environmental Protection Agency noted that;

> "the Carver Terrace housing project and adjacent playgrounds are located such that residents, including the children, are literally living *on the fenceline* of some of the largest oil and gas refineries in the United States. Accordingly, the residents of Carver Terrace face greater risks from air pollution (e.g. releases due to process malfunctions or inefficient equipment shutdowns), as well as a higher risk of emergency events (such as chemical and oil spills). Significantly, during hurricanes, these risks become amplified and more probable."

The families in the LIHTC development face the same risks, but without the proposed change to the QAP, the development could not be moved to a safer area.

We support this change to the QAP, but would go further and require a location analysis of all developments to determine whether the proposed location – including the existing site –

complies with fair housing requirements. We further suggest that TDHCA include an environmental hazard proximity impact factor in the scoring criteria. Developments within certain distances of TCEQ clean-up sites, emissions sites, brownfields, etc. should receive lower scores.

§11.7. Tie Breaker Factors

We support the goals of this section, which is to encourage deals in higher opportunity, lower housing-tax-credit concentrated, areas of the state. In the spirit of constructive feedback, however, we note that the proposed language in 11.7(2) may aggravate the existing, problem of Housing Tax Credit units being located on the peripheral edges of populated areas. To address this, we suggest the 11.7(2) de-concentration tiebreaker be instead calculated as the application with the tract lower concentration index, where the index is calculated as ((**existing HTC units + proposed HTC units)/households)**.

Given this is a tract-level calculation, it is still theoretically possible that two applications in the same census tract could tie. In that case, we suggest a final tie-breaker, unlikely to be reached, of the lower linear distance to the nearest post office. This arbitrary number would be uniquely available for every address in the state and would encourage units closer to, rather than farther, from services.

§11.9. Competitive HTC Selection Criteria

11.9(c)(4)(A): We strongly support the goals of the opportunity index as calculated for Urban Areas of the state. Texas' inclusion of school quality in its Opportunity Index is critical. While the poverty rate of the proposed Development Site is an important measure of opportunity, it does not by itself indicate access to opportunity or racial desegregation. Studies of the Moving to Opportunity (MTO) demonstration project found that despite the program's definition of a high-opportunity neighborhood as one in which fewer than 10% of the residents were below the poverty level, the low-poverty neighborhoods to which MTO families moved were still generally racially segregated, often within the same school system as the family's previous neighborhood, and less likely to have good employment resources and public services because of historic patterns of disinvestment in racially segregated minority neighborhoods.[1]

Much as TDHCA currently limits opportunity points to areas with relatively low poverty rates, we encourage TDHCA to explore limiting Opportunity points to neighborhoods with crime

[1] *See, for example,* Orr, Larry, Judith D. Feins, Robin Jacob, Erik Beecroft, Lisa Sanbonmatsu, Lawrence F. Katz, Jeffrey B. Liebman, and Jeffery R. Kling [2003]. *Moving to Opportunity: Interim Impacts Evaluation.* Prepared for U.S. Department of Housing and Urban Development. Abt Associates Inc. and National Bureau of Economic Research; Kingsley, G. Thomas, and Kathryn L.S. Pettit [2008]. "Have MTO Families Lost Access to Opportunity Neighborhoods Over Time?" Three City Study of Moving to Opportunity, Brief No. 2, Urban Institute; Sanbonmatsu, Lisa, Jens Ludwig, Lawrence F. Katz, Lisa A. Gennetian, Greg C. Duncan, Ronald C. Kessler, Emma Adam, Thomas W. McDate, and Stacy Tessler Lindau [2011]. *Moving to Opportunity for Fair Housing Demonstration Program: Final Impacts Evaluation.* Prepared for U.S. Department of Housing and Urban Development. National Bureau of Economic Research.

rates below the median county or place level.[2]

11.9(c)(4)(B) We support the goals of the opportunity index as calculated for Rural Areas of the state, but question the effectiveness of the proposed scoring regime. The use of a "cumulative" point system with 16 possible points undermines the meaningful guidance provided by this section. We suggest changing the points available for the basic services items (ii), (iii), and (iv) from 2 points to 1 point. This would leave one point only available to general-population applications near schools with a "met standard" rating.

We suggest rewording 11.9(c)(4)(B)(iv) from "a child-care center that is licensed by the Department of Family and Protective Services" to "child-care facility that is licensed by the Department of Family and Protective Service as a licensed child-care center" to emphasize that licensed in-home providers do not qualify for these points.

§11.9. (d) Criteria promoting community support and engagement.
11.9. (d)(1) The points for Local Government Support in §11.9. (d)(1) should be reserved for resolutions containing a statement by the local government body that they have reviewed the application and their support or lack of objection to the application is consistent with their obligation to affirmatively further fair housing.

The high number of points allocated to Local Government Support has the strong potential to result in discriminatory impacts, including perpetuating racial segregation and making housing unavailable to families with children and persons with disabilities. Not only does the number of points present an almost insurmountable barrier for projects that do not receive resolutions of approval or non-objection, points for a resolution of approval in segregated minority areas would prioritize these projects over those in less segregated and higher opportunity areas. Because the forms of local government support eligible for points – resolutions of the local governing body commitments of local government funding – are likely to be tied together, local opposition to the proposed project is multiplied by the cumulative nature of the points.

§11.9. (d)(4)(C)(1): While we appreciate the state's efforts to recognize the higher level of difficulty obtaining support letters in certain neighborhoods, ongoing rewards to neighborhoods for historically opposing tax credit properties in their boundaries sets up inappropriate incentives for organizations to game the system with spurious letters of false opposition. We suggest these points be removed.

[11.9(d)(5)]: Community Support from State Representative: This item is statutorily required to be the eleventh-ranked scoring priority. However, the proposed language makes this the only scoring item eligible for both positive and negative points, effectively granting a 16-point spread between positive and negative support from a State Representative. This 16 point spread increases the ranking of this item in the scoring priority beyond the eleventh priority,

[2] Using sources such as the Texas Department of Public Safety or FBI Uniform Crime Reports.

and is not supported by the statutory language.

In addition to the fact that this ranking is not supported by the statutory language, it has the strong potential to result in discriminatory impacts, including perpetuating racial segregation and making housing choice unavailable to families with children and persons with disabilities. We suggest letters indicating lack of support by state representatives be scored zero points.

§11.9. (d)(6)(D): We support excluding input from community organizations that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing. However, we believe this clause should be moved and expanded to cover all input regarding the application, including, but not limited to: Local Government Support resolutions [11.9(d)(1)], Quantifiable Community Participation [11.9(d)(4)], and Community Support from State Representatives [11.9(d)(5)].

§11.9. (d)(7)(A) and (B): The State of Texas and political jurisdictions such as counties and cities who are developing community revitalization plans and approving housing tax credit applications within such areas each have a responsibility to act in a manner consistent with the Fair Housing Act and the Executive Order directing recipients to "affirmatively further fair housing". The State, counties, and cities are under an obligation to eliminate discrimination and segregation and increase the supply of genuinely open housing.

In order to fulfill this obligation, the QAP should explicitly assess residential racial and ethnic segregation as a site condition and apply a preference to awarding housing tax credits to reduce rather than to reinforce residential segregation.

We agree with the QAP defining community revitalization areas and permitting the award of some low income housing tax credits within those areas. Because the HTC program creates housing units, the amount of credits awarded in community revitalization areas should be significantly less than those awarded in high opportunity, racially and ethnically integrated neighborhoods. The QAP must ensure that a predominant emphasis of the housing tax credit program is placed on developing housing available to African-American, Hispanic, Asian and other "minority" tenants in the form of open housing outside of segregated minority neighborhoods. A review of the TDHCA Housing Sponsor Report shows clearly that the predominant race or ethnicity of the neighborhood in which a housing development funded by TDHCA is located is highly correlated with the race/ethnicity of the tenants residing in that development. To produce open housing TDHCA must both award a significant portion of housing tax credits outside of minority segregated neighborhoods and compel developers and owners to engage in affirmative marking plans that actually produce project level integration that is clearly not currently being achieved.

As one illustration of how to pursue community revitalization while achieving fair housing we point to the City of Houston DR program. We have negotiated a fair housing agreement with

the City of Houston. As part of selecting community revitalization areas the city considered and documented through experts the rates of neighborhood change economically and racially across the city and then selected areas as community revitalization areas. The designation of these areas required that the neighborhood could reasonably be expected, through private market forces and concentrated public investment in infrastructure and public services, to transition from high poverty, minority segregated neighborhoods into economically, racially and ethnically integrated neighborhoods. The city made a massive short term as well as a long term funding commitment to support this explicit integration outcome. The city has also chosen to invest CDBG-DR funds in multifamily development within these neighborhoods through a conscious effort to create mixed income housing at the development level.

We urge TDHCA to incorporate a similar approach in the QAP to define eligible community revitalization areas. A city or county designating a neighborhood as a community revitalization area must be required to do at least what the city of Houston did: produce a competent market analysis demonstrating that market forces can reasonably be expected, in combination with a major public investment in improved infrastructure and public services, to result in economic, racial, and ethnic integration. The jurisdiction must offer a long-term commitment of local improvements of public services and infrastructure.

An analysis of the ethnic and racial composition of government subsidized developments of all types in and around the proposed community revitalization area should be produced. The jurisdiction should be required to provide an acceptable strategy achieving the integration of government subsidized housing within the community revitalization area and explicitly address how the introduction of new housing tax credits will overcome existing patterns of racial, ethnic, and economic segregation in the area.

The commitment to achieve integration must also be explicit on the part of the jurisdiction. Community revitalization must go beyond building more and better government subsidized housing in the neighborhood because government subsidized housing alone will not result in racial and economic integration and may actually work against such integration. TDHCA must require the jurisdiction to acknowledge its commitment to comply with fair housing and affirmatively further fair housing. The jurisdiction must explicitly state that the community revitalization plan it proffers to obtain tax credits is part of the jurisdiction's deliberate plan to affirmatively further fair housing and that it consistent with the local Analysis of Impediments to Fair Housing. Without such a showing and commitment we suggest that the community revitalization plan is not an adequate commitment for the State to base an award of housing tax credits.

We also urge TDHCA's follow up monitoring of the outcomes of accepted community revitalization plans. At periods of time after construction of the tax credit developments in community revitalization areas, 2 years, 5 years and 10 years, an assessment of the ethnic/racial composition of the tenants in LIHTC developments in community revitalization areas and the populations in the surrounding neighborhoods should be undertaken to determine if the

criteria used to designate community revitalization areas and the public revitalization commitments produced the required outcomes. The eligibility criteria for community revitalization areas in future QAPs should be modified as appropriate based on these assessments.

§11.9. (d)(7)(B)(ii): We suggest the following edits to §11.9. (d)(7)(B)(ii):

> *(I) define specific target areas for redevelopment of housing that do not encompass the entire jurisdiction;*
>
> *(II) ~~affirmatively address Fair Housing demonstrated through~~ be subject to administration in a manner consistent with an approved Fair Housing Activity Statement-Texas (FHAST) if a FHAST Form is in place within the jurisdiction;*
>
> *(III) be subject to administration in a manner consistent with the findings of an Analysis of Impediments approved or accepted by HUD within the last three (3) calendar years ~~or an approved Fair Housing Activity Statement-Texas (FHAST), approved by the Texas General Land Office~~;*
>
> *(IV) certify that the plan and the Application are consistent with the adopting municipality or county's plan to affirmatively further fair housing under the Fair Housing Act (42 USC 3608(d)) and Executive Order 12892; and*
>
> *(~~IV~~ V) be in place prior to the Pre-Application Final Delivery Date.*

Sincerely,

John Henneberger, co director
Texas Low Income Housing Information Service

Madison Sloan, staff attorney
Texas Appleseed

(40) Stuart Shaw
Bonner Carrington

BONNER CARRINGTON

October 17, 2013

Cameron Dorsey
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

RE: 2014 Qualified Allocation Plan – Public Comment

Comments on 2014 QAP New Items and Changes

1. **§11.2 Calendar.** The due date for the market analysis, site design and development feasibility report, all resolutions for housing de-concentration factors, and Local Government Support resolutions should be April 1, 2014. We understand these items are key to underwriting, but having more time to work with the local jurisdictions will be beneficial to the Applicant and the local jurisdiction. This should not delay underwriting for the simple fact that the legislator support letter is also not due until April 1, 2014, which is the primary determinant on whether an application will be competitive. In addition, it is helpful for the Applicant to have as much time as possible to analyze the Pre-Application and Application scoring logs to determine whether or not to proceed; when Applicants exercise discretion after analyzing the scoring logs, better applications are submitted and both time and money resources are not wasted by the TDHCA or the Applicant in pursuing these sites or by reviewing applications that will not be competitive.

Recommended Language:

Deadline	***Document Required***
02/28/2014	*Full Application Delivery Date (including Quantifiable Community Participation documentation, Environmental Site Assessments (ESAs), Property Condition Assessments (PCAs), and Appraisals~~; Market Analysis Summary; Site Design and Development Feasibility Report; and all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors).~~*
04/01/2014	*Final Input from Elected Officials Delivery Date (including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5) (after opportunity to review materially complete Applications)).* *Market Analysis Summary; Site Design and Development Feasibility Report; and all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors.*

	Market Analysis Delivery Date pursuant to §10.205 of this title.

2. **§11.2 Calendar and §11.10 (1) Challenges of Competitive HTC Applications.** The QAP states that the Department must receive a challenge no later than seven days after the Application Challenges Deadline, which is May 15, 2014. That date plus seven days results in the effectual due date for challenges being May 22, 2014 for all intents and purposes. This is confusing and the Department should just change the deadline to the actual due date of May 22, 2014, if that is indeed the latest possible date to submit challenges.

   Recommended Language:

Deadline	***Document Required***
05/~~15~~22/2014	*Applications Challenges Deadline*

3. **§11.3(e) Developments in Certain Regions and Counties.** We oppose applying this limiting factor to senior communities and recommend the Department removing this scoring item. This is one of the fastest growing age groups in our state; in 2010, 10.3% of the Texas population was sixty-five and over, and by 2012 that figure had risen to 10.9%. The youngest of the baby boom generation will turn sixty by 2024. We suggest letting the market analysis determine whether or not there is a need for senior communities. If a limiting factor is applied, we request the Department take into consideration the number of single-family households in the area. Often times, seniors will relocate to be next to their children or grandchildren, so by limiting the number of senior communities based on the current senior population in the area, this criterion is going to actually create a shortage of senior housing options. Finally, the existing QAP already favors general population over senior communities, so this additional scoring criterion is not needed.

   Recommended Language:
   Delete this scoring criterion.

4. **§11.9 Selection Criteria.** The Department should not, as one developer suggested and others on the 2014 QAP Forum agreed, give points or promote senior communities for locating near hospitals, pharmacies, senior care centers, clinics, or nearby public transportation beyond what is in §10.101(a)(2) Mandatory Community Assets. Seniors aged fifty-five years young and over living in our apartment home communities who enjoy the abundant, dynamic amenities for which to maintain a vigorous lifestyle are not the same residents as those that would choose to live in an assisted living facility or nursing home and desire the services mentioned by our colleague. The current mandatory community assets; such as outdoor public recreation, religious institutions, post offices, and city hall, would better serve our energetic senior residents. This suggestion was not in the QAP, but we would like to be known that we strongly oppose this idea.

   Recommended Language:
   Keep this scoring criterion as is.

5. **§11.9(b)(2) Sponsor Characteristics.** In addition to a HUB or non-profit, three years of developing HTC communities in Texas will give you these points. Evidence in the form of a Commitment, 8609 or Carryover Agreement will be acceptable.

   Recommended Language:
   (2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) (1 point). An Application may qualify to receive one (1) point provided the ownership structure contains a HUB, as certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date, ~~or~~ Qualified Nonprofit Organization, provided the Application is under the Nonprofit Set-Aside, has some combination of ownership interest in the General Partner of the Applicant, cash flow from operations, and developer fee which taken together equal at least 80 percent and no less than 5 percent for any category, or a person with at least fifty percent ownership interest in the General Partner also owns at least fifty percent interest in the General Partners of at least three existing tax credit developments in Texas, none of which are in Material Noncompliance. The IRS Form(s) 8609 must have been issued for each of the properties used for points under this paragraph and each must have a Uniform Physical Condition Standard (UPCS) score of at least eighty-five based on their most recent inspection…

6. **§11.9(c)(4)(a) Opportunity Index.** The Department should restore the five points for any population in top quartile in the attendance zone of a qualifying elementary school. General population communities already have a two-point scoring advantage when in the first quartile. In addition, the Remedial Plan requires five points under the opportunity Index for any population served with less than fifteen percent poverty in a top quartile census tract and a qualifying elementary school.

   Recommended Language:
   (4) Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials.
   (A) For Developments located in an Urban Area, if the proposed Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (or 35 percent for Developments in Regions 11 and 13), an Application may qualify to receive up to seven (7) points upon meeting the additional requirements in clauses (i) – ~~(iv)~~(v) of this subparagraph. The Department will base poverty rate on data from the five (5) year American Community Survey…
   (iii) any Development, regardless of population served, if the Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (5 points);…

7. **§11.9(c)(4)(c) Opportunity Index and §11.9(c)(5) Educational Excellence.** In Districts that have open enrollment, the Department should judge developments by the schools that are closest to the site by linear distance, rather than using the lowest ranked school in

the entire district, since most students will attend the closest school. Open enrollment and limited open enrollment are becoming increasingly popular in Texas and this item unfairly penalizes developments in these school districts including, but not limited to, Argyle ISD, Birdville ISD, Cleburne ISD, Coppell ISD, Deer Park ISD, Forney ISD, Garland ISD, Lake Dallas ISD, McAllen ISD, Rockwall ISD, Texas City ISD. This is not an extensive list and the Texas Education Agency (TEA) itself does not even keep a list of open enrollment districts. Additionally, Texas Education Code §25.031 Assignment and Transfers in Discretion of Governing Board says "In conformity with this subchapter, the board of trustees of a school district or the board of county school trustees or a school employee designated by the board may assign and transfer any student from one school facility or classroom to another within its jurisdiction." The TEA estimates that during the 2007-08 school year, approximately ninety-four thousand Texas students transferred to a non-charter school in the public school system. According to the Coalition for Public Schools, of the 1,031 Texas school districts, 1,028 districts have adopted inter-district transfers that provide students with the opportunity to transfer from their home district to a public school within another district. Also, Students attending a "low-performing" school are eligible to attend a higher performing school in the same district or in another district under the Public Education Grant (PEG) program. Texas Education Code §29.202 establishes criteria allowing a student to transfer under PEG. Of the three hundred and fifty thousand students statewide estimated to be eligible to transfer from 613 identified campuses during the 2007-08 school year, five hundred students exercised their right to transfer to a different public school with a PEG transfer. Judging developments in open enrollment districts by the nearest school achieves the purpose of the Opportunity Index and Educational Excellence scoring criteria by rewarding developments in close proximity to good schools and creating opportunities for children living in these apartment communities to receive a quality education.

Recommended Language:
(5) Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools that have achieved a 77 or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency, provided that the schools also have a Met Standard rating. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the ~~lowest~~ rating of the closest (as measured by linear distance) non-charter ~~of all~~ elementary, middle, or high school~~s~~, respectively…

8. **§11.9(c)(5) Educational Excellence.** The Department should allocate points to developments in the attendance zones of schools that meet the criteria of this item per each school. Developments in the attendance zone for all schools meeting the criteria should receive three points. If only two schools – regardless of whether they are elementary, middle, or high schools – meet the criteria, the development should receive two points. Finally, if only one school – regardless of whether it is elementary, middle, or high school – meets the criteria, the development should receive one point. For this item

all schools that comprise elementary grades of early education to fifth grade would count as one school, all schools that comprise middle school grades of sixth grade to eighth grade would count as one school, and all schools that comprise high school grades ninth to twelfth grade would count as one school.

Recommended Language:
(A) The Development Site is within the attendance zone of an elementary school, a middle school, and a high school with the appropriate rating (3 points); ~~*or*~~
(B) The Development Site is within the attendance zone of any two schools ~~*an elementary school and either a middle school or high school*~~ *with the appropriate rating. Possible combinations are: elementary and middle school, elementary and high school, or middle school and high school (*~~*1*~~ *2 points); or*
(C) The Development Site is within the attendance zone of any one school: an elementary school, a middle school, or a high school with the appropriate rating (1 point).

9. **§11.9(c)(6)(C) Underserved Area.** The Department should allow points under this scoring item if there is not an active tax credit development that serves the same target population. Different target populations serve different needs and if there is only one type of population served, the place is underserved in regards to the other type of population.

Recommended Language:
(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive two (2) points for general population or Supportive Housing Developments if the Development Site is located in one of the areas described in subparagraphs (A) – (D) of this paragraph.

(A) A Colonia;
(B) An Economically Distressed Area;
(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population; or
(D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population.

10. **§11.9(c)(8) Location Outside of "Food Deserts".** The Department should remove this scoring item. While we applaud the intent behind the addition of this new scoring item, the Food Access Research Atlas on the United States Department of Agriculture (USDA) website is unreliable and dependency on this tool is objectionable since it is a new and largely untested tool. Additionally, the USDA website and therefore the instrument to find food deserts are currently unavailable due to the government shutdown stating, "due to the lapse in federal government funding, this website is not available. After funding has been restored, please allow some time for this website to become available again." Without a dependable and simple way to determine whether a development is inside a food desert, the Department should not continue to include this as a scoring item.

Recommended Language:
Delete this scoring criterion.

11. **§11.9(d)(2) Commitment of Development Funding by Local Political Subdivision.** The Department should move the resolution due date for bonus points for this scoring item to April 1, 2014. When developers have more time to work with the local jurisdictions it will be beneficial to the Applicant and the local jurisdictions.

Recommended Language:
(2)…The Applicant must provide evidence ~~in the Application~~ by April 1, 2014 that an application or request for the development funds has been submitted in the form of an acknowledgement from the applicable city or county. The acknowledgement must also state that a final decision with regard to the awards of such funding is expected to occur no later than September 1. A firm commitment of funds is required by Commitment or points will be lost (except for Applicants electing the point under subparagraph (C) of this paragraph). While the specific source can change, the funding secured must have been eligible at the time the Application was submitted. …

> *(C) Two (2) points may be added to the points in subparagraph (B) (i) – (v) of this paragraph and subparagraph (D) of this paragraph if the Applicant provides a firm commitment for funds in the form of a resolution by April 1, 2014 from the Local Political Subdivision and provides a commitment for the same source(s) at Commitment. The resolution must reflect terms that are consistent with the requirements of this paragraph. …*

12. **§11.9(d)(2) Commitment of Development Funding by Local Political Subdivision.** Since State HOME funds do not apply to this scoring item, then no HOME funds should apply. This rule, as currently written, gives larger metropolitan areas a distinct advantage, which could be in violation of Fair Housing. We recommend allowing all HOME funds count for this scoring item or none at all.

Most Preferred Recommended Language:
(2)… HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas ~~cannot~~ can be utilized for points under this scoring item ~~except where the city, county, or instrumentality is an actual applicant for and sub-recipient of such funds for use in providing financial support to the proposed Development~~.

Second Preferred Recommended Language:
HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas cannot be utilized for points under this scoring item ~~except where the city, county, or instrumentality is an actual applicant for and sub-recipient of such funds for use in providing financial support to the proposed Development~~.

13. **§11.9(d)(2)(C) Commitment of Development Funding by Local Political Subdivision.** The Department should keep the one bonus point for the financing terms of the commitment of development funding by local political subdivision as it appears in the current draft QAP. One developer suggested eliminating this point, but we agree with the TDHCA.

    Recommended Language:
    Keep this scoring criterion as is.

14. **§11.9(d)(4)(A)(iii) and (iv) Quantifiable Community Participation.** The Department should remove and replace line items (iii) and (iv). Neighborhood Organizations have the right to form and govern their organizations as they see fit. As long as support or opposition is given in accordance with the HOA or POA meeting rules, nothing further should be needed for the Department.

    Recommended Language:
    (A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph.

    (i) the Neighborhood Organization's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing address) of at least two individual members with authority to sign on behalf of the organization;
    (ii) certification that the boundaries of the Neighborhood Organization contain the Development Site and that the Neighborhood Organization meets the definition pursuant to Texas Government Code, §2306.004(23-a) and includes at least two separate residential households;
    (iii) certification that ~~no person required to be listed in accordance with Texas Government Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, including any votes taken~> support, opposition, or neutrality was given at a public meeting in accordance with the organization's governing documents;
    ~~(iv) certification that at least 80 percent of the current membership of the Neighborhood Organization consists of persons residing or owning real property within the boundaries of the Neighborhood Organization; and~~
    ~~(v)~~ (iv) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization is encouraged to be prepared to provide additional information with regard to opposition.

15. **§11.9(d)(4)(C) Quantifiable Community Participation.** The Department should change the amount of points allowed for neutrality to four points (and five points for neutrality from group that opposed a previous application). If this change is made and the Department allows Input from Community Organizations points for neutral Neighborhood Organizations (see Item 15 below), then these items will have equal

scores, with one bonus point going to applications for development sites that are within the boundaries of a Neighborhood Organization that opposed an application in the previous three years.

Recommended Language:
(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in clauses (i) – (vi) of this subparagraph. Points will not be cumulative. Where more than one written statement is received for an Application, the average of all statements received in accordance with this subparagraph will be assessed and awarded.

(i) nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;
(ii) eight (8) points for explicitly stated support from a Neighborhood Organization;
(iii) ~~six (6)~~ five (5) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;
(iv) ~~five (5)~~ four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;
(v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; or
(vi) zero (0) points for statements of opposition meeting the requirements of this subsection.

16. **§11.9(d)(6) Input from Community Organizations.** The Department should allow Input from Community Organization to score up to the maximum four points if a qualifying Neighborhood Organization takes a neutral stance. If this change is made and the Department changes the point values for neutrality from Quantifiable Community Participation (see Item 14 above), then these items will have equal scores, with one bonus point going to applications for development sites that are within the boundaries of a Neighborhood Organization that opposed an application in the previous three years.

Recommended Language:
(6) Input from Community Organizations. Where the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization or the Neighborhood Organization remained neutral (if an Application receives points under paragraph (4)(C)(iii), (iv), or (v) of this subsection), then, in order to ascertain if there is community

support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances…

17. **§11.9(d)(6) Input from Community Organizations.** The Department should remove the deductive points for opposition. This creates opportunities for foul play. If there are additional community organizations not included in the application by the developer that wish to provide input, they can contact their local government officials at any time or the Department during the public comment period.

    Recommended Language:
    Delete this scoring criterion

18. **§11.9(d)(6)(A) Input from Community Organizations.** The Department should change back to two points per letter. The difference in getting four letters as opposed to two letters is just time; it doubles the time for the developer to secure additional letters and doubles the time for the Department to read the letters when reviewing applications. This scoring change will not differentiate Applications and we recommend each letter counting as two points.

    Recommended Language:
    (A) An Application may receive ~~one (1)~~ two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located.

19. **§11.9(d)(7)(A)(i)(II) Community Revitalization Plan.** The Department should consider only four of the seven factors. This would still require the CRP to meet more than half of the factors and free up the Applicant to ensure that the factors that are included are meaningful.

    Recommended Language:
    (II) The adopting municipality or county must have performed, in a process providing for public input, an assessment of the factors in need of being addressed as a part of such community revitalization plan. Factors assessed must include at least ~~five (5)~~ four (4) of the following seven (7) factors:

20. **§11.9(d)(7)(A)(i)(IV) Community Revitalization.** The Department should allow the Community Revitalization Plan to be in place by the Full Application Delivery Date instead of Pre-Application. It benefits everyone when communities are given adequate time to comply with clear direction. This time benefits the local jurisdictions as well as the Applicant.

    Recommended Language:
    (VI) To be eligible for points under this item, the community revitalization plan must already be in place as of the ~~Pre-Application~~ Full Application Final Delivery Date

pursuant to §11.2 of this chapter evidenced by a letter from the appropriate local official stating that…

21. **§11.9(e)(4) Leveraging of Private, State, and Federal Resources**. The Department should keep this scoring criterion and not limit the number of market rate units, as one developer suggested. The inclusion of market rate units benefits the Department because those units do not require HTC funding and the Department can leverage more credits.

    Recommended Language:
    Keep this scoring criterion as is.

Sincerely,

Stuart B. Shaw, CEO

(42) Claire Palmer

Claire
Palmer
Comments
9/23/2013

TDHCA Board Approved *Draft* of the Qualified Allocation Plan

Chapter 11 of the Texas Administrative Code

Disclaimer

Attached is a draft of Chapter 11 – Qualified Allocation Plan that was approved by the TDHCA Governing Board on September 12, 2013. This draft incorporates changes made by the Board as a result of public comment at the meeting.

The rules are scheduled to be published in the September 27 edition of the *Texas Register* and will constitute the official version for purposes of public comment. The version herein should not be relied upon as the basis for public comment. The public comment period shall be September 27 – October 21.

DRAFT 2014 State of Texas

Qualified Allocation Plan

§11.1. General.

(a) Authority. The rules in this chapter apply to the awarding and allocation by the Texas Department of Housing and Community Affairs (the "Department") of Housing Tax Credits. The federal laws providing for the awarding and allocation of Housing Tax Credits require states to adopt a qualified allocation plan. Pursuant to Texas Government Code, Chapter 2306, Subchapter DD, the Department is assigned responsibility for this activity. As required by Internal Revenue Code (the "Code"), §42(m)(1), the Department has developed this Qualified Allocation Plan (QAP) and it has been duly approved to establish the procedures and requirements relating to an award and allocation of Housing Tax Credits. All requirements herein and all those applicable to a Housing Tax Credit Development or an Application under Chapter 10 of this title (relating to Uniform Multifamily Rules), or otherwise incorporated by reference herein collectively constitute the QAP required by Texas Government Code, §2306.67022.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP or be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and/or the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application. These rules may need to be applied to facts and circumstances not contemplated at the time of their creation and adoption. When and if such situations arise the Board will use a reasonableness standard in evaluating and addressing Applications for Housing Tax Credits.

(c) Competitive Nature of Program. Applying for competitive housing tax credits is a technical process that must be followed completely. As a result of the highly competitive nature of applying for tax credits, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants should further ensure that all required documents are included, legible, properly organized, and tabbed, and that materials in required formats involving digital media are complete and fully readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Staff, when accepting Applications, may conduct limited reviews at the time of intake as a courtesy only. If staff misses an issue in such a limited review, the fact that the Application was accepted by staff or that the issue was not identified does not operate to waive the requirement or validate the completeness, readability, or any other aspect of the Application.

(d) Definitions. The capitalized terms or phrases used herein are defined in §10.3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Any capitalized terms that are defined in Texas Government Code, Chapter 2306, §42 of the Code, or other Department rules have, when capitalized, the meanings ascribed to them therein. Defined terms when not capitalized, are to be read in context and construed according to common usage.

(e) Census Data. Where this chapter requires the use of census or American Community Survey data, the Department shall use the most current data available as of October 1, 2013, unless specifically otherwise provided in federal or state law or in the rules. The availability of more current data shall generally be disregarded.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted on or before 5:00 PM Central Standard Time on the day of the deadline.

§11.2. Program Calendar for Competitive Housing Tax Credits.

Non-statutory deadlines specifically listed in the Program Calendar may be extended for good cause by the Executive Director for a period of not more than five (5) business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline. Extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party.

I didn't find a definition for this.

Deadline	Documentation Required
12/16/2013	Application Acceptance Period Begins.
01/16/2014	Pre-Application Final Delivery Date (including pre-clearance and waiver requests). Is there a deadline by which staff must respond?
02/28/2014	Full Application Delivery Date (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Property Condition Assessments (PCAs); Appraisals; Market Analysis Summary; Site Design and Development Feasibility Report; and all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors).
04/01/2014	Final Input from Elected Officials Delivery Date (including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5) (after opportunity to review materially complete Applications)). Market Analysis Delivery Date pursuant to §10.205 of this title.
05/01/2014	Challenges to Neighborhood Organization Opposition Delivery Date.
05/15/2014	Application Challenges Deadline.
Mid-May	Final Scoring Notices Issued for Majority of Applications Considered "Competitive."
06/13/2014	Deadline for public comment to be included in a summary to the Board at a posted meeting.

Still difficult to include all w/ app.

Deadline	Documentation Required
June	Release of Eligible Applications for Consideration for Award in July.
July	Final Awards.
Mid-August	Commitments are Issued.
11/03/2014	Carryover Documentation Delivery Date.
07/01/2015	10 Percent Test Documentation Delivery Date.
12/31/2016	Placement in Service.
Five (5) business days after the date on the Deficiency Notice (without incurring point loss)	Administrative Deficiency Response Deadline (unless an extension has been granted).

§11.3. Housing De-Concentration Factors.

(a) Two Mile Same Year Rule (Competitive HTC Only). As required by Texas Government Code, §2306.6711(f), staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application within said county that is awarded in the same calendar year.

(b) Twice the State Average Per Capita. As provided for in Texas Government Code, §2306.6703(a)(4), if a proposed Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins (or for Tax-Exempt Bond Developments at the time the Certificate of Reservation is issued by the Texas Bond Review Board), the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must include a resolution adopted by the Governing Body of the municipality or county, as applicable, setting forth a written statement of support, specifically citing Texas Government Code, §2306.6703(a)(4) in the text of the actual adopted resolution, and authorizing an allocation of Housing Tax Credits for the Development. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) or Resolutions Delivery Date in §10.4 of this title (relating to Program Dates), as applicable.

(c) One Mile Three Year Rule. (§2306.6703(a)(3))

(1) An Application that proposes the New Construction or Adaptive Reuse of a Development that is located one linear mile or less (measured between closest boundaries by a straight line on a map) from another development that meets all of the criteria in subparagraphs (A) – (C) of this paragraph shall be considered ineligible.

(A) The development serves the same type of household as the proposed Development, regardless of whether the Development serves families, elderly individuals, or another type of household; and

(B) The development has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and

(C) The development has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a Development:

(A) that is using federal HOPE VI (or successor program) funds received through HUD;

(B) that is using locally approved funds received from a public improvement district or a tax increment financing district;

(C) that is using funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.);

(D) that is using funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.);

(E) that is located in a county with a population of less than one million;

(F) that is located outside of a metropolitan statistical area; or

(G) that the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(3) Where a specific source of funding is referenced in paragraph (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application or prior to the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(d) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 20 percent Housing Tax Credit Units per total households as established by the 5-year American Community Survey shall be considered ineligible unless:

(1) the Development is in a Place that has a population is less than 100,000; or

(2) the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and submits to the Department a resolution referencing this rule. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

* (e) Developments in Certain Sub-Regions and Counties. In the 2014 Application Round the following Counties are ineligible for Qualified Elderly Developments: Wichita; Collin; Denton; Ellis; Johnson; Henderson; Hays; Lamar; Gillespie; Guadalupe; Kendall; and Starr, unless the Application is made in a Rural Area. In the 2014 Application Round Regions five (5); six (6); and eight (8) are ineligible for Qualified Elderly Developments, unless the Application is made in a Rural Area. These limitations will be reassessed prior to the 2015 Application Round and are based on the fact that data evaluated by the Department has shown that in the ineligible areas identified above, the percentage of qualified elderly households residing in rent restricted tax

Given that you cannot even apply to do elderly in certain areas, elderly should be able to score equal to supportive housing - see notes further in.

credit assisted units exceeds the percentage of the total Qualified Elderly-eligible low income population for that area.

(f) Additional Phase. Applications proposing an additional phase of an existing tax credit Development serving the same Target Population, or Applications proposing Developments that are adjacent to an existing tax credit Development serving the same Target Population, or Applications that are proposing a Development serving the same Target Population on a contiguous site to another Application awarded in the same program year, shall be considered ineligible unless the other Developments or phase(s) of the Development have been completed and have maintained occupancy of at least 90 percent for a minimum six (6) month period as reflected in the submitted rent roll.

§11.4. Tax Credit Request and Award Limits.

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater than $3 million in a single Application Round. All entities that are under common Control are Affiliates. For purposes of determining the $3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate or Guarantor solely because it:

(1) raises or provides equity;

(2) provides "qualified commercial financing;"

(3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or

(4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments) to be paid or $150,000, whichever is greater.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the sub-region based on estimates released by the Department on December 1, or $1,500,000, whichever is less, or $2,000,000 for Applications under the At-Risk Set-Aside. The Department will consider the amount in the Funding Request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than $2 million in a single Application Round. (§2306.6711(b))

Is there a potential to change this if 4% is not locked?

(c) Increase in Eligible Basis (30 percent Boost). Applications will be evaluated for an increase of up to but not to exceed 30 percent in Eligible Basis provided they meet the criteria identified in paragraph (1) or (2) of this subsection. Staff will recommend no increase or a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. The criteria in paragraph (2) of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20 percent Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. For any Development located in a census tract with 20 percent or greater Housing Tax Credit Units per total households, the Development is eligible for the boost if a resolution is submitted. The Governing Body of the appropriate municipality or county containing the

* Because the 4% rate has slipped so much is it possible to apply ALL categories to bond/4% deals?

Development has by vote specifically allowed the construction of the new Development and submits to the Department a resolution referencing this rule. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable. Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT.

(2) The Development meets one of the criteria described in subparagraphs (A) - (D) of this paragraph pursuant to §42(d)(5) of the Code:

(A) the Development is located in a Rural Area;

(B) the Development is proposing entirely Supportive Housing and is expected to be debt free or have no foreclosable or non-cash flow debt;

(C) the Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria);

(D) the Applicant elects to restrict an additional 10 percent of the proposed low income Units for households at or below 30 percent of AMGI. These Units must be in addition to Units required under any other provision of this chapter.

see request p. 4.

(E) the Development is ~~a non-Qualified Elderly Development~~ not located in a QCT that is in an area covered by a community revitalization plan. A Development will be considered to be in an area covered by a community revitalization plan if it is eligible for points under §11.9(d)(7) of the chapter.

§11.5. Competitive HTC Set-Asides (§2306.111(d)) This section identifies the statutorily-mandated set-asides which the Department is required to administer. An Applicant may elect to compete in each of the set-asides for which the proposed Development qualifies.

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)) At least 10 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of §42(h)(5) of the Code and Texas Government Code, §2306.6729 and §2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this set-aside (*e.g.*, greater than 50 percent ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, for Qualified Nonprofit Development in the Nonprofit Set-Aside the nonprofit entity or its nonprofit Affiliate or subsidiary must be the Developer or a co-Developer as evidenced in the development agreement. An Applicant that meets the requirements to be in the Qualified Nonprofit Set-Aside is deemed to be applying under that set-aside unless their Application specifically includes an affirmative election to not be treated under that set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department reserves the right to request a change in this election and/or not recommend credits for those unwilling to change elections if insufficient Applications in the Nonprofit Set-Aside are received. Applicants may not use different organizations to satisfy the state and federal requirements of the set-aside.

(2) USDA Set-Aside. (§2306.111(d-2)) At least 5 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this set-aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-Aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region and will compete within the applicable sub-region. Commitments of Competitive Housing Tax Credits issued by the Board in the current program year will be applied to each set-aside, Rural Regional Allocation, Urban Regional Allocation and/or USDA Set-Aside for the current Application Round as appropriate. Applications must also meet all requirements of Texas Government Code, §2306.111(d-2).

(3) At-Risk Set-Aside. (§2306.6714; §2306.6702)

(A) At least 15 percent of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-Aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6 of this chapter (relating to Competitive HTC Allocation Process). Through this set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to 5 percent of the State Housing Credit Ceiling associated with this set-aside may be given priority to Rehabilitation Developments under the USDA Set-Aside.

(B) An At-Risk Development must meet all the requirements of Texas Government Code, §2306.6702(a)(5). For purposes of this subparagraph, any stipulation to maintain affordability in the contract granting the subsidy, or any federally insured mortgage will be considered to be nearing expiration or nearing the end of its term if expiration will occur or the term will end within two (2) years of July 31 of the year the Application is submitted. Developments with HUD-insured mortgages qualifying as At-Risk under §2306.6702(a)(5) may be eligible if the HUD-insured mortgage is eligible for prepayment without penalty. To the extent that an Application is eligible under §2306.6705(a)(5)(B)(ii)(b) and the units being reconstructed were demolished prior to the beginning of the Application Acceptance Period, the Application will be categorized as New Construction.

(C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Texas Government Code, §2306.6702(a)(5) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. Alternatively, an Applicant may propose relocation of the existing units in an otherwise qualifying At-Risk Development if:

(i) the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred to the Development Site (*i.e.* the site proposed in the tax credit Application) prior to February 28, 2013;

(ii) the Applicant seeking tax credits must propose the same number of restricted units (*e.g.* the Applicant may add market rate units); and

(iii) the new Development Site must qualify for points on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria).

(D) Developments must be at risk of losing affordability from the financial benefits available to the Development and must retain or renew the existing financial benefits and affordability unless regulatory barriers necessitate elimination of a portion of that benefit for the Development. For Developments qualifying under §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25 percent of the proposed Units must be ~~public housing units supported~~ by public housing operating subsidy. (§2306.6714(a-1))

(E) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under §42 of the Code. Evidence must be provided in the form of a copy of the recorded LURA, the first years' IRS Forms 8609 for all buildings showing Part II of the form completed and, if applicable, documentation from the original application regarding the right of first refusal.

(F) An amendment to any aspect of the existing tax credit property sought to enable the Development to qualify as an At-Risk Development, that is submitted to the Department after the Application has been filed and is under review will not be accepted.

§11.6. Competitive HTC Allocation Process. This section identifies the general allocation process and the methodology by which awards are made.

reserved for public housing eligible tenants supported by

The statute does not say "must be public housing units," it says "a portion of the public housing operating subsidy received from the department is retained on the development."

Does not have to stay "public housing" or any particular type housing so long as subsidy is retained.

(1) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region ("sub-region") Housing Tax Credits in an amount consistent with the Regional Allocation Formula developed in compliance with Texas Government Code, §2306.1115. The process of awarding the funds made available within each sub-region shall follow the process described in this section. Where a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate a recommendation for the Board's consideration based on the objectives of regional allocation together with other policies and purposes set out in Texas Government Code, Chapter 2306 and the Department shall provide Applicants the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the priority of Applications within a particular sub-region or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the $3 million credit limit per Applicant, the Department will make its recommendation by selecting the Development(s) that most effectively satisfy the Department's goals in meeting set-aside and regional allocation goals. Where sufficient credit becomes available to award an application on the waiting list late in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline to ensure to the fullest extent feasible that available resources are allocated by December 31.

(2) Credits Returned and National Pool Allocated After January 1. For any credits returned after January 1 and eligible for reallocation, the Department shall first return the credits to the sub-region or set-aside from which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may ultimately flow from the sub-region and be awarded in the collapse process to an Application in another region, sub-region or set-aside. For any credit received from the "national pool" after the initial approval of awards in late July, the credits will be added to and awarded to the next Application on the waiting list for the state collapse.

(3) Award Recommendation Methodology. (§2306.6710(a) - (f); §2306.111) The Department will assign, as described herein, Developments for review by the program and underwriting divisions. In general, Applications will be prioritized for assignment, with highest priority given to those identified as most competitive based upon the Applicant self-score and an initial program review. The procedure identified in subparagraphs (A) - (F) of this paragraph will also be used in making recommendations to the Board.

(A) USDA Set-Aside Application Selection (Step 1). The first level of priority review will be those Applications with the highest scores in the USDA Set-Aside until the minimum requirements stated in §11.5(2) of this chapter (relating to Competitive HTC Set-Asides. (§2306.111(d))) are attained. The minimum requirement may be exceeded in order to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement;

(B) At-Risk Set-Aside Application Selection (Step 2). The second level of priority review will be those Applications with the highest scores in the At-Risk Set-Aside statewide until the minimum requirements stated in §11.5(3) of this chapter are attained. This may require the minimum requirement to be exceeded to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement. This step may leave less than originally anticipated in the 26 sub-regions to award under the remaining steps, but these funds would generally come from the statewide collapse;

(C) Initial Application Selection in Each Sub-Region (Step 3). The highest scoring Applications within each of the 26 sub-regions will then be selected provided there are sufficient funds within the sub-region to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the sub-regions;

(D) Rural Collapse (Step 4). If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region ("Rural sub-region") that remain after award under subparagraph (C) of this paragraph, those tax credits shall be combined into one "pool" and then be made available in any other Rural Area in the state to the Application in the most underserved Rural sub-region as compared to the sub-region's allocation. This rural redistribution will continue until all of the tax credits in the "pool" are allocated to Rural Applications and at least 20 percent of the funds

At this point, I would like to see no award from Waiting List, until Commitments are back because of the Sept. 1 deadline for funding.

* named "most significant project" in competition with other projects under the same Local jurisdiction;

available to the State are allocated to Applications in Rural Areas. (§2306.111(d)(3)) In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) – (ii) of this subparagraph will be used to select the next most underserved sub-region:

(i) the sub-region with no recommended At-Risk Applications from the same Application Round; and

(ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any sub-region in the State, will be combined into one "pool." The funds will be used to award the highest scoring Application (not selected in a prior step) in the most underserved sub-region in the State compared to the amount originally made available in each sub-region. This process will continue until the funds remaining are insufficient to award the next highest scoring Application in the next most underserved sub-region. In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved sub-region:

(i) the sub-region with no recommended At-Risk Applications from the same Application Round; and

(ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(F) Contingent Qualified Nonprofit Set-Aside Step (Step 6). If an insufficient number of Applications participating in the Nonprofit Set-Aside are selected after implementing the criteria described in subparagraphs (A) – (E) of this paragraph to meet the requirements of the 10 percent Nonprofit Set-Aside, action must be taken to modify the criteria described in subparagraphs (A) – (E) of this paragraph to ensure the set-aside requirements are met. Therefore, the criteria described in subparagraphs (C) – (E) of this paragraph will be repeated after selection of the highest scoring Application(s) under the Nonprofit Set-Aside statewide are selected to meet the minimum requirements of the Nonprofit Set-Aside. This step may cause some lower scoring Applications in a sub-region to be selected instead of a higher scoring Application not participating in the Nonprofit Set-Aside.

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. Applications on the waiting list are selected for an award when the remaining balance of tax credits is sufficient to award the next Application on the waiting list. The waiting list is not static. The allocation process will be used in determining the Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or sub-region from which they were originally awarded. This means that the first Application on the waiting list is in part contingent on the nature of the credits that became available for award. (§2306.6710(a) - (f); §2306.111)

§11.7. Tie Breaker Factors. In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or statewide collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. The tie breaker factors are not intended to specifically address a tie between equally underserved sub-regions in the rural or statewide collapse.

(1) Applications scoring higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

(2) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. The linear measurement will be performed from closest boundary to closest boundary.

§11.8. Pre-Application Requirements (Competitive HTC Only).

(a) General Submission Requirements. The pre-application process allows Applicants interested in pursuing an Application to assess potential competition across the thirteen (13) state service regions, sub-regions and set-asides. Based on an understanding of the potential competition they can make a more informed decision whether they wish to proceed to prepare and submit an Application. A complete pre-application is a pre-application that meets all of the Department's criteria, as outlined in subsections (a) and (b) of this section, with all required information and exhibits provided pursuant to the Multifamily Programs Procedures Manual.

(1) The pre-application must be submitted, along with the required pre-application fee as described in §10.901 of this title (relating to Fee Schedule), no later than the Pre-application Final Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). If such pre-application and corresponding fee are not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

(2) The pre-application shall consist of one (1) CD-R containing a PDF copy and Excel copy submitted to the Department in the form of single files as required in the Multifamily Programs Procedures Manual.

(3) Only one pre-application may be submitted by an Applicant for each Development Site.

(4) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the pre-application is more limited in scope than an Application, pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as a full Application, and pre-applications will thus be subject to the same consequences for violation, including but not limited to loss of points and termination of the pre-application.

(b) Pre-Application Threshold Criteria. Pursuant to Texas Government Code, §2306.6704(c) pre-applications will be terminated unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection:

(1) Submission of the competitive HTC pre-application in the form prescribed by the Department which identifies at a minimum:

(A) Site Control meeting the requirements of §10.204(9) of this title (relating to Required Documentation for Application Submission);

(B) Funding request;

(C) Target Population;

(D) Requested set-asides (At-Risk, USDA, Nonprofit, and/or Rural);

(E) Total Number of Units proposed;

(F) Census tract number in which the Development Site is located; and

(G) Expected score for each of the scoring items identified in the pre-application materials;

(2) Evidence in the form of a certification provided in the pre-application, that all of the notifications required under this paragraph have been made. (§2306.6704)

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the local elected officials, or that the Applicant has knowledge of as of the date of pre-application submission. It is the responsibility of the Applicant to identify all such Neighborhood Organizations.

(B) Notification Recipients. No later than the date the pre-application is submitted, notification must be sent to all of the persons or entities prescribed in clauses (i) – (viii) of this subparagraph. Developments located in an ETJ of a city are required to notify both city and county officials. The

What about situation where "correct person" is a replacement for someone who died or resigned and the Local Gov't has not posted the info?

notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format required in the Pre-application Notification Template provided in the pre-application. The Applicant is encouraged to retain proof of delivery in the event the Department requires proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of delivery for fax and e-mail. Officials to be notified are those officials in office at the time the pre-application is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

(i) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site;

(ii) Superintendent of the school district in which the Development Site is located;

(iii) Presiding officer of the board of trustees of the school district in which the Development Site is located;

(iv) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(v) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(vi) Presiding officer of the Governing Body of the county in which the Development Site is located;

(vii) All elected members of the Governing Body of the county in which the Development Site is located; and

(viii) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(C) Contents of Notification.

(i) The notification must include, at a minimum, all of the information described in subclauses (I) – (VI) of this clause.

(I) the Applicant's name, address, an individual contact name and phone number;

(II) the Development name, address, city and county;

(III) a statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(IV) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;

(V) the physical type of Development being proposed (*e.g.* single family homes, duplex, apartments, townhomes, high-rise etc.); and

(VI) the approximate total number of Units and approximate total number of low-income Units.

(ii) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve the elderly unless 100 percent of the Units will be for Qualified Elderly and it may not indicate that it will target or prefer any subpopulation unless such targeting or preference is in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

(c) Pre-application Results. Only pre-applications which have satisfied all of the pre-application requirements, including those in §11.9(e)(3) of this chapter, will be eligible for pre-application points. The order and scores of those Developments released on the Pre-application Submission Log do not represent a

tax credit

Commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the Pre-application Submission Log. Inclusion of a pre-application on the Pre-application Submission Log does not ensure that an Applicant will receive points for a pre-application.

§11.9. Competitive HTC Selection Criteria.

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsections (b) - (e) of this section include those items required under Texas Government Code, Chapter 2306, §42 of the Code, and other criteria established in a manner consistent with Chapter 2306 and §42 of the Code. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. Due to the highly competitive nature of the program, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency. However, Department staff may provide the Applicant an opportunity to explain how they believe the Application, as submitted, meets the requirements for points or otherwise satisfies the requirements.

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)) An Application may qualify for up to fifteen (15) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (8 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form.

(i) five-hundred fifty (550) square feet for an Efficiency Unit;

(ii) six-hundred fifty (650) square feet for a one Bedroom Unit;

(iii) eight-hundred fifty (850) square feet for a two Bedroom Unit;

(iv) one-thousand fifty (1,050) square feet for a three Bedroom Unit; and

(v) one-thousand two-hundred fifty (1,250) square feet for a four Bedroom Unit.

(B) Unit and Development Features (7 points). Applicants that elect in an Application to provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) (1 point). An Application may qualify to receive one (1) point provided the ownership structure contains a HUB, as certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date, or Qualified Nonprofit Organization, provided the Application is under the Nonprofit Set-Aside, has some combination of ownership interest in the General Partner of the Applicant, cash flow from operations, and developer fee which taken together equal at least 80 percent and no less than 5 percent for any category. For example, a HUB or Qualified Nonprofit Organization may have 20 percent ownership interest, 30 percent of the developer fee, and 30 percent of cash flow from operations. The HUB or Qualified Nonprofit Organization must also materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. The Principals of the HUB or Qualified

Could you explain in FAQ

Nonprofit Organization cannot be a Related Party to any other Principals of the Applicant or Developer (excluding Principals of said HUB or Qualified Nonprofit Organization).

(c) Criteria to serve and support Texans most in need.

(1) Income Levels of Tenants. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(I)) An Application may qualify for up to sixteen (16) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A) or (B) of this paragraph.

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs:

(i) At least 40 percent of all low-income Units at 50 percent or less of AMGI (16 points);

(ii) At least 30 percent of all low income Units at 50 percent or less of AMGI (14 points); or

(iii) At least 20 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph:

(i) At least 20 percent of all low-income Units at 50 percent or less of AMGI (16 points);

(ii) At least 15 percent of all low-income Units at 50 percent or less of AMGI (14 points); or

(iii) At least 10 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(G)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. These levels are in addition to those committed under paragraph (1) of this subsection.

(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments qualifying under the Nonprofit Set-Aside only (13 points);

(B) At least 10 percent of all low-income Units at 30 percent or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low-income Units at 30 percent or less of AMGI (11 points); or

(C) At least 5 percent of all low-income Units at 30 percent or less of AMGI (7 points).

(3) Tenant Services. (§2306.6710(b)(1)(I) and §2306.6725(a)(1)) A Supportive Housing Development qualifying under the Nonprofit Set-Aside may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points. By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application will remain the minimum. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

(4) Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials.

(A) For Developments located in an Urban Area, if the proposed Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (or 35 percent for Developments in Regions 11 and 13), an Application may qualify to receive up to seven (7) points upon meeting the additional requirements in clauses (i) – (iv) of this subparagraph. The Department will base poverty rate on data from the five (5) year American Community Survey.

(i) the Development targets the general population or Supportive Housing, the Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an

elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (7 points);

(ii) the Development targets the general population or Supportive Housing, the Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (5 points);

(iii) any Development, regardless of population served, if the Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable ~~(3 points)~~; or 5 pts (see earlier Elderly comments)

(iv) any Development, regardless of population served, if the Development Site is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (1 point).

(B) For Developments located in a Rural Area, an Application may qualify to receive up to seven (7) cumulative points based on median income of the area and/or proximity to the essential community assets as reflected in clauses (i) – (v) of this subparagraph.

change all to 2 miles in most rural areas there is one elem. school, etc.

(i) The Development Site is located within the attendance zone and within one linear mile of an elementary school with a Met Standard rating (3 points);

(ii) The Development Site is within one linear mile of a school-age before or after-school program that meets the minimum standards established by the Department of Family and Protective Services for such programs (2 points);

(iii) The Development Site is located within one linear mile of a full service grocery store (2 points);

(iv) The Development Site is located within one linear mile of a child-care center that is licensed by the Department of Family and Protective Services and provides day care for children ages 6 months through 5 years, at a minimum (2 points);

(v) The Development Site is located in a census tract with income in the top or second quartile of median household income for the county or MSA as applicable (3 points);

(vi) The Development is a Qualified Elderly Development and the Development Site is located within one linear mile of a senior center (2 points); and/or

(vii) Development is a Qualified Elderly Development and the Development Site is located within one linear mile of a health related facility (2 points).

(C) An elementary school attendance zone for the Development Site does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary schools. The applicable school rating will be the 2013 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions.

(5) Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools that have achieved a 77 or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency, provided that the schools also have a Met Standard rating. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph. An attendance zone does not include schools with district-

wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary, middle, or high schools, respectively. The applicable school rating will be the 2013 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings.

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with the appropriate rating (3 points); or

(B) The Development Site is within the attendance zone of an elementary school and either a middle school or high school with the appropriate rating (1 point) (2 points)

(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive two (2) points for general population or Supportive Housing Developments if the Development Site is located in one of the areas described in subparagraphs (A) – (D) of this paragraph.

1 pt for one school

(A) A Colonia;

(B) An Economically Distressed Area;

serving same target population

(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development; or

(D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population.

(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive two (2) points to meet the Special Housing Needs of the State if the Applicant agrees to participate in the Department's Section 811 Project Rental Assistance Demonstration Program (Section 811 Program) and the Development Site meets the requirements in subparagraph (A) of this paragraph. Development Sites not meeting the requirements in subparagraph (A) of this paragraph may qualify under subparagraph (C) of this paragraph.

(A) Applications meeting the following requirements are eligible to receive two (2) points if they agree to commit at least 10 units (or the maximum allowed) for participation in the Section 811 Program as described in subparagraph (B) of this paragraph. The maximum number of units allowed will be restricted by the Department's Integrated Housing Rule, §1.15 of this title, and the Section 811 Program integration requirements, (the total number of units set-aside for persons with disabilities, including Section 811 units, cannot exceed 18 percent of Units for Developments of 50 Units or more or exceed 25 percent for Developments with less than 50 Units).

(i) The Development must target the general population or be Supportive Housing;

(ii) The units committed to the Section 811 Program in the Development must not have any other sources of project-based rental or operating assistance; and

(iii) The Development Site must be located in one of the following areas: Austin-Round Rock MSA; Brownsville-Harlingen MSA; Dallas-Fort Worth-Arlington MSA; El Paso MSA; Houston-The

Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA.

(B) Applicants seeking points under subparagraph (A) and this paragraph are required to satisfy the requirements of the Section 811 Program as outlined in the Section 811 Program guidance and contracts unless a specific requirement of the Section 811 Program is otherwise waived by the Board. The Section 811 Program provides project-based rental assistance to Developments to serve extremely low income persons with disabilities (who meet target population requirements and are age 18 and over, but less than 62 years of age) who are referred to each participating Development by the Department. Participation in the Section 811 Program requires execution of a Rental Assistance Contract by the later of Carryover Allocation deadline or upon preparation of a Rental Assistance Contract by the Department. Because HUD has not yet released Section 811 Program guidance or agreements between the Department and HUD, the Board may make adjustments or accommodations for participation of each Applicant in this Program, however, once elected, Applicants may not withdraw their commitment to participate in the Section 811 Program unless so authorized by the Board or as a result of program eligibility issues. Should an Applicant receive a Housing Tax Credit award, the Department may allow Applicants to identify an alternate existing Development in the Applicant's or an Affiliate's portfolio, consistent with Department Section 811 Program criteria, to participate in the Section 811 Program.

(C) Only if the Applicant that is making application for a Development Site does not meet the requirements in subparagraph (A) of this paragraph may an Application qualify for points under this subparagraph. An Application will receive two points for Developments for which at least 5 percent of the Units are set aside for Persons with Special Needs. For purposes of this scoring item, Persons with Special Needs is defined as households where one individual has with alcohol and/or drug addictions, Colonia resident, Persons with Disabilities, Violence Against Woman Act Protections (domestic violence, dating violence, sexual assault, and stalking), persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and migrant farm workers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for households with special needs, but will be required to continue to affirmatively market Units to households with special needs.

does this mean any D/FW project must apply to get the 2 points?

(8) Location Outside of "Food Deserts". An Application with a Development Site that is located outside of a "food desert" qualifies for one (1) point. A food desert is a census tract identified as low income and low access at one (1) mile for urban areas and ten (10) miles for rural areas (also known as the Original Food Desert measure) based on the U. S. Department of Agriculture's Food Access Research Atlas. Applicants must submit a map using the Food Access Research Atlas indicating that the Development Site is not located in a food desert. Applicants can access said map at http://www.ers.usda.gov/data-products/food-access-research-atlas/. If the location of the map or data changes, the Department will provide updated information concerning accessing the map or data on the Department's website.

delete

(d) Criteria promoting community support and engagement.

(1) Local Government Support. An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) - (C) of this paragraph, as applicable. The resolution(s) must be dated prior to April 1, 2014 and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

(A) Within a municipality, the Application will receive:

(i) seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or
(ii) fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(B) Within the extraterritorial jurisdiction of a municipality, the Application may receive points under clauses (i) or (ii) of this subparagraph and under clauses (iii) or (iv) of this subparagraph:
(i) eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or
(ii) seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; and
(iii) eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or
(iv) seven (7) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:
(i) seventeen (17) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or
(ii) fourteen (14) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6710(b)(1)(E)) An Application may receive up to fourteen (14) points for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located. Development funding from instrumentalities of a city or county will not qualify for points under this scoring item unless such instrumentalities first award the funds to the city or county for their administration, at least 60 percent of the governing board of the instrumentality consists of city council members from the city in which the Development Site is located (if located in a city) or county commissioners from the county in which the Development Site is located, or 100 percent of the governing board of the instrumentality is appointed by the elected officials of the city in which the Development Site is located (if located within a city) or county in which the Development Site is located. The government instrumentality providing Development funding under this scoring item may not be a Related Party to the Applicant. Development funding must be provided in the form of a construction and/or permanent loan with an interest rate no higher than 3 percent per annum and term of at least 5 years, a grant, an in-kind contribution, a contribution which will support the Development, such as vouchers, or combination thereof. Funds cannot have been provided to the Local Political Subdivision by the Applicant or a Related Party. Should the Local Political Subdivision borrow funds in order to commit funding to the Development, the Applicant or a Related Party to the Applicant can provide collateral or guarantees for the loan only to the Local Political Subdivision. HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas cannot be utilized for points under this scoring item except where the city, county, or instrumentality is an actual applicant for and subrecipient of such funds for use in providing financial support to the proposed Development. The Applicant must provide evidence in the Application that an application or request for the development funds has been submitted in the form of an acknowledgement from the applicable city or county. The acknowledgement must also state that a final decision with regard to the awards of such funding ~~is expected to~~ occur no later than September 1. A firm commitment of funds is required by Commitment or points will be lost (except for Applicants electing the point under subparagraph (C) of this paragraph). While the specific source can change, the funding secured must have been eligible at the time the Application was submitted.

Still would like to see the PHA language I proposed earlier

shall

Can amount change dramatically?

(A) Option for Development Sites located in the ETJ of a municipality. For an Application with a Development Site located in the ETJ of a municipality, whether located in an unincorporated Place or not, the Applicant may seek Development funding from the municipality or a qualifying instrumentality of the municipality, provided the Applicant uses the population of said municipality as the basis for determining the Application's eligible points under subparagraph (B) of this paragraph. Applicants are encouraged to contact Department staff where an Applicant is uncertain of how to determine the correct Development funding amounts or qualifying Local Political Subdivisions.

(B) Applications will qualify for points based on the amount of funds at the levels described in clauses (i) - (v) of this subparagraph. For the purpose of this calculation, the Department will use the population of the Place from which the Development Site's Rural or Urban Area designation is derived.

(i) eleven (11) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.15 in funding per Low Income Unit or $15,000 in funding per Low Income Unit;

(ii) ten (10) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.10 in funding per Low Income Unit or $10,000 in funding per Low Income Unit;

(iii) nine (9) points for a commitment by a Local Political Subdivision of the lesser of population of the Place multiplied by a factor of 0.05 in funding per Low Income Unit or $5,000 in funding per Low Income Unit;

(iv) eight (8) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.025 in funding per Low Income Unit or $1,000 in funding per Low Income Unit; or

(v) seven (7) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.01 in funding per Low Income Unit or $500 in funding per Low Income Unit.

(C) Two (2) points may be added to the points in subparagraph (B) (i) - (v) of this paragraph and subparagraph (D) of this paragraph if the Applicant provides a firm commitment for funds in the form of a resolution from the Local Political Subdivision and provides a commitment for the same source(s) at Commitment. The resolution must reflect terms that are consistent with the requirements of this paragraph.

(D) One (1) point may be added to the points in subparagraph (B)(i) - (v) of this paragraph and subparagraph (C) of this paragraph if the financing to be provided is in the form of a grant or in-kind contribution meeting the requirements of this paragraph or a permanent loan with a minimum term of fifteen (15) years, minimum amortization period of thirty (30) years, and interest rate no higher than 3 percent per annum. An Applicant must certify that they intend to maintain the Development funding for the full term of the funding, barring unanticipated events. For Applicants electing this additional point that have not yet received an award or commitment, the structure of the funds will be reviewed at Commitment for compliance with this provision.

everyone gets

(3) Declared Disaster Area. (§2306.6710(b)(1)) An Application may receive ten (10) points if at the time of Application submission or at any time within the two-year period preceding the date of submission, the Development Site is located in an area declared to be a disaster area under the Texas Government Code, §418.014.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(B); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in existence prior to the Pre-Application Final Delivery Date, and its boundaries must contain the Development Site. In addition, the Neighborhood Organization must be on record with the state (includes the Department) or county in which the Development Site is located. Neighborhood Organizations may request to be on

record with the Department for the current Application Round with the Department by submitting documentation (such as evidence of board meetings, bylaws, etc.) by the Full Application Delivery Date. The written statement must meet the requirements in subparagraph (A) of this paragraph.

(A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph.

(i) the Neighborhood Organization's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing address) of at least two individual members with authority to sign on behalf of the organization;

(ii) certification that the boundaries of the Neighborhood Organization contain the Development Site and that the Neighborhood Organization meets the definition pursuant to Texas Government Code, §2306.004(23-a) and includes at least two separate residential households;

(iii) certification that no person required to be listed in accordance with Texas Government Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, including any votes taken;

(iv) certification that at least 80 percent of the current membership of the Neighborhood Organization consists of persons residing or owning real property within the boundaries of the Neighborhood Organization; and

(v) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization is encouraged to be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this section, if and only if there is no Neighborhood Organization already in existence or on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of and/or placing on record of a Neighborhood Organization. Technical assistance is limited to:

(i) the use of a facsimile, copy machine/copying, email and accommodations at public meetings;

(ii) assistance in completing the QCP Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process; and

(iii) presentation of information and response to questions at duly held meetings where such matter is considered.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in clauses (i) – (vi) of this subparagraph. Points will not be cumulative. Where more than one written statement is received for an Application, the average of all statements received in accordance with this subparagraph will be assessed and awarded.

(i) nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(ii) eight (8) points for explicitly stated support from a Neighborhood Organization;

(iii) six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(iv) five (5) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides

no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;

(v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; or

(vi) zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such statement is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §11.2 of this chapter. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

(5) Community Support from State Representative. (§2306.6710(b)(1)(F); §2306.6725(a)(2)) Applications may receive up to eight (8) points or have deducted up to eight (8) points for this scoring item. To qualify under this paragraph letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and clearly state support for or opposition to the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. Neutral letters or letters that do not specifically refer to the Development or specifically express support or opposition will receive zero (0) points. A letter that does not directly express support but expresses it indirectly by inference (*e.g.* "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral letter.

(6) Input from Community Organizations. Where the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters must be submitted within the Application. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item.

need 4 letters to get max points

(A) An Application may receive one (1) point for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose of the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide some documentation of its tax exempt status

and its existence and participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), or taxing entities.

(B) An Application may receive one (1) point for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application may receive one (1) point for a letter of support from a Special Management District whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(7) Community Revitalization Plan. An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(A) For Developments located in an Urban Area of Region 3.

If the plan was approved last year and has not changed, must it be resubmitted?

(i) An Application may qualify to receive up to six (6) points if the Development Site is located in an area targeted for revitalization in a community revitalization plan that meets the criteria described in subclauses (I) – (VI) of this clause:

(I) The community revitalization plan must have been adopted by the municipality or county in which the Development Site is located.

(II) The adopting municipality or county must have performed, in a process providing for public input, an assessment of the factors in need of being addressed as a part of such community revitalization plan. Factors assessed must include at least five (5) of the following seven (7) factors:

(-a-) adverse environmental conditions, natural or manmade, that are material in nature and are inconsistent with the general quality of life in typical average income neighborhoods. By way of example, such conditions might include significant and recurring flooding, presence of hazardous waste sites or ongoing localized emissions not under appropriate remediation, nearby heavy industrial uses, or uses presenting significant safety or noise concerns such as major thoroughfares, nearby active railways (other than commuter trains), or landing strips; significant and widespread (*e.g.* not localized to a small number of businesses or other buildings) rodent or vermin infestation acknowledged to present health risks requiring a concerted effort; or fire hazards;

(-b-) presence of blight, which may include excessive vacancy, obsolete land use, significant decline in property value, or other similar conditions that impede growth;

(-c-) presence of inadequate transportation or infrastructure;

(-d-) lack of accessibility to and/or presence of inadequate health care facilities, law enforcement and fire fighting facilities, social and recreational facilities, and other public facilities comparable to those typically found in neighborhoods containing comparable but unassisted housing;

(-e-) the presence of significant crime;

(-f-) the lack of or poor condition and/or performance of public education; or

(-g-) the lack of local business providing employment opportunities.

(III) The target area must be larger than the assisted housing footprint and should be limited in size along the lines of specific neighborhoods rather than encompassing large areas of a city or county. Staff will review the target areas for presence of the factors identified in subclause (II) of this clause.

(IV) The adopted plan, taken as a whole, must be a plan that can reasonably be expected to revitalize the neighborhood and address in a substantive and meaningful way the material factors identified in subclause (II) of this clause. Generally, because revitalization must identify specific matters needing to be addressed by revitalization and provide a plan and budget specifically directed to those identified issues, revitalization will be considered distinct and separate from broader economic development efforts.

(V) The adopted plan must describe the planned budget and uses of funds to accomplish its purposes within the applicable target area. To the extent that expenditures, incurred within four (4) years prior to the beginning of the Application Acceptance Period, have already occurred in the applicable target area, a statement from a city or county official concerning the amount of the expenditure and purpose of the expenditure may be submitted.

(VI) To be eligible for points under this item, the community revitalization plan must already be in place as of the Pre-Application Final Delivery Date pursuant to §11.2 of this chapter evidenced by a letter from the appropriate local official stating that:

(-a-) the plan was duly adopted with the required public input processes followed;

(-b-) the funding and activity under the plan has already commenced; and

(-c-) the adopting municipality or county has no reason to believe that the overall funding for the full and timely implementation of the plan will be unavailable.

(ii) Points will be awarded based on:

(I) Applications will receive four (4) points if the applicable target area of the community revitalization plan has a total budget or projected economic value of $6,000,000 or greater; or

(II) Applications will receive two (2) points if the applicable target area of the community revitalization plan has a total budget or projected economic value of at least $4,000,000; and

(III) Applications may receive (2) points in addition to those under subclauses (I) or (II) of this clause if the Development is explicitly identified by the city or county as contributing most significantly to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. A resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application (this resolution is not required at pre-application). If multiple Applications submit resolutions under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application as contributing most significantly to concerted revitalization efforts.

(B) For Developments located in Urban Areas outside of Region 3.

(i) An Application may qualify for up to six (6) points for meeting the criteria under subparagraph (A) of this paragraph (with the exception of being located in Region 3); or

(ii) An Application will qualify for four (4) points if the city or county has an existing plan for Community Development Block Grant - Disaster Relief Program (CDBG-DR) funds that meets the requirements of subclauses (I) - (IV) of this clause. To qualify for points, the Development Site

must be located in the target area defined by the plan, and the Application must have a commitment of CDBG-DR funds. The plan (in its entirety) and a letter from a local government official with specific knowledge and oversight of implementing the plan are included in the Application and must:

(I) define specific target areas for redevelopment of housing that do not encompass the entire jurisdiction;

(II) affirmatively address Fair Housing demonstrated through an approved Fair Housing Activity Statement-Texas (FHAST);

(III) be subject to administration in a manner consistent with the findings of an Analysis of Impediments approved or accepted by HUD within the last three (3) calendar years or an approved Fair Housing Activity Statement-Texas (FHAST), approved by the Texas General Land Office; and

(IV) be in place prior to the Pre-Application Final Delivery Date.

(C) For Developments located in a Rural Area.

(i) The requirements for community revitalization in a Rural Area are distinct and separate from the requirements related to community revitalization in an Urban Area in that the requirements in a Rural Area relate primarily to growth and expansion indicators. An Application may qualify for up to four (4) points if the city, county, state, or federal government has approved expansion of basic infrastructure or projects, as described in this paragraph. Approval cannot be conditioned upon the award of tax credits or on any other event (zoning, permitting, construction start of another development, etc.) not directly associated with the particular infrastructure expansion. The Applicant, Related Party, or seller of the Development Site cannot contribute funds for or finance the project or infrastructure, except through the normal and customary payment of property taxes, franchise taxes, sales taxes, impact fees and/or any other taxes or fees traditionally used to pay for or finance such infrastructure by cities, counties, state or federal governments or their related subsidiaries. The project or expansion must have been completed no more than twelve (12) months prior to the beginning of the Application Acceptance Period or be approved and projected to be completed within twelve (12) months from the beginning of the Application Acceptance Period. An Application is eligible for two (2) points for one of the items described in subclauses (I) – (V) of this clause or four (4) points for at least two (2) of the items described in subclauses (I) – (V) of this clause:

(I) New paved roadway (may include paving an existing non-paved road but excludes overlays or other limited improvements) or expansion of existing paved roadways by at least one lane (excluding very limited improvements such as new turn lanes or restriping), in which a portion of the new road or expansion is within one quarter (1/4) mile of the Development Site;

(II) New water service line (or new extension) of at least 500 feet, in which a portion of the new line is within one quarter (1/4) mile of the Development Site;

(III) New wastewater service line (or new extension) of at least 500 feet, in which a portion of the new line is within one quarter (1/4) mile of the Development Site;

(IV) Construction of a new law enforcement or emergency services station within one (1) mile of the Development Site that has a service area that includes the Development Site; and

(V) Construction of a new hospital or expansion of an existing hospital's capacity by at least 25 percent within a five (5) mile radius of the Development Site and ambulance service to and from the hospital is available at the Development Site. Capacity is defined as total number of beds, total number of rooms or total square footage of the hospital.

(ii) The Applicant must provide a letter from a government official with specific knowledge of the project which must include:

should be 2 years on either side of application - these take a long time to get approved and built

(I) the nature and scope of the project;

(II) the date completed or projected completion;

(III) source of funding for the project;

(IV) proximity to the Development Site; and

(V) the date of any applicable city, county, state, or federal approvals, if not already completed.

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) An Application may qualify to receive a maximum of eighteen (18) points for this item. To qualify for points, a 15-year pro forma itemizing all projected income including Unit rental rate assumptions, operating expenses and debt service, and specifying the underlying growth assumptions and reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party construction or permanent lender. An acceptable form of lender approval letter is found in the application. If the letter evidences review of the Development alone it will receive sixteen (16) points. If the letter evidences review of the Development and the Principals, it will receive eighteen (18) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on either the Building Cost or the Hard Costs per square foot of the proposed Development, as originally submitted in the Application. For purposes of this paragraph, Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule.

(A) A high cost development is a Development that meets one of the following conditions:

(i) the Development is elevator served, meaning it is either a Qualified Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;

(ii) the Development is more at least 75 percent single family design;

(iii) the Development is Supportive Housing; or

(iv) the Development Site qualifies for five (5) or seven (7) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area.

(B) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

(i) The Building Cost per square foot is less than $60 per square foot;

(ii) The Building Cost per square foot is less than $65 per square foot, and the Development is a meets the definition of a high cost development;

(iii) The Hard Cost per square foot is less than $80 per square foot; or

(iv) The Hard Cost per square foot is less than $90 per square foot, and the Development meets the definition of high cost development.

Do these make sense?

(C) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:

(i) The Building Cost per square foot is less than $65 per square foot;

(ii) The Building Cost per square foot is less than $70 per square foot, and the Development meets the definition of a high cost development;

(iii) The Hard Cost per square foot is less than $85 per square foot; or

(iv) The Hard Cost per square foot is less than $95 per square foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for nine (9) points if one of the following conditions is met:

(i) The Building Cost is less than $80 per square foot; or

(ii) The Hard Cost is less than $100 per square foot.

(E) Applications proposing Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $100 per square foot;

(ii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $130 per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $130 per square foot.

(F) Applications proposing New Construction or Reconstruction will be eligible for one (1) point, in addition to those under subparagraph (B) or (C) of this paragraph, if the Hard Cost per square foot is within 5 percent of the mean cost per square foot. The mean will be calculated separately for high cost developments.

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted during the Pre-Application Acceptance Period. Applications that meet the requirements described in subparagraphs (A) - (G) of this paragraph will qualify for four (4) points:

(A) The total number of Units does not change by more than ten (10) percent from pre-application to Application;

(B) The designation of the proposed Development as Rural or Urban remains the same;

(C) The proposed Development serves the same Target Population;

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than six (6) points from what was reflected in the pre-application self score;

(F) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application; and

(G) The pre-application met all applicable requirements.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least five (5) percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph:

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 8 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii) If the Housing Tax Credit funding request is less than 7 percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than 8 percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than 9 percent of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(5) Extended Affordability or Historic Preservation. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) An Application may qualify to receive (2 points) for this scoring item.

(A) In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Development Owners that agree to extend the affordability period for a Development to thirty-five (35) years total may receive two (2) points; or

(B) An Application proposing the use of historic (rehabilitation) tax credits and providing documentation that an existing building that will be part of the Development will reasonably be able to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609 may qualify to receive two (2) points.

(6) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Texas Government Code, §2306.6726 and the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).

(7) Development Size. An Application may qualify to receive one (1) point if the Development is proposed to be fifty (50) total HTC Units or less and the Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission, of $500,000 or less.

(f) Point Adjustments.

Staff will recommend to the Board and the Board may make a deduction of up to five (5) points for any of the items listed in paragraph (1) of this subsection, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of deduction by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions. (§2306.6710(b)(2))

(1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10 percent Test deadline(s) or has requested an extension of the Carryover submission deadline, the 10 percent Test deadline (relating to either submission or expenditure).

(2) If the Developer or Principal of the Applicant violates the Adherence to Obligations.

(3) Any deductions assessed by the Board for paragraph (1) or (2) of this subsection based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

§11.10. Challenges of Competitive HTC Applications.

The Department will address challenges received from unrelated entities to a specific active Application. The Department will utilize a preponderance of the evidence standard and determinations made by the Department concerning challenges cannot be appealed by a party unrelated to the Applicant that is the subject of the challenge. The challenge process is reflected in paragraphs (1) - (13) of this section. A matter, even if raised as a challenge, that staff determines should be treated as an Administrative Deficiency will be treated and handled as an Administrative Deficiency, not as a challenge.

(1) The challenge must be received by the Department no later than seven (7) days after the Application Challenges Deadline as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) and must be accompanied by the corresponding non-refundable challenge processing fee as described in §10.901 of this title (relating to Fee Schedule). Unless the required fee is received with the challenge, no challenge will be deemed to have been submitted, and the challenge fee must be paid for each Application challenged by a challenger.

(2) A challenge must be clearly identified as such, using that word in all capital letters at the top of the page, and it must state the specific identity of and contact information for the person making the challenge and, if they are acting on behalf of anyone else, on whose behalf they are acting.

(3) Challengers must provide, at the time of filing the challenge, ally briefings, documentation, and other information that the challenger offers in support of the challenge. Challengers must provide sufficient credible evidence that, if confirmed, would substantiate the challenge. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered.

(4) Challenges to the financial feasibility of the proposed Development are premature unless final underwriting reports on the challenged Application have been posted to the Department's website..

(5) Challenges relating to undesirable area features as described in §10.101(a)(4) of this title (relating to Site and Development Requirements and Restrictions) will not be accepted unless they relate to a failure to disclose substantive issues not already disclosed or a material misrepresentation about a disclosed item.

(6) Challengers are encouraged to be prudent in identifying issues to challenge, realizing that most issues will be identified and addressed through the routine review and Administrative Deficiency process;

(7) Once a challenge on an Application has been submitted, subsequent challenges on the same Application from the same challenger will not be accepted;

(8) The Department shall promptly post all items received and purporting to be challenges and any pertinent information to its website;

(9) The Department shall notify the Applicant that a challenge was received within seven (7) days of the challenge deadline;

(10) Where, upon review by staff, an issue is not clearly resolved, staff may send an Applicant an Administrative Deficiency notice to provide the Applicant with a specific issue in need of clarification and time to address the matter in need of clarification as allowed by the rules related to Administrative Deficiencies;

(11) The Applicant must provide a response regarding the challenge within fourteen (14) days of their receipt of the challenge;

(12) The Department shall promptly post its determinations of all matters submitted as challenges. Because of statutory requirements regarding the posting of materials to be considered by the Board, staff

may be required to provide information on late received items relating to challenges as handouts at a Board meeting; and

(13) Staff determinations regarding all challenges will be reported to the Board.

3c

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
NOVEMBER 7, 2013

Presentation, Discussion and Possible Action on an order adopting the repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Qualified Allocation Plan and an order adopting the new 10 TAC Chapter 11, concerning the Housing Tax Credit Program Qualified Allocation Plan, and directing its publication in the *Texas Register.*

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") is authorized to make Housing Tax Credit allocations for the State of Texas, and;

WHEREAS, the Department, as required by §42(m)(1) of the Internal Revenue Code, developed this Qualified Allocation Plan to establish the procedures and requirements relating to an allocation of Housing Tax Credits;

WHEREAS, the proposed repeal and proposed new Chapter 11 were published in the September 21, 2013 issue of the Texas Register for public comment; and

WHEREAS, pursuant to Texas Government Code, Chapter 2306 the Board shall adopt and submit to the Governor a proposed Qualified Allocation Plan no later than November 15;

NOW, therefore, it is hereby,

RESOLVED, that the final order adopting the repeal of 10 TAC, Chapter 11 concerning the Housing Tax Credit Qualified Allocation Plan and the final order adopting the new 10 TAC, Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan is hereby ordered and approved, together with the preamble presented to this meeting, for publication in the *Texas Register*.

FURTHER RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the Qualified Allocation Plan, together with the preamble in the form presented to this meeting, to be delivered to the Governor, prior to November 15th for his review and approval and to cause the Qualified Allocation Plan, as approved by the Governor, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The Board approved the proposed repeal and proposed new Chapter 11 regarding the Housing Tax Credit Program Qualified Allocation Plan ("QAP") at the September 12, 2013, Board

meeting to be published in the *Texas Register* for public comment. In keeping with the requirements of the Administrative Procedures Act, staff has reviewed all comments received and provided a reasoned response to these comments. Staff has listed the areas below that received the most comment.

1. §11.2 Program Calendar
2. §11.3(e) Developments in Certain Sub-regions and Counties
3. §11.4(c) Increase in Eligible Basis
4. §11.5(3) Competitive HTC Set-Aside
5. §11.9(c)(4) Opportunity Index
6. §11.9(c)(5) Educational Excellence
7. §11.9(c)(6) Underserved Area
8. §11.9(c)(7) Tenant Populations with Special Housing Needs
9. §11.9(c)(8) Location Outside Food Deserts
10. §11.9(d)(2) Commitment of Development Funding by Local Political Subdivision
11. §11.9(d)(6) Input From Community Organizations
12. §11.9(d)(7) Community Revitalization Plan
13. §11.9(e)(2) Cost of Development Per Square Foot
14. §11.9(e)(4) Leveraging of Private, State and Federal Resources
15. §11.9(e)(5) Extended Affordability or Historic Preservation

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Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC, Chapter 11, §§11.1 – 11.10 concerning the Housing Tax Credit Program Qualified Allocation Plan. Sections 11.2 – 11.6 and 11.9 – 11.10 are adopted with changes to text as published in the September 27, 2013 issue of the *Texas Register* (38 TexReg 6436). Sections 11.1 and 11.7 – 11.8 are adopted without change and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the rule will result in a more consistent approach to governing multifamily activity and to the awarding of multifamily funding or assistance through the Department while minimizing repetition among the programs. The comments and responses include both administrative clarifications and revisions to the Housing Tax Credit Program Qualified Allocation Plan based on the comments received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the Draft Housing Tax Credit Program Qualified Allocation Plan as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

Public comments were accepted through October 21, 2013 with comments received from (1) Texas Affiliation of Affordable Housing Providers ("TAAHP"), (2) State Representative Roland Gutierrez, (3) San Antonio Housing Authority ("SAHA"), (4) State Senator Leticia Van De Putte, (5) State Representative Ruth Jones McClendon, (6) Mayor Julian Castro, City of San Antonio, (7) Harris County Housing Authority, (8) Breck Kean, Prestwick Companies, (9) Darrell Jack, Apartment MarketData, (10) Steve Dieterichs, Corsicana Main Street Program, (11) Craig Lindholm, City of Texarkana, (12) Texarkana, Texas Historic Landmark Preservation Committee (Frances Holcombe, Gerry Archibald, Douglas Cogdill, Travestine Nash Turner, Georgia Randall), (13) JoAnn Dunman, (14) State Representative Byron Cook, (15) Larry Foerster, Montgomery County Historical Commission, (16) Catherine Sak, Texas Downtown Association, (17) Joy Horak-Brown, New Hope Housing, (18) Robbye Meyer, Arx Advantage, (19) Bobby Bowling, Tropicana Building Corporation, (20) Justin Hartz, LDG Development, (21) Barry Palmer, Coats Rose, (22) Sarah Anderson, S. Anderson Consulting, (23) Valentin DeLeon, DMA Development Company, (24) Chris Akbari, ITEX Group, (25) Doak Brown, Brownstone Affordable Housing, (26) Lora Myrick, BETCO Consulting, (27) Bob Stimson, Oak Cliff Chamber of Commerce, (28) Alyssa Carpenter, S. Anderson Consulting, (29) Neal Rackleff, City of Houston Housing and Community Development Department, (30) Marlon Sullivan, Rural Rental Housing Association of Texas, (31) Walter Moreau, Foundation Communities, (32) Debra Guerrero, NRP Group, (33) Gene Watkins, (34) Donna Rickenbacker, Marque Real Estate Consultants, (35) Sean Brady, REA Ventures, (36) Jay Collins, Charter Contractors, (37) Toni Jackson, Coats Rose, (38) Belinda Carlton, Texas Council for Developmental Disabilities, (39) John Henneberger, Texas Low Income Housing Information Service and Madison Sloan ("Texas Appleseed"), (40) Stuart Shaw, Bonner Carrington, (41) State Representative's Debbie Riddle, Jodie Laubenberg, Trent Ashby, Dwayne Bohac, Travis Clardy, Brandon Creighton, Drew Darby, Pat Fallon, Allen Fletcher, Lance Gooden, Patricia Harless, Jeff Leach, Rick Miller, Tan Parker, Ron Simmons, Van Taylor, Scott Turner, Sylvester Turner, (42) Claire Palmer, (43) Main Street Texarkana Board of Directors, (44) Kim Youngquist, Hamilton Valley Management, (45) Ron Kowal, Austin Affordable Housing Corporation, (46) Barry Kahn, Hettig-Kahn, (47) Granger MacDonald, MacDonald Companies,

(48) Jim Serran, Serran Company Landmark Group, (49) Mike Daniel, Inclusive Communities Project, Inc.

1. §11.2 – Program Calendar (1), (18), (24), (26), (34), (35), (40), (42)

COMMENT SUMMARY: Commenter (1) suggested the Market Analysis Summary requirement be deleted and the final, complete Market Analysis remain due on April 1, 2014, citing that State Representatives can contact the developers directly should they desire to see the market information. Commenter (1) also suggested the Site Design and Development Feasibility Report as well as all resolutions needed (including those required under §11.3 relating to Housing De-Concentration Factors) be due on April 1, 2014. Requiring the resolutions on February 28 may result in only one opportunity to get on the appropriate municipalities' agenda and possibly jeopardize an applicant's ability to secure a resolution should the municipality table the item for any reason or if there happens to not be a quorum for the meeting. With the exception of the Market Analysis Summary, commenter (40) expressed similar recommendations as commenter (1) and further indicated an April 1, 2014 deadline for all resolutions will allow more time to work with the local jurisdiction and thus more beneficial to both the applicant and the jurisdiction. Moreover, commenter (40) indicated it is helpful for the applicant to have as much time as possible to analyze the pre-application and application scoring logs to determine whether or not to proceed. In reviewing the comments in relation to statutory requirements staff noted a change to the beginning of the application acceptance period may be necessary for conformance with the statutory definition of Application Round.

Commenters (18), (26), and (35) expressed support for the Market Analysis Summary to be due on February 28 with the full application and the full Market Analysis due on April 1.

Commenter (24) expressed concern that the due date of the third party reports are less than 45 days from the pre-application submission deadline and indicated it is difficult to complete the reports within this timeframe when applicants will not have seen how the development scores in order to determine viability. Commenter (42) indicated it is still difficult to include all the third party reports by February 28, 2014.

Commenter (34) suggested that if resolutions for the local government support scoring item are allowed to be turned in on April 1, 2014, then this should be the deadline for all resolutions. Commenter (34) indicated that municipalities will want to consider all resolutions at the same time in their deliberation of a particular development.

Commenter (40) recommended the challenges deadline be changed to May 22, 2014 in order to eliminate confusion based on §11.10 of the QAP that seems to indicate that such date is the latest possible date to submit challenges.

Commenter (42) questioned whether the Market Analysis Summary was going to be a defined term and also questioned whether there was a deadline by which the Department must respond to pre-clearance and waiver requests that are due on January 16, 2014.

STAFF RESPONSE: The rule as proposed provides 75 days between the due date of the pre-application and the due date for the market study. Staff believes that this is a reasonable timeframe for the preparation of a market study. Staff has taken great care in crafting the

program calendar to account for the realities applicants encounter in crafting a development plan and completing an application, as well as aligning due dates with the Board's expected meeting dates to ensure that the 2014 tax credit round is administered in compliance with all laws and requirements, and with an understanding of the resources available to administer the program. Staff has incorporated a definition of Market Analysis Summary in the Subchapter C of the Uniform Multifamily Rules.

Several Commenters recommend aligning the due dates for all resolutions that may be submitted and incorporating a due date of April 1 for such resolutions. However, this action would limit staff's ability to identify competitive applications and begin reviews upon receipt of the bulk of an application on February 28, 2014. Staff must receive applications that are sufficiently complete such that staff can mobilize resources to complete the necessary reviews to meet the statutory deadlines for awards. The rule does not preclude those applicants needing multiple resolutions from submission of all necessary resolutions at the same time provided they are received by the more restrictive of the two deadlines associated with submission of resolutions.

Staff recommends changing the beginning of the application acceptance period to January 2, 2014 in order to align with statutory provisions. Staff also recommends changing the due date for receipt of challenges to May 7, 2013 in order to work in conjunction with the planned Board meeting on July 26, 2014 (although Board meeting dates are subject to change). Staff has, however, reviewed §11.10 to ensure there are no conflicting dates with regard to challenges.

Staff recommends two changes to the Application Acceptance Period and the Application Challenges Deadline and no other changes based on public comment.

2. §11.3(a) and (c) – Two Mile Same Year and One Mile Three Year (27)

COMMENT SUMMARY: Commenter (27) proposed removing the time requirements in these sections to ensure that the presence of aging tax credit developments are considered before new developments are approved nearby.

Commenter (37) suggested the One Mile Three Year provision be updated to include all public housing, except HOPE VI.

STAFF RESPONSE: Changes such as those proposed by Commenters (27) and (37) would go beyond the requirements of Chapter 2306, §2306.6703.

Staff recommends no change.

3. §11.3(b) – Twice the State Average Per Capita (39)

COMMENT SUMMARY: Commenter (39) supported the language in this section but recommended the resolution be required to contain a statement that the governing body has examined the concentration of housing supported by low-income housing tax credits in that jurisdiction, and that concentration does not constitute a barrier to fair housing choice, is consistent with local fair housing plans and will affirmatively further fair housing.

STAFF RESPONSE: Staff agrees that there are considerations such as fair housing issues and consistency with HUD block grant plans that different jurisdictions may need to consider.

However, staff believes that inclusion of specific language in §§11.3(d) and 11.9(d)(1) of the QAP and §10.204(4) of the Uniform Multifamily Rules will address this more appropriately.

Staff recommends no changes.

4. §11.3(d) – Limitations on Developments in Certain Census Tracts (37), (39)

COMMENT SUMMARY: Commenter (37) recommended this limitation revert back to the 30% HTC units per total households.

Commenter (39) supported the language in this section but recommended the resolution be required to contain a statement that the governing body has examined the concentration of housing supported by low-income housing tax credits in that jurisdiction, and that concentration does not constitute a barrier to fair housing choice, is consistent with local fair housing plans and will affirmatively further fair housing.

STAFF RESPONSE: The requirement to obtain a resolution in instances in which a development site is located in a census tract where there is a tax credit supported unit for every five households (equating to 20%) is believed by staff to be prudent in reducing trends towards concentration of units in certain areas of the state already having a relatively high level of such units. Fewer than 140 census tracts in the entire state have concentrations in excess of the 20% requirement with more than 5,200 census tracts in Texas. In essence, in the most highly concentrated census tracts in the state (approximately 2.5% of all tracts) additional due diligence and deliberate action by the governing body of the local jurisdiction to facilitate any additional units is a reasonable requirement and is consistent with the department's goal of providing affordable housing throughout the state.

Staff agrees with Commenter (39) concerning the inclusion of language regarding fair housing laws. However, as such a resolution may be required in jurisdictions not receiving any HUD or other housing related funding, staff does not believe the statement should, at this point in time, be incorporated into the resolution itself but should be advisory in nature.

Staff recommends the following change:

"(d) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 20 percent Housing Tax Credit Units per total households as established by the 5-year American Community Survey shall be considered ineligible unless:

(1) the Development is in a Place that has a population is less than 100,000; or

(2) the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and submits to the Department a resolution referencing this rule. In providing a resolution a municipality or county should consult its own staff and legal counsel to as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any FHAST form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs

Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable."

5. §11.3(e) – Developments in Certain Sub-Regions and Counties (1), (26), (29), (35), (39), (40), (41), (42), (46), (47)

COMMENT SUMMARY: Commenters (1), (26), (35), (40), (41), (46), (47) recommended the prohibition against elderly developments in the urban counties listed, as well as Regions 5, 6 and 8 be deleted. Commenters (26), (35), (40), (46) explained that funding elderly developments is already a challenge since they do not qualify for the points associated with the Opportunity Index. Commenter (42) indicated that given this limitation, elderly developments should be able to score equal to supportive housing developments.

Commenter (46) further explained that should this limitation on elderly developments remain, there will be difficulty utilizing the credits allocated to certain regions because non-qualified elderly developments located in high opportunity areas will not be competitive due to lack of local support, and those developments, if located on the east side of town, will not be eligible for points under community revitalization either. In addition, if these developments are also not located in QCTs they will be ineligible for the 30% boost in eligible basis and, therefore, not financially feasible.

Should the prohibition remain, commenter (1) suggested a limit of not more than 65% of the tax credits available in the sub-region be awarded to elderly developments and further commented that elderly developments should not be ineligible in sub-regions where there are only enough tax credits for one allocation. Commenter (41) indicated the Department overstepped its bounds by taking the authority retained by the Texas Legislature and turning it over to an unelected bureaucracy and further stated the ability to make such a sweeping change to the tax credit program is a legislative matter and should not be done through rulemaking by staff in a state agency. Moreover, commenter (41) indicated this restriction is open-ended for an indefinite period of time and the decision to allow for senior housing developments would be determined again by unelected staff. Commenter (40) expressed that the market analysis should determine whether or not there is a need for elderly developments. Commenter (40) suggested that if a limiting factor is applied then the Department should take into consideration the number of single-family households in the area. Commenter (40) indicated that since seniors often relocate to be near children/grandchildren by limiting the number of elderly developments based on the current senior population, this item has the effect of creating a shortage of senior housing options.

Commenters (29), (47) stated that the methodology or the data sets used to support the statement "*the percentage of qualified elderly households residing in rent restricted tax credit assisted units exceeds the percentage of the total qualified elderly-eligible low income population for that area*" was not made publicly available for review and comment. Commenters (29), (47) further stated that a substantial number of elderly residents in the community are not being served by qualified affordable housing, and a moratorium on development would hinder their ability to serve this population. Commenter (29) suggested an incremental cap to the number of quality elderly developments rather than complete elimination.

Commenter (39) expressed support over this limitation and further stated that an over-funding of elderly units in certain areas of the state limits the fair housing choice of families with children and asserted the state has an obligation to affirmatively further fair housing for families with children, a protected class under the Fair Housing Act.

Commenter (49) supports staff's proposal to make applications for Qualified Elderly developments in Collin, Denton, and Ellis counties ineligible.

STAFF RESPONSE: Staff has evaluated the distribution of units serving elderly households relative to census data concerning the percentage of qualifying elderly households at the county and regional levels. Staff has found that the general population is proportionately underserved in several areas of the state. Imposing limits on developments exclusively serving qualified elderly households is expected to result in additional units serving the general population in these areas. This is consistent with the some interpretations of the Fair Housing Act insofar as families with children are protected and this requirement seeks to facilitate a balancing of tax credit supported units in these areas to provide similar housing opportunities. This new restriction does not require an applicant to design and build the property in a manner that would not be conducive to the needs of seniors as well as families with children and the Department continues to encourage applicants to design and develop housing that is consistent with the demographics of the demand pool for such housing.

The proposed rule is not intended to be a proxy for economic demand for one type of housing versus another. However, staff recognizes that there is significant demand from all segments of the population throughout the state for affordable rental opportunities. As a result, staff seeks to respond by implementing rules that promote a fair and proportionate distribution of the allocation of resources for housing opportunities.

Staff, in coordination with the Department's General Counsel, has reviewed the limitations that operate to restrict certain portions of the allocation for specific purposes, such as the Commenter's proposed 65% limitation. These kinds of restrictions do not comport with statutory limitations related to implementing set-asides. The proposed rule is supported by the Department's statutory authority to establish threshold and eligibility criteria. The proposed rule was drafted to ensure that it is consistent with the Fair Housing Act and civil rights laws and that it is not inconsistent with state statutory provisions. However, staff does believe that the rule would benefit from the implementation of a 500 units *de minimis*, where a county has less than 500 total units and the region in which the county lies does not reflect a disproportionate number of units serving elderly households. This results in the removal of Wichita, Henderson, Lamar, Gillespie, Kendall, and Starr counties from the list of restricted areas.

Staff recommends the following changes:

> "(e) Developments in Certain Sub-Regions and Counties. In the 2014 Application Round the following Counties are ineligible for Qualified Elderly Developments: ~~Wichita;~~ Collin; Denton; Ellis; Johnson; ~~Henderson;~~ Hays; and ~~Lamar; Gillespie;~~ Guadalupe~~; Kendall; and Starr~~, unless the Application is made in a Rural Area. In the 2014 Application Round Regions five (5); six (6); and eight (8) are ineligible for Qualified Elderly Developments, unless the Application is made in a Rural Area. These limitations will be reassessed prior to the 2015 Application Round and are based on the fact that data evaluated by the Department has shown that in

the ineligible areas identified above, the percentage of qualified elderly households residing in rent restricted tax credit assisted units exceeds the percentage of the total Qualified Elderly-eligible low income population for that area."

6. §11.3(f) – Additional Phase Developments (21), (22), (28)

COMMENT SUMMARY: Commenter (21) suggested the requirements for an additional phase of an existing HTC development be modified as indicated below to reflect the fact that the new phase will be drawing its tenants from existing tax credit units that are being replaced.

> "(f) Additional Phase. Applications proposing an additional phase of an existing tax credit Development serving the same Target Population, or Applications proposing Developments that are adjacent to an existing tax credit Development serving the same Target Population, or Applications that are proposing a Development serving the same Target Population on a contiguous site to another Application awarded in the same program year, shall be considered ineligible unless the other Developments or phase(s) of the Development have been completed and have maintained occupancy of at least 90 percent for a minimum six (6) month period as reflected in the submitted rent roll. This subsection does not apply to Applications where the Development or phases of the Development replaces in part or in whole an existing tax credit development."

Commenter (22), (28) suggested an additional phase that is serving the same population should be permitted if the governing body has by vote specifically allowed the construction of a new development and provided that the additional units are supported by a market study. Commenter (22) indicated that should the Department consider this unacceptable then it should be limited to exclude an additional phase that is being done to replace units that were previously demolished, with the second phase adding the same number or less than was originally there. Commenter (22) explained that there could be credit limitations in some regions where there simply are not enough credits to replace all of the demolished units.

STAFF RESPONSE: Staff proposes the following changes to accommodate the public comment received:

> (f) Additional Phase. Applications proposing an additional phase of an existing tax credit Development serving the same Target Population, or Applications proposing Developments that are adjacent to an existing tax credit Development serving the same Target Population, or Applications that are proposing a Development serving the same Target Population on a contiguous site to another Application awarded in the same program year, shall be considered ineligible unless the other Developments or phase(s) of the Development have been completed and have maintained occupancy of at least 90 percent for a minimum six (6) month period as reflected in the submitted rent roll. If the Application proposes the Rehabilitation or replacement of existing federally-assisted affordable housing units or federally-assisted affordable housing units demolished on the same site within two years of the beginning of the Application Acceptance Period, this provision does not apply.

7. §11.4(a)(4) – Tax Credit Request and Award Limits (1), (23), (26), (42)

COMMENT SUMMARY: Commenter (1) recommended the following revision to this section:

> "..(4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for ~~Qualified~~ Nonprofit Developments defined under federal, state, or local codes) to be paid or $150,000, whichever is greater."

Commenter (23) indicated similar comments and recommended the following modification to this section:

> "..(4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for Qualified nonprofit Developments, developments Controlled by a housing authority organized under Local Government Code Chapter 392, developments Controlled by a housing authority Affiliate, or developments Controlled by any non-profit organized under Texas Government Code or Local Government Code) to be paid or $150,000, whichever is greater."

Commenter (26) recommended the maximum credit request be modified such that the cap in each region is increased to $650,000 and requests cannot exceed what is available.

Commenter (42) questioned whether there is the potential to change the maximum request limit in subparagraph (b) of this section if the 9% applicable percentage is not locked.

STAFF RESPONSE: Staff agrees with Commenters (1) and (23) and proposes changes to accommodate these comments.

In response to Commenter (26), increasing the cap in each region from $500,000 to $650,000 would result in the redirection of tax credit resources from the larger Urban Areas to Rural Areas of the state. Currently, statute includes a minimum of $500,000 for rural sub-regions, but to set a higher minimum without a clear policy rationale that comports with Texas Government Code §2306.1115 is not recommended. The demographic data used by the Department in crafting the regional allocation already support the need for tax credits in urban sub-regions in excess of their initial regional allocations due to the statutory $500,000 minimum for Rural Areas.

In response to Commenter (42), the Board has the discretion to waive rules only in instances where an Applicant can demonstrate that the waiver would comply with §10.207 of the Uniform Multifamily Rules.

Staff recommends the following change to §11.4(a)(4):

> (4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments and other Developments in which an entity that is exempt from federal income taxes owns at least 50% of the General Partner) to be paid or $150,000, whichever is greater.

8. §11.4(c) – Increase in Eligible Basis (20), (21), (22), (23), (33), (37), (39), (42), (45)

COMMENT SUMMARY: Commenters (20), (22), (23), (33), (45) expressed support for this section that allows the 30% increase in eligible basis for developments located in a census tract with 20% or greater HTC units provided that a resolution from the governing body is submitted. Commenter (33) further recommended that if market data supports the development of the additional tax credit units then the increase in eligible basis should be allowed. Commenters (20), (22) stated that maintaining this language is important because the increase in eligible basis is required to finance 4% HTC and Rental Assistance Demonstration (RAD) developments given the current inflation of interest rates and expenses; RAD and Housing Authority projects developed now or in the future are highly likely to be located in census tracts that have greater than 20% HTC units; the boost does not reduce the tax credit availability since 4% HTC's are unlimited at the state level and the presence of the resolution indicates local support.

Commenter (37) expressed support for this section but suggested the 20% limitation on such tax credit units in the census tract be changed to 30% as it was in prior years. Commenter (37) also recommended the boost be automatically granted if a housing authority has 51% or more ownership interest, if the development contains RAD units or if the development elects to provide 10% or more 30% AMI units.

Commenter (21) expressed a belief that §42(d)(5)(B)(i)(I) and (II) of the Code makes the boost mandatory in a QCT, regardless of the percentage of tax credit units in place for a new building and for rehabilitation expenditures for an existing building. Commenter (21) further indicated that the Department's ability to designate what developments qualify under the Code is a right granted to the Department in addition to and not replacing or mitigating the Code's specification in §42(d)(5)(B)(i). Commenter (21) therefore recommended the boost be made available for any development in a QCT, but if the Department is not in agreement, this section be revised to clarify that any development, even if it is new construction or adaptive reuse can qualify for the boost provided a resolution is submitted and clarify that such statement only applies to QCT's and not to any census tract with tax credit units in excess of 20% of the total households. Commenter (21) therefore recommended the following:

> "…For any Development, including New Construction and Adaptive Reuse Developments, located in a QCT ~~census tract~~ with 20 percent or greater Housing Tax Credit Units per total households, the Development is eligible for the boost if a resolution is submitted."

Commenter (38) expressed support for the additional provision that allows the 30% boost to be claimed on applications that include an additional 10% of the low-income units for households at or below 30% AMI.

Commenter (39) stated that historically all rural applications were made eligible for the 30% boost because it was difficult for rural deals to compete for the high opportunity points. Since the high opportunity scoring item currently takes into account the unique nature of rural deals commenter (39) suggested the blanket availability for the 30% boost is no longer needed and undercuts the purpose of the rural high opportunity points.

Commenter (42) indicated that because the 4% applicable percentage has decreased so much, all the eligibility criteria under this section should be applicable to 4% HTC applications. Moreover, commenter (42) indicated that given the limitation on elderly developments, the following modification should be made to this section:

> "…(2)The Development meets one of the criteria described in subparagraphs (A) - (D) of this paragraph pursuant to §42(d)(5) of the Code:
>
> (E) the Development is ~~a non-Qualified Elderly Development~~ not located in a QCT that is in an area covered by a community revitalization plan. A Development will be considered to be in an area covered by a community revitalization plan if it is eligible for points under §11.9(d)(7) of the chapter."

STAFF RESPONSE: Staff does not recommend changes that would exempt certain programs or sponsors from the limitations related to the provision of the boost in certain highly concentrated QCTs. The limitation applicable to certain QCTs in the state is designed to further the Department's goals to encourage housing outside of areas that already have a high number of tax credit units relative to the population. Staff believes the restrictions in this regard are reasonable and recommends no changes that would limit the effect of this restriction. Staff also does not agree that the limitation is inconsistent with Section 42 of the Internal Revenue Code. Changes are being recommended, consistent with comments made by Commenter (42), to ensure internal consistency in the rule.

In response to Commenter (39), staff would recommend maintaining the blanket boost for Rural Areas for the 2014 tax credit round. The expiration of the fixed 9% applicable percentage combined with the relative low floating applicable percentages will likely impact the financial viability and/or structuring of Developments proposed in Rural Areas. Without a clear understanding of the effect this will have on development in Rural Areas, staff recommends that this issue be revisited in the next rule making cycle when the effects are better understood.

In response to Commenter (42) concerning the expansion of the boost options for 4% tax credit developments, IRC §42(d)(5) does not provide state allocating agencies the discretion to make the same options 9% tax credit developments are afforded available to 4% tax credit developments. As a result, staff recommends no change in this regard. Staff also does not recommend Commenter (42)'s suggestion that Qualified Elderly Developments be eligible for the boost under §11.4(c)(2)(E). The rationale that the eligibility restrictions applicable to certain counties and regions should allow removal of this restriction does not take into account the effect it may have in creating less balance in the allocations in regions not subject to the eligibility restriction.

Staff recommends the following changes:

"(c) Increase in Eligible Basis (30 percent Boost). Applications will be evaluated for an increase of up to but not to exceed 30 percent in Eligible Basis provided they meet the criteria identified in paragraph (1) or (2) of this subsection. Staff will recommend no increase or a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. The criteria in paragraph (2) of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20 percent Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. For New Construction or Adaptive Reuse ~~any~~ Developments located in a ~~census tract~~QCT with 20 percent or greater Housing Tax Credit Units per total households, the Development is eligible for the boost if ~~a~~ the Application includes a resolution ~~is submitted. T~~stating that the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and ~~submits to the Department a resolution~~ referencing this rule. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable. Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT.

(2) The Development meets one of the criteria described in subparagraphs (A) - (D) of this paragraph pursuant to §42(d)(5) of the Code:

(A) the Development is located in a Rural Area;

(B) the Development is proposing entirely Supportive Housing and is expected to be debt free or have no foreclosable or non-cash flow debt;

(C) the Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria);

(D) the Applicant elects to restrict an additional 10 percent of the proposed low income Units for households at or below 30 percent of AMGI. These Units must be in addition to Units required under any other provision of this chapter; and.

(E) the Development is a non-Qualified Elderly Development not located in a QCT that is in an area covered by a community revitalization plan. A Development will be considered to be in an area covered by a community revitalization plan if it is eligible for and elects points under §11.9(d)(7) of the chapter."

9. §11.5(3) – Competitive HTC Set-Asides (1), (21), (24), (25), (37), (39), (42)

COMMENT SUMMARY: Commenter (1), (21), and (37) expressed support for public housing developments that convert their assistance to long-term project-based Section 8 rental assistance contracts under HUD's Rental Assistance Demonstration (RAD) Program and further suggested that these developments should be allowed to qualify under the At-Risk Set-Aside. Commenters (1), (21), (37) indicated that the RAD program uses public housing funding, maintains the same tenants and requires PHA ownership and therefore meets the statutory intent of the At-Risk Set-Aside. Commenters (21), (24) recommended the ability for the RAD program to qualify under the At-Risk Set-Aside be implemented by adding the following subsection:

> "(G) A public housing development that has applied to be included in HUD's Rental Assistance Demonstration (RAD) program is qualified for the At-Risk Set-Aside, provided that the public housing development does actually convert its rental assistance to a long term project-based Section 8 rental assistance contract."

Commenter (21) suggested this section be harmonized with §11.5(2) by revising it to clarify that New Construction USDA applications awarded in the sub-region are aggregated with the At-Risk USDA applications in order to meet the USDA Set-Aside. Commenter (21) offered the following language:

> "…Up to 5 percent of the State Housing Credit Ceiling associated with this set-aside may be given priority to Rehabilitation Developments under the USDA Set-Aside, to the extent necessary to meet the USDA Set-Aside, taking into consideration allocations made to both At-Risk and New Construction Applications financed through USDA."

Commenter (21) indicated that §11.5(3)(D) has been revised to require that no less than 25% of the proposed units be public housing units; however, §2306.6702(a)(5)(B) of the Texas Government Code does not describe the public housing projects that are owned and operated by public housing authorities, but rather it describes projects with HOME funds or 221(d)(3) or (d)(4) financing. Commenter (21) further explained that public housing projects do not terminate and that the types of the aforementioned projects are unlikely to have public housing units (even though their units may be subsidized). Commenter (21) recommended the 2013 language be reinstated which, while it references public housing units, it does not reference them in a way that creates problems with non-public housing subsidized units. Commenter (24) expressed similar concern that the prior year language was clearer and asked that staff clarify that no less than 25% of the proposed units must receive a form of operating subsidy since the current reading seems to imply that project-based Section 8 properties would not meet the requirement. Similarly, commenter (42) indicated that statute does not say it "must be public housing units" but that "a portion of the public housing operating subsidy received from the department is retained for the development." According to commenter (42) it does not have to stay "public housing" or any particular type of housing so long as the subsidy is retained. Commenter (42) recommended the following revision to this subparagraph:

> "(D) Developments must be at risk of losing affordability from the financial benefits available to the Development and must retain or renew the existing financial benefits and affordability unless regulatory barriers necessitate elimination of a portion of that benefit for the Development. For Developments qualifying under §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25 percent of the proposed Units must be reserved for public housing eligible tenants ~~public housing units~~ supported by public housing operating subsidy. (§2306.6714(a-1))"

Commenter (25) recommended §11.5(3)(C)(i) be revised to allow more time to get HUD approval of the transfer of the subsidy and further asserted that if a development site has not been

identified until late December, a deadline of February 28, 2014 may not be enough time to obtain HUD approval.

Commenter (39) expressed support for the addition of the option to relocate existing units in an otherwise qualifying At-Risk development instead of rebuilding those units on the same site for the following reasons: the preservation of affordable housing is both laudable and needed; the existing location of the At-Risk development may not comply with the Fair Housing Act and some existing tax credit developments are located in areas with high levels of environmental risk. Commenter (39) suggested this option be expanded to require a location analysis of all developments to determine whether the proposed location, including the existing site, complies with fair housing requirements. Moreover, commenter (39) suggested the Department include an environmental hazard proximity impact factor in the scoring criteria and further added that developments within certain distances of TCEQ clean-up sites, emissions sites, brownfields, etc. should receive lower points.

STAFF RESPONSE: Staff does not recommend any changes to incorporate the RAD program explicitly as eligible under the At-Risk Set-Aside. Staff also does not recommend making any changes to preclude RAD specifically from being eligible under the At-Risk Set-Aside. Staff, instead, recommends that the Department seek an opinion on the subject from the Attorney General's office with respect to the eligibility of a development converting under the RAD program to compete as an at-risk development.

Staff understands Commenter (21)'s confusion surrounding the USDA Set-Aside and the treatment of New Construction Developments. It is exceedingly rare to have New Construction Developments under the USDA Set-Aside. However, the language in the QAP is already consistent with the statutory language in §2306.111(d-2) and no change is necessary.

Staff believes that Commenter (21)'s comments concerning §2306.6702(a)(5)(B) may be based on the language prior to the passage of H.B. 1888 during the 83rd legislative session. After incorporation of the recent legislative changes, the reference is correct. In response to Commenter (42), the statutory language in §2306.6714(a)(1) imposes two specific requirements on any Development qualifying as At-Risk under §2306.6702(a)(5)(B), one of which is "a portion of the units are reserved for public housing as specified in the qualified allocation plan." The provision in the QAP included to conform to this requirement uses the phrase "public housing units" which is simply the common usage phrase to describe units that are reserved for public housing and is not intended to impose any restriction that narrows the statutory meaning. Because a "public housing operating subsidy" cannot be associated with a unit that is not a "public housing unit" the two specific requirements in statute are simply harmonized in the QAP in language that is more commonly used to describe how public housing works.

Staff agrees with Commenter (25) that additional time may be necessary to receive HUD's approval for a transfer of housing and any associated subsidies to a new site. Staff recommends this deadline be moved to Commitment, which is generally in mid-September.

Staff shares similar concerns to those expressed by Commenter (39) but believes that the restrictions related to undesirable site and area features reflected in Subchapter B of Chapter 10 (Uniform Multifamily Rules) operate to address these concerns.

Staff recommends the following changes:

"(3) At-Risk Set-Aside. (§2306.6714; §2306.6702)

…

(C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Texas Government Code, §2306.6702(a)(5) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. Alternatively, an Applicant may propose relocation of the existing units in an otherwise qualifying At-Risk Development if:

(i) the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred to the Development Site (i.e. the site proposed in the tax credit Application) prior to the tax credit Commitment deadline ~~February 28, 2013~~;

(ii) the Applicant seeking tax credits must propose the same number of restricted units (e.g. the Applicant may add market rate units); and

(iii) the new Development Site must qualify for points on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria)."

10. §11.6 – Competitive HTC Allocation Process (32), (42)

COMMENT SUMMARY: Commenter (32) recommended this section be revised to allow for maximum Department flexibility in responding to an underfunded sub-region by postponing additional awards to applications on the waiting list until after all possible tax credit commitments have been combined together into the statewide collapse pool. Commenter (32) further asserted that the current QAP precludes the Department from efficiently addressing underserved sub-regions by requiring that "*applications on the waiting list are selected for an award when the remaining balance of tax credits is sufficient to award the next application on the waiting list*." Commenter (32) suggested the following modification:

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any sub-region in the State, and also including any commitments returned to the State before September 15th or the commitment notice deadline of initial awards, will be combined into one "pool." The funds will be used to award the highest scoring Application (not selected in a prior step) in the most underserved sub-region in the State compared to the amount originally made available in each sub-region. This process will continue until the funds remaining are insufficient to award the next highest scoring Application in the next most underserved sub-region. In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved sub-region:

(i) the sub-region with no recommended At-Risk Applications from the same Application Round; and

(ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round….

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. Applications on the waiting list are selected for an award when the remaining balance

of tax credits is sufficient to award the next Application on the waiting list, September 15th or the commitment notice deadline of the initial awards. The waiting list is not static. The allocation process will be used in determining the Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or sub-region from which they were originally awarded. This means that the first Application on the waiting list is in part contingent on the nature of the credits that became available for award. (§2306.6710(a) - (f); §2306.111)

Commenter (42) recommended similar changes to that of commenter (32) but recommended those changes specific to subparagraph (3)(D) relating to the rural collapse and suggested that no awards from the waiting list be made until the HTC commitments are returned because of the deadline for funding.

STAFF RESPONSE: In response to Commenter (32), staff does not have control over when returns of tax credits occur. However, some returns, such as those resulting from a failure to meet tax credit Commitment can be anticipated and staff agrees that it would be prudent to hold returns occurring between the July awards and Commitment until they can be combined and allocated after all returns made at Commitment are known. Staff recommends changes to accomplish this general goal although the changes recommended by staff are slightly different than those recommended by the Commenter.

The following changes are recommended to §11.6(4):

"(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. ~~Applications on the waiting list are selected for an award when the remaining balance of tax credits is sufficient to award the next Application on the waiting list.~~ The waiting list is not static. The allocation process will be used in determining the Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or sub-region from which they were originally awarded. This means that the first Application on the waiting list is in part contingent on the nature of the credits that became available for award. The Department shall hold all credit available after the late-July awards until September 30 in order to collect credit that may become available when tax credit Commitments are submitted. Credit confirmed to be available, as of September 30, may be awarded to Applications on the waiting list unless insufficient credits are available to fund the next Application on the waiting list. For credit returned after September 30, awards from the waiting list will be made when the remaining balance is sufficient to award the next Application on the waiting list based on the date(s) of returned credit. Notwithstanding the foregoing, if decisions related to any returns or rescissions of tax credits are under appeal or are otherwise contested as of September 30, the Department may delay awards until resolution of such issues. (§2306.6710(a) - (f); §2306.111)"

11. §11.7 – Tie Breaker Factors (35), (39), (42)

COMMENT SUMMARY: Commenter (35) proposed the following additional items be considered as alternative tie breakers: lower tax credit request, part of completion of an adopted redevelopment plan, substantial experience along with good compliance record from previous

developments, general partner or co-general partner is a non-profit or quasi-governmental entity, and/or highest market demand based on submitted market studies. Commenter (42) suggested an additional tie breaker be added based on the most significant development in competition with other developments under the same local jurisdiction.

Commenter (39) suggested the current tie breaker factors may aggravate the existing tax credit developments and these units being located on the peripheral edges of populated areas. Commenter (39) recommended the de-concentration tie-breaker instead be calculated as the application with the tract lower concentration index, where the index is calculated as the (existing tax credit units + proposed tax credit units)/households). Because it may still be a possibility that two applications in the same census tract could tie, commenter (39) suggested the final tie breaker be the lower linear distance to the nearest post office; such tie breaker would be uniquely available for every address in the state and would encourage units closer to, rather than farther away, from services.

STAFF RESPONSE: The tie breakers reflected in the QAP were approved as part of the court ordered Remedial Plan. While applied statewide and not just to the remedial area, staff believes these tie breakers operate to support development in high opportunity areas throughout the state. The second tie breaker builds on the first by prioritizing high opportunity developments in areas that may be the most underserved. Other provisions of the QAP operate to ensure that any such housing is located within close proximity to community assets, such as grocery stores, schools, etc.

Staff recommends no changes.

12. §11.8(b)(2) – Pre-Application Threshold Criteria (19), (28), (42)

COMMENT SUMMARY: Commenter (19) asserted that because the term neighborhood organization is not a defined term, use of the term throughout the rules is confusing. Commenter (19) proposed a definition for this term under §10.1 Subchapter A of the Uniform Multifamily Rules and suggested that without such definition they oppose language in this section that puts the responsibility on the applicant to identify all such neighborhood organizations without actually knowing what or who the applicant is supposed to identify.

Commenter (28) questioned whether the underlined portion of the following statement in this section should be included since the requirement to request a list of neighborhood groups from the local elected officials has been removed.

> "The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site <u>as provided by the local elected officials</u>, or that the Applicant has knowledge of as of the date of pre-application submission."

Commenter (42) questioned what the appropriate course of action would be if an applicant notifies who they believed to be the correct person who replaced someone who died or resigned, but the local government has not posted the information.

As it relates to the content of the notifications, Commenter (42) recommended the following modification:

"(ii) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve the elderly unless 100 percent of the tax credit Units will be for Qualified Elderly and it may not indicate that it will target or prefer any subpopulation unless such targeting or preference is in full compliance with all applicable state and federal laws, including state and federal fair housing laws."

STAFF RESPONSE: In response to Commenter (19), neighborhood organization is defined in §2306.6704(23-a). Staff understands Commenter's concerns, but the QAP has been drafted to comply with state statutory requirements related to neighborhood organizations. Those provisions provide certain rights to organizations meeting the requisite definition and it is an applicant's responsibility to perform the necessary due diligence to comply. In response to Commenter (28), the statute does not limit the notification requirements to neighborhood organizations "as provided by the local elected officials." An applicant must notify neighborhood organizations whether or not identified as such by local officials.

In response to Commenter (42) regarding an applicant's belief to have notified the correct person, staff cannot effectively evaluate the beliefs that may underlie an action taken by an applicant and does not recommend a change. In addition, a change to provision (ii) to insert the words "tax credit" as suggested is not consistent with the Fair Housing Act provisions related to age restrictions which, as staff understands them, apply to a housing development or all units owned by a particular entity on an aggregate basis.

Staff recommends no changes.

13. §11.9 – Selection Criteria – General Comment (27)

COMMENT SUMMARY: Commenter (27) suggested the QAP award points in a manner that incentivizes developments with mixed-income and/or mixed-use components to achieve statutory goals and provided Texas Government Code §§2306.111(g)(3)(B) and 2306.6710(b)(1)(A) as a reference.

STAFF RESPONSE: While there is not an explicit incentive in the QAP, there are several areas that include implied incentives for inclusion of some market rate units into a development. For example, the points awarded under §11.9(d)(2), related to development funding from a local political subdivision, are calculated based on the number of tax credit units rather than total units. As funding meeting the requirements of this item can often be difficult to secure, there is an incentive to include market rate units to reduce the total funding needed to achieve a given level of points. Incentives like this have in recent years resulted in a higher percentage of market rate units. In the 2013 cycle, for example, approximately 20% of the units in non-At-Risk developments were market rate units.

Staff recommends no change.

14. §11.9(b)(2) – Selection Criteria – Sponsor Characteristics (40), (42)

COMMENT SUMMARY: Commenter (40) indicated that in addition to a HUB or non-profit, three years of developing tax credit properties will qualify an applicant for these points. Commenter (40) recommended that this scoring item be modified to reflect the following and that evidence in the form of a Commitment, Form 8609 or Carryover Agreement be acceptable.

> "An Application may qualify to receive one (1) point provided the ownership structure contains a HUB as certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date, ~~or~~ Qualified Nonprofit Organization provided the Application is under the Nonprofit Set-Aside, has some combination of ownership interest in the General Partner of the Applicant, cash flow from operations, and developer fee which taken together equal at least 80 percent and no less than 5 percent for any category, or a person with at least fifty percent ownership interest in the General Partner also owns at least fifty percent interest in the General Partners of at least three existing tax credit developments in Texas, none of which are in Material Noncompliance. The IRS Form(s) 8609 must have been issued for each of the properties used for points under this paragraph and each must have a Uniform Physical Condition Standard (UPCS) score of at least eighty-five based on their most recent inspection…".

Commenter (42) requested the Department provide more explanation of this scoring item in the Frequently Asked Questions that gets posted on the website.

STAFF RESPONSE: In response to Commenter (40), staff has contemplated an incentive for Texas experience under sponsor characteristics in several previous years and each time the Board has voted to remove Texas experience requirements and retain an incentive related to partnering with HUBs and/or nonprofit organizations. Staff does not believe circumstances have changed such that the Board would reconsider this incentive.

Staff will provide additional guidance in FAQs if necessary. However, staff also recommends some clarification of this point item, as follows:

> "(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) (1 point). An Application may qualify to receive one (1) point provided the ownership structure contains a HUB~~,~~ ~~as~~ certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date, or Qualified Nonprofit Organization~~,~~ provided the Application is under the Nonprofit Set-Aside. The HUB or Qualified Nonprofit Organization must have~~, has~~ some combination of ownership interest in the General Partner of the Applicant, cash flow from operations, and developer fee which taken together equal at least 80 percent and no less than 5 percent for any category. For example, a HUB or Qualified Nonprofit Organization may have 20 percent ownership interest, 30 percent of the developer fee, and 30 percent of cash flow from operations. The HUB or Qualified Nonprofit Organization must also materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. ~~The~~A Principal~~s~~ of the HUB or Qualified Nonprofit Organization cannot be a Related Party to any other Principal~~s~~ of the Applicant or Developer (excluding another Principal~~s~~ of said HUB or Qualified Nonprofit Organization)."

15. §11.9(c)(2) – Selection Criteria – Rent Levels of the Tenants (17), (29), (38)

COMMENT SUMMARY: Commenter (17) expressed that supportive housing developments simply do not generate robust positive cash flow to serve a significantly higher percentage of 30% units as required under this scoring item. Moreover, Commenter (17) indicated that the additional 30% units could result in a reduced developer fee, which further restricts the nonprofits capacity to develop additional supportive housing units. Commenter offers that this seems counterintuitive to the goal of creating a small incentive for supportive and nonprofit housing providers. Commenter (17) recommended the following revision:

> "(A) At least 15~~20~~ percent of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments qualifying under the Nonprofit Set-Aside only (13 points);"

Commenter (29) recommended that Houston-designated Permanent Supportive Housing Program proposals receive equivalent points as it relates to this scoring item and suggested the following modification:

> "(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI for Supportive housing developments qualifying under the nonprofit Set-Aside or qualifying for a Permanent Supportive Housing designation from the City of Houston only (13 points)."

Commenter (38) recommended the following addition to this scoring item and indicated that the federal sequestration and reduction in Section 8 vouchers subsidies are quickly dwindling as an option for people with disabilities, and the failure to secure or the loss of housing support results in institutionalization or homelessness.

> "(D) At least 5% of all low-income Units at 15% or less AMGI (7 points)."

STAFF RESPONSE: In response to Commenter (17), staff believes the scoring threshold should remain as drafted. This is a scoring item, so developers who do not wish to restrict 20% of their units at 30% AMGI are not required to do so. The current language, which affords supportive housing developments an opportunity to score an additional point over other types of developments, was added in 2013 in order to recognize the unique ability of supportive housing developments to provide such deep rent and income targeting. Because it is not available to other types of applications, staff believes the distinction should be significant.

In response to Commenter (29), the current language does not necessarily preclude applications that qualify for a permanent supportive housing designation from the City of Houston from also qualifying for points under this scoring item in the QAP. The development of the City's program is ongoing and incomplete at this stage. Moreover, the program functions based on units rather than whole developments, which means that only a few units of permanent supportive housing in an application funded through the City of Houston could result in said application receiving additional points that may be significantly more difficult to achieve in other areas of the same region. However, staff believes the issue should be revisited in subsequent years after gaining an understanding of how the two programs interact.

In response to Commenter (38), the addition of this option to the scoring criteria is unlikely to cause any applicants to pursue it since there is a more financially viable option (5% of the units serving 30% AMGI households) available. In drafting this item, staff reviewed the financial effect on applicant's that may choose the various options and believe that further targeting may have the effect of decreasing the financial viability of many developments. In addition, staff would recommend this option be explored further to ensure that a 15% of AMI option would work throughout the state, including those areas with already very low median incomes.

Staff recommends no change.

16. §11.9(c)(3) – Selection Criteria - Tenant Services (29)

COMMENT SUMMARY: Commenter (29) recommended that Houston-designated Permanent Supportive Housing Program proposals receive equivalent points as it relates to this scoring item and suggested the following modification:

> "A Supportive Housing Development qualifying under the Nonprofit Set-Aside or qualifying for a Permanent Supportive Housing designation from the City of Houston may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points. By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA or documented as required by the City of Houston Permanent Supportive Housing Program. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application will remain the minimum. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item."

STAFF RESPONSE: In response to Commenter (29), just as with the scoring item related to Rent Levels of the Tenants, the current language does not necessarily preclude applications that qualify for a permanent supportive housing designation from the City of Houston from also qualifying for points under this scoring item in the QAP. The differences in definitions and uncertainty surrounding how the two programs will operate together causes concern. However, staff believes the issue should be revisited in the next rule making cycle.

Staff recommends no change.

17. §11.9(c)(4) – Selection Criteria - Opportunity Index (1), (18), (23), (26), (28), (30), (35), (37), (39), (40), (42), (44)

COMMENT SUMMARY: Commenter (40) recommended this scoring item be modified to reflect that for developments in an urban area, five points be allowed for developments serving any population that are in the top quartile and in the attendance zone of a qualifying elementary school. Commenter (40) further expressed that general population developments already have a two-point advantage when in the first quartile and that the remedial plan requires five points

under the opportunity index for any population served with less than 15 percent poverty in the first quartile census tract and a qualifying elementary school.

> "(A) For Developments located in an Urban Area, if the proposed Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (or 35 percent for Developments in Regions 11 and 13), an Application may qualify to receive up to seven (7) points upon meeting the additional requirements in clauses (i) – (~~i~~v) of this subparagraph. The Department will base poverty rate on data from the five (5) year American Community Survey.
>
> (i) the Development targets the general population or Supportive Housing, the Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (7 points);
>
> (ii) the Development targets the general population or Supportive Housing, the Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (5 points);
>
> (iii) any Development, regardless of population served, if the Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (5 points);
>
> (iv~~iii~~) any Development, regardless of population served, if the Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable (3 points); or
>
> (v~~iv~~) any Development, regardless of population served, if the Development Site is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (1 point)."

Commenter (23) suggested increasing senior points under this scoring item to five (5) points as allowed under the 2013 QAP and noted below:

> "Any Development, regardless of population served is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable and the Site is in the attendance zone of an elementary school that has a Met Standard Rating and has achieved a 77 or greater on index 1 of the performance index related to student achievement (5 points)."

Commenter (42) recommended the following revision to (A)(iii) of this scoring item given the limitation on elderly developments in certain regions and counties.

"…(iii) any Development, regardless of population served, if the Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable (~~3~~5 points); or"

Commenter (40) suggested that in districts that have open enrollment, developments should be judged by the schools that are closest to the site by linear distance, rather than using the lowest ranked school in the entire district since most students will attend the closest school. Commenter (40) indicated that open enrollment and limited open enrollment are becoming increasingly popular in Texas and this scoring item unfairly penalizes developments in such school districts. Moreover, commenter (40) indicated that such change achieves the purpose of the opportunity index by rewarding developments in proximity to good schools and creating opportunities for children living in these areas. Commenter (40) recommended the following modification:

"(C) An elementary school attendance zone for the Development Site does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the ~~lowest~~ rating of the closest (as measured by linear distance) non-charter ~~of all~~ elementary school, middle or high school~~s~~."

Commenter (49) objects to the structure of the rural opportunity index, stating that it changes the concept from focusing on high opportunity areas to one that merely requires basic services. However, Commenter (49) supports the use of the Met Standard rating paired with the 77 or higher score on student performance index 1 as criteria for qualifying schools.

Commenter (1) recommended the following revision to subparagraph (B) and commenter (35) concurred with the modification noted for (B)(i):

"(B) For Developments located in a Rural Area, an Application may qualify to receive up to seven (7) cumulative points based on median income of the area and/or proximity to the essential community assets as reflected in clauses (i) – (v) of this subparagraph.

(i) The Development Site is located within the attendance zone and within one linear mile of an elementary, middle or high school with a Met Standard rating (3 points);

(ii) The Development Site is within one linear mile of a school-age before or after-school program that meets the minimum standards established by the appropriate federal, state or local agencies ~~Department of Family and Protective Services~~ for such programs (2 points);

(iii) The Development Site is located within one linear mile of a full service grocery store (2 points);

(iv) The Development Site is located within one linear mile of a child-care ~~center~~provider that is licensed by the Department of Family and Protective Services and provides day care for children ages 6 months through 5 years, at a minimum (2 points)..."

Conversely, commenter (28) indicated that (B)(i) in this section should not be expanded to include middle and high schools because such children are typically more independent and

would not need to rely on a parent for transportation to a school that is more than a mile away. Commenter (28) further indicated that any school that serves elementary grades (typically K-5 or K-6) with a Met Standard rating should qualify regardless of the number of grades served at the campus (for example, some school districts may have a separate kindergarten or fifth-grade campus).

Commenter (26) recommended, for developments in a rural area, an increase of two points each for middle and high schools since schools tend to be limited in number and can be significantly further in distance. Commenter (26) asserted that having all three schools that meet the standard and the distance requirement should be worth more points.

Commenter (28) requested that items (B)(ii) and (iv) relating to childcare be clarified in that item (ii) requires the program meet the minimum standards while item (iv) requires the center to be licensed. Commenter (28) indicated that it would appear that licensed facilities meet the minimum standards; therefore, item (ii) should use the same language as item (iv). Commenter (28) further proposed that items (ii) and (iv) allow for licensed centers and licensed childcare homes to qualify for this item; however, the commenter was not sure if registered childcare homes have the same requirements and therefore probably shouldn't be included. Moreover, items (ii) and (iv) relating to childcare, commenter (28) suggested should be available to general population developments only and not to elderly developments.

Commenter (39) suggested (B)(iv) be reworded as indicated below to emphasize that licensed in-home providers do not qualify for these points:

> "…(B)(iv)The Development Site is located within one linear mile of a child-care ~~center~~facility that is licensed by the Department of Family and Protective Services as a licensed child-care center and provides day care for children ages 6 months through 5 years, at a minimum (2 points);

Commenter (39) further suggested the points available for the basic services in items (ii), (iii) and (iv) be changed from 2 points to 1 point and indicated that such change would leave one point only available to general population applications near schools with a Met Standard rating.

Commenter (44) suggested that items (ii) and (iv) are similar and recommended the following revision to this scoring item:

> "There has to be a Department of Family and Protective Services Licensed Center and if they take infants (1 point), toddlers (1 point), if they offer preschool (1 point) and if they take after school children (1 point)."

Also as it relates to the rural component of this scoring item, Commenters (18), (26), (30), (35), (42) recommended that the distance for proximity to community assets be increased from one mile to two miles since amenities in rural areas are usually spread out and most residents use their own vehicles to move around due to the lack of public transportation.

Commenter (37) stated that census tracts with a poverty rate below 15% excludes much of the area of the city where the PHA's currently work and suggested adjusting this to a higher percentage.

Commenter (18) stated that developments proposed in the At-Risk Set-Aside are predestined in their location and therefore such existing housing stock lacks the opportunity of location. Commenter (18) suggested that many rural developers have determined that the majority of their properties are located in the third and fourth quartile income census tracts and commenter (18) recommended that At-Risk/USDA developments be exempt from this scoring item. Similarly, commenter (30) recommended that the points for quartiles in rural areas be eliminated and asserted that one census track often covers an entire rural town and the effect of these points is to choose one town over another. Moreover, commenter (30) recommended At-Risk developments be exempt from this scoring item, but added that if the category of At-Risk is too broad then the USDA Set-Aside within the At-Risk category should be exempted from this scoring item.

Commenter (39) expressed support for the goals of the opportunity index as calculated for urban areas, but stated that while the poverty rate of the proposed development site is an important measure of opportunity it does not by itself indicate access to opportunity or racial desegregation. Commenter (39) encouraged the Department to explore limiting the opportunity index points to neighborhoods with crime rates below the median county or place level.

STAFF RESPONSE: In response to Commenters (23), (40), and (42), with respect to the opportunity index in urban areas and the addition or revision of criteria necessary for qualifying for 5 points, the current language (which was revised from the 2013 QAP, eliminating the possibility of scoring 5 points for Qualified Elderly developments) is expected to result in additional units serving the general population in high opportunity areas. There is, however, no preclusion from or disincentive to designing a development that serves the needs of persons of all ages. The item is crafted to provide the greatest incentives to those developments that accept tenants of all ages, including those for which Internal Revenue Code §42(m) requires prioritization.

Staff appreciates the support of Commenter (49) with respect to the school ratings and is not recommending changes to the methodology behind determining qualifying schools.

In response to Commenter (40), suggesting that in cases where districts have open enrollment that the Department consider the rating of the nearest school as opposed to the ratings of all of the possibly attended schools, staff does not recommend such a change. The underlying premise of the rule is to ensure that the children that live in the proposed development attend a good school. Linear distance to a school is irrelevant when making such a determination. Staff does suggest clarifying language (below) to convey this idea more clearly.

In response to Commenters (1), (26), (28), (39), (44) and (49) with respect to the rural opportunity index, staff is recommending the following changes:

> (B) For Developments located in a Rural Area, an Application may qualify to receive up to seven (7) cumulative points based on median income of the area and/or proximity to the essential community assets as reflected in clauses (i) – (vi) of this subparagraph if the Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (35 percent for regions 11 and 13) or within a census tract with income in the top or second quartile of median household income for the county or MSA as

applicable or within the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement.

(i) The Development Site is located within the attendance zone and within one linear mile of an elementary, middle, or high school with a Met Standard rating. (For purposes of this clause only, any school, regardless of the number of grades served, can count towards points. However, schools without ratings, unless paired with another appropriately rated school, or schools with a Met Alternative Standard rating, will not be considered.) (3 points);

(ii) The Development Site is within one linear mile of a ~~school-age before or after-school program that meets the minimum standards established~~center that is licensed by the Department of Family and Protective Services ~~for such~~specifically to provide a school-age program~~s~~ (2 points);

(iii) The Development Site is located within one linear mile of a full service grocery store (2 points);

(iv) The Development Site is located within one linear mile of a ~~child-care~~ center that is licensed by the Department of Family and Protective Services ~~and~~to provide ~~s day~~a child care program for ~~children ages 6 months through 5 years~~infants, toddlers, and pre-kindergarten, at a minimum (2 points);

~~(v) The Development Site is located in a census tract with income in the top or second quartile of median household income for the county or MSA as applicable (3 points);~~

(v~~i~~) The Development is a Qualified Elderly Development and the Development Site is located within one linear mile of a senior center (2 points); and/or

(vi~~i~~) ~~Development is a Qualified Elderly Development and t~~The Development Site is located within one linear mile of a health related facility (~~2~~1 point~~s~~).

(C) An elementary school attendance zone for the Development Site does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary schools that may possibly be attended by the tenants. The applicable school rating will be the 2013 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions.

Staff believes that this change more closely resembles the opportunity index for urban areas and also is a less dramatic change from the Remedial Plan, where the scoring item was originally contemplated. This revision retains the idea of placing developments in high income, low poverty census tracts with good schools while incorporating the difference between urban and rural sites, encouraging development near city centers. Staff is not recommending any change to the distance requirement to these community assets for that very reason; the rule is meant to

incentivize development very near these community assets. With that in mind, staff is also recommending that only licensed child care centers (and not child care homes which may be located anywhere) be counted towards points and also that any public school be counted as well since these facilities are typically located near other development. While the first portion of the rule addresses the characteristics of a census tract which may be rather large in rural counties, the second portion of the rule is meant to address proximity to these community assets.

In response to Commenter (37), the purpose of the opportunity index is to prioritize sites that meet certain specific criteria in order to produce an overall portfolio with a balanced dispersion of units throughout the state. The QAP does not preclude development outside of high opportunity areas. PHAs and other developers alike should consider development of housing in high opportunity areas.

In response to Commenters (18) and (30), suggesting that At-Risk and/or USDA Set-Aside applications be exempt from this scoring item, staff is not recommending such a change. The opportunity index is a scoring item, and it is not required that developments competing in these set-asides achieve the points. Additionally, this year's QAP includes an incentive to relocate At-Risk units to higher opportunities areas and exempting applications under this set-aside from points under the opportunity index undermines the efficacy of such an incentive. In response to Commenter (30) specifically suggesting that this may cause some towns to be excluded from qualifying for points on the opportunity index entirely, staff, while understanding this as a possibility, does not believe that this is sufficient justification for a change in light of the overall purpose of the rule.

In response to Commenter (39), staff finds the idea of including crime statistics compelling but is not yet comfortable with the accuracy of available data sources. Crime statistics are important, however, for determining an application's eligibility under undesirable area features in §10.101 of the Uniform Multifamily Rules. This item is written to include a more subjective review of information so that one particular data source may be complimented with alternative data sources or information provided directly by local law enforcement.

18. §11.9(c)(5) – Selection Criteria – Educational Excellence (1), (18), (26), (28), (34), (35), (40), (42)

COMMENT SUMMARY: Commenters (1), (26), (34), (35), (42) recommended the following revision and addition to this scoring item and commenter (34) indicated that such modification will enhance the remedial plan objectives by incentivizing general population developments located in the attendance zones of 2 out of 3 schools with the appropriate rating:

> "(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with the appropriate rating (3 points); ~~or~~
>
> (B) The Development Site is within the attendance zone of an elementary school and either a middle school or high school with the appropriate rating (2~~1~~ point<u>s</u>) <u>or</u>~~.~~
>
> <u>(C) The Development Site is within the attendance zone of an elementary school with the appropriate rating (1 point).</u>"

Commenter (40) recommended similar modifications in that if all schools meet the criteria the application should receive three points; however, commenter (40) suggested that if only two schools, regardless of whether they are elementary, middle or high schools meet the criteria the application should receive two points and if only one school meets the criteria, regardless of whether it is an elementary, middle or high school, it should receive one point. Recommended modifications by commenter (40) therefore include the following:

> (A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with the appropriate rating (3 points); ~~or~~
>
> (B) The Development Site is within the attendance zone of any two schools ~~an elementary school and either a middle school or high school~~ with the appropriate rating. Possible combinations are: elementary and middle school, elementary and high school, or middle school and high school (~~1~~2 point~~s~~)~~.~~; or
>
> (C) The Development Site is within the attendance zone of any one school: an elementary school, a middle school, or a high school with the appropriate rating (1 point).

Commenter (18) recommended this scoring item be revised to reflect a point for each high performing school so that there is more of a graduated scale.

Commenter (27) requested clarification on whether a sixth grade campus should be included with the elementary rating or with the middle school rating since there are some school districts that have a dedicated sixth grade campus. Commenter (27) believes the point options for this scoring item should remain as drafted.

Commenter (40) indicated that all schools that comprise elementary grades of early education to 5^{th} grade should count as one school; middle school grades of 6^{th} – 8^{th} should count as one school and a high school with grades 9^{th} – 12^{th} should count as one school.

Commenter (40) suggested that in districts that have open enrollment, developments should be judged by the schools that are closest to the site by linear distance, rather than using the lowest ranked school in the entire district since most students will attend the closest school. Commenter (40) indicated that open enrollment and limited open enrollment are becoming increasingly popular in Texas and this scoring item unfairly penalizes developments in such school districts. Commenter (40) recommended the following modification:

> "An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools that have achieved a 77 or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency, provided that the schools also have a Met Standard rating. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the ~~lowest~~ rating of the closest (as measured by linear distance) non-charter ~~of all~~ elementary, middle, or high school~~s~~, respectively."

Commenter (49) supports the use of the Met Standard rating paired with the 77 or higher score on student performance index 1 as criteria for qualifying schools.

STAFF RESPONSE: In response to Commenters (1), (18), (26), (34), (35), and (42), staff is not recommending a change that would include the addition of the possibility of two points for being located in the attendance zones of two highly rated schools. Such a change would require the approval of the court for incorporation into the Remedial Plan. Staff has taken great care to evaluate in what instances changes may be necessary to effectuate the underlying policy of a particular change. However, where changes do not have a compelling underlying policy rationale staff does not believe the additional uncertainty associated with requesting such a change be approved is necessary or prudent. Additionally, retention of the existing language retains a higher point differential for applicants that are able to identify sites in areas where all schools are highly rated.

In response to Commenters (27) and (40), the rule was intended to include sixth grade centers in the middle school category, and staff recommends clarifying language below. Staff appreciates comments in agreement with the current point options.

Staff appreciates the support of Commenter (49) and is not recommending changes to the methodology behind determining qualifying schools.

In response to Commenter (40), just as with similar comments on the opportunity index, staff does not recommend such a change. The idea behind the rule is to ensure that the children that live in the proposed development attend a good school. Linear distance to a school is irrelevant when making such a determination. Staff is recommending the following clarifying language to convey this idea more clearly:

> (5) Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools that have achieved a 77 or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency, provided that the schools also have a Met Standard rating. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary, middle, or high schools, respectively, which may possibly be attended by the tenants. The applicable school rating will be the 2013 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary

school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.

19. §11.9(c)(6) – Selection Criteria – Underserved Area (1), (18), (23), (28), (34), (40), (42)

COMMENT SUMMARY: Commenter (1) recommended the following revision to this scoring item:

> "(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive two (2) points for general population or Supportive Housing Developments or one (1) point for Qualified Elderly Developments, if the Development Site is located in one of the areas described in subparagraphs (A) – (D) of this paragraph.
>
> (A) A Colonia;
>
> (B) An Economically Distressed Area;
>
> (C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population; or
>
> (D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population."

Commenters (34), (40), (42) similarly agreed with the modification proposed by commenter (1) regarding item (C) relating to a place that contains an active tax credit development that serves the same target population as the proposed. Commenter (23) agreed with the suggested revision by Commenter (1) regarding the point for Qualified Elderly Developments and further explained that given the new language under §11.3(e) which limits the location of elderly developments, it is not necessary to further penalize elderly developments in the scoring criteria in areas of the state where elderly applications are eligible.

Commenter (18) indicated that there are many first quartile census tracts that have strong market potential; however, there is an older HTC property in the census tract. Commenter (18) recommended the following modification to this scoring item.

> "…(C) A Place – never received an allocation serving the same population as propose or has not received an allocation in the last 10 years.~~, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development; or~~
>
> (D) For Rural Areas only, a census tract that has no more than fifty (50) units serving the same population.~~never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population.~~"

Commenter (28) indicated that since there are a limited number of places and census tracts with tax credit developments that have only 1 or 2 units, items (C) and (D) of this scoring item should exclude existing tax credit developments with less than 4 units.

Commenter (34) requested clarification on what is required to be submitted in the application to evidence whether a development site is located in a colonia or economically distressed area in order to qualify for the points under this scoring item.

STAFF RESPONSE: Several Commenters recommend a change to allow one point for Qualified Elderly Developments. Staff does not recommend such a change. The item is crafted to provide the greatest incentives to those developments that accept tenants of all ages, including those for which Internal Revenue Code §42(m) requires prioritization.

In response to Commenters (1), (18), (28), (34), (40), and (42) with respect to only considering developments that serve the same target population or that are a certain number of units, staff believes this is not consistent with the statutory requirement which reads, "…locate the development in a census tract in which there are no existing developments supported by housing tax credits" (Tex. Gov't Code §2306.6725(b)(2)). It does not distinguish between developments with only one unit, or less than 50 units, or serving the same target population.

In response to Commenter (34), staff will provide examples of acceptable documentation in the manual.

Staff recommends no changes.

20. §11.9(c)(7) – Selection Criteria – Tenant Populations with Special Housing Needs (1), (19), (26), (29), (34), (38), (42)

COMMENT SUMMARY: Commenters (1), (34) indicated that because the Section 811 Project Rental Assistance Demonstration Program is just a pilot program with no released program guidelines, participation in the program should be optional, not required. Commenters (1), (34) further indicated that applicants should have the option to meet requirements under subparagraphs (A) or (C) of this scoring item. Moreover, commenter (1) suggested that should an applicant elect to participate in the Section 811 Program, they should be allowed to opt out of the program and meet the requirements under subparagraph (C) after the applicant has been given the opportunity to review the Section 811 program guidelines as well as any agreements between the Department and HUD related to the 811 program. Commenter (26) expressed similar concern over the pilot program and suggested the Section 811 program be removed as a scoring item since there are still too many unknowns regarding the program guidelines. Moreover, commenter (26) indicated it should be a standalone program using existing developments that are already in operation since they may have an easier transition with incorporating these designated units in their daily operations.

Commenter (29) recommended that Houston-designated Permanent Supportive Housing Program proposals receive equivalent points as it relates to this scoring item and suggested the following modification:

"An Application may qualify to receive two (2) points to meet the Special Housing Needs of the State if the Applicant agrees to participate in the Department's Section 811 Project Rental Assistance Demonstration Program (Section 811 Program) or qualify for Supportive Housing vouchers in partnership with the City of Houston Permanent Supportive Housing program and the Development Site meets the requirements in subparagraph (A) of this paragraph. Development Sites not meeting the requirements in subparagraph (A) of this paragraph may qualify under subparagraph (C) of this paragraph.

(A) Applications meeting the following requirements are eligible to receive two (2) points if they agree to commit at least 10 units (or the maximum allowed) for participation in the Section 811 Program or qualifying for a Permanent Supportive Housing designation from the City of Houston, as described in subparagraph (B) of this paragraph. The maximum number of units allowed will be restricted by the Department's Integrated Housing Rule, §1.15 of this title, and the Section 811 Program integration requirements, (the total number of units set-aside for persons with disabilities, including Section 811 units, cannot exceed 18 percent of Units for Developments of 50 Units or more or exceed 25 percent for Developments with less than 50 Units)."

Commenter (42) questioned whether a Dallas/Fort Worth project must apply in order to get the 2 points under subparagraph (C) of this scoring item.

Commenter (19) expressed support for language in this scoring item relating to the Section 811 program that allows an applicant to identify an alternate existing development in their portfolio or in an affiliate's portfolio, consistent with Department Section 811 Program criteria, to participate in the Section 811 Program. Commenter (19) indicated that such language will enable the Department to meet the goals of the program much faster than if it was relying solely on proposed developments with completion deadlines three years out. Commenter (38) also expressed support for this scoring item and the inclusion of the Section 811 program.

STAFF RESPONSE: In response to Commenters (1), (26), the Department appreciates the concern relating to the lack of program guidelines from HUD on the Section 811 PRA program. However, the Department has been told by HUD to expect these by Fall 2013. The Department believes this will provide enough time to implement the program for those applying for the 2014 housing tax credit cycle. However, if the guidance from HUD is delayed to a point that the timing will impact the ability of the applicant to participate successfully in the program or if the Department has significant concerns about the program guidance, the 2014 QAP gives the Board the authority to waive this requirement. In addition, the inclusion of the Section 811 PRA program in the 2014 QAP provides a significant incentive for participation in the program that will not be available by only being a standalone program that could also negatively affect the ability of the Department to successfully implement the Section 811 PRA program.

In response to Commenter (29), while the Department appreciates the efforts of the Houston community to create Permanent Supportive Housing, the 2014 QAP already has point considerations for Supportive Housing in other sections. This scoring item is specifically to incentivize the Section 811 PRA program and adding a City of Houston program to this item

would also provide a disincentive the use of the Section 811 PRA program in the Houston area, in proportion to the other program areas.

21. §11.9(c)(8) – Selection Criteria – Location Outside of "Food Deserts" (1), (8), (9), (18), (23), (26), (28), (30), (35), (40), (42)

COMMENT SUMMARY: Commenter (1) recommended removing this scoring item due to the lack of quantifiable, comprehensive, and valid data. Commenters (8), (9), (18), (26), (28), (30), (35), (40), (42) provided similar comments in that the USDA website is not reliable and in many cases, inaccurate. Commenter (23) concurred with the elimination of this scoring item but suggested that should it remain, the Department should create a process for identifying full service grocery stores not identified in USDA data. Commenter (28) also proposed this scoring item be deleted due to inconsistencies in the data, but proposed that if it remains it should be modified to allow an applicant to elect the point if it can show that the census tract is not low income per the newest census data that is used by the Department or that the development site is within one mile of a grocery store for urban developments or 2 miles of a grocery store for rural developments.

STAFF RESPONSE:
Staff agrees with the Commenters and is recommending that the scoring item be deleted. Staff endeavors to, whenever possible, fully understand the methodology underlying the data that is used within scoring items. In this case, staff was not able to verify how the food deserts were determined. In addition, based on anecdotal examples, staff determined that the data appears on its face to be inaccurate or outdated. The data provided in spreadsheets in some instances differs from the mapping application provided for the purpose of identifying food deserts.

Staff recommends deletion of this item entirely.

22. §11.9(d)(1) – Selection Criteria – Local Government Support (27), (39)

COMMENT SUMMARY: Commenter (27) recommended removing subparagraph (A)(ii) in this section that requires a resolution from the governing body that "has no objection" but does not "expressly…support" to ensure that governing body recommendations reflect a thorough analysis of a proposed development.

Commenter (39) indicated that the resolutions required under this scoring item should contain a statement by the governing body stating they have reviewed the application and their support or lack of objection to the application is consistent with their obligation to affirmatively further fair housing. Commenter (39) explained that the number of points associated with this scoring item presents almost an insurmountable barrier for applications that don't receive such a resolution; and points for a resolution of approval in segregated minority areas would prioritize these developments over those in less segregated and higher opportunity areas. As asserted by commenter (39), the resolutions for local government support and local government funding are likely to be tied together; therefore, local opposition to the development is multiplied by the cumulative nature of the points.

Commenter (49) suggests that this scoring item has potential discriminatory impacts because it presents an insurmountable barrier to projects that do not receive local support. In addition, these points (or lack thereof) are likely to be combined with the effects of other scoring items related

to local support, such as local political subdivision funding and community support from a state representative. Commenter (49) continues to state that the application of this scoring item could result in the statute and its application result in violation of the Fair Housing Act and claims that staff has the discretion to revise the item so that it does not have a determinative effect.

STAFF RESPONSE: In response to Commenter (27), staff believes that a change is not necessary. The provision as written comports with statute and believes that local governments are able to exercise the level of due diligence they feel is necessary to gain a sufficient level of comfort with a particular application. Staff also does not believe that such a language change would have the intended effect expressed by the Commenter.

In response to Commenters (39) and (49) with respect to fair housing issues, and in order to direct local governments to work with their staff and counsel to ensure compliance with fair housing and other requirements which may apply, staff recommends the following:

> "(1) Local Government Support. An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) – (C) of this paragraph, as applicable. The resolution(s) must be dated prior to April 1, 2014 and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution a municipality or county should consult its own staff and legal counsel to as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any FHAST form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is…"

23. §11.9(d)(2)(B) – Selection Criteria – Commitment of Development Funding by Local Political Subdivision (1), (2), (3), (19), (22), (24), (25), (28), (34), (37), (40), (42)

COMMENT SUMMARY: Commenters (1), (22), (25), (28) recommended a reduction in the funding levels associated with this scoring item because the funds available to local political subdivisions for housing have been reduced significantly. Commenters (1), (22), (25) suggested changes to the multipliers as noted below and Commenters (1), (37) recommended an additional point category for a resolution that is submitted in lieu of funding by the local political subdivision.

> "(B) Applications will qualify for points based on the amount of funds at the levels described in clauses (i) – (v) of this subparagraph. For the purpose of this calculation, the Department will use the population of the Place from which the Development Site's Rural or Urban Area designation is derived.
>
> (i) eleven (11) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.075~~0.15~~ in

funding per Low Income Unit or $7,500~~15,000~~ in funding per Low Income Unit;

(ii) ten (10) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.05~~0.10~~ in funding per Low Income Unit or $5,000~~10,000~~ in funding per Low Income Unit;

(iii) nine (9) points for a commitment by a Local Political Subdivision of the lesser of population of the Place multiplied by a factor of 0.025~~0.05~~ in funding per Low Income Unit or $2,500~~5,000~~ in funding per Low Income Unit;

(iv) eight (8) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.0125~~0.025~~ in funding per Low Income Unit or $500~~1,000~~ in funding per Low Income Unit; ~~or~~

(v) seven (7) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.005~~0.01~~ in funding per Low Income Unit or $250~~500~~ in funding per Low Income Unit; or~~.~~

(vi) seven (7) points for a resolution of support from the Governing Body of the city (if located in a city) or county (if not located within a city) in which the Development is located stating that the city or county would provide development funding but has no development funding available due to budgetary or fiscal constraints and despite reasonable efforts, has been unable to identify and secure any such funding. The resolution must be submitted with the Application and dated prior to February 28, 2014. A general letter of support does not qualify."

Commenter (37) suggested the funding levels per low-income unit are too high and should be reduced or set on a sliding scale based upon the amount of funds received by the participating jurisdiction. Commenter (37) further recommended that public housing funds and Section 8 vouchers should qualify as potential sources.

Commenters (2), (3), (4), (5), (6), (7), (37) recommended the term "related party" be removed from this section which would allow public housing authorities (PHA) the ability to contribute funding to transactions in which they were involved. Commenters (2), (3), (5), (6), (7) further stated that some housing authority funding is limited to transactions where the PHA also participates which provide opportunity for the PHA to forward its public mission of providing low-income housing through a public-private partnership. Commenters (2), (3), (5), (6), (7) illustrated that a PHA providing funding in a transaction is not unlike the ability of a developer or private owner providing financial and liquidity guarantees to local political subdivisions in order to receive a loan for those funds. The local political subdivision assures repayment of its funds through the guarantees made by the developers. Commenters (2), (3), (5), (6), (7) also suggested housing authorities be considered a local political subdivision. Commenter (4) indicated that public housing authorities should be eligible for points under this scoring item because they typically develop long term strategies to develop comprehensive plans that take into considerations the needs of the community.

Commenter (42) suggested this scoring item be revised to reflect the units must be reserved for public housing eligible tenants supported by public housing operating subsidy since statute doesn't require the units must be public housing units. Moreover, commenter (42) questioned that while the language indicates the specific source can change the extent to which the amount can change dramatically.

Commenter (37) suggested the following revision to this scoring item:

> "An Application may receive up to thirteen (13) points for a commitment of Development funding from the city, county, a unit of government or its instrumentality in which the Development is proposed to be located."

Commenter (24) indicated some rural cities that have limited capacity or funding abilities have offered to defer payment of permits for one year as a contribution of local funds; most small cities with a population of 10,000 or less don't have access to any other form of funds and don't have housing finance corporations to assist with housing development. Commenter (24) asked for clarification on whether a commitment of funds from a TIRZ or management district would qualify under this scoring item.

Commenter (34) requested clarification regarding when the firm commitment of funds in the form of a resolution from the local political subdivision would need to be submitted to the Department.

Commenter (19) expressed support for this item as currently drafted and further stated that without it an unfair advantage would be realized by local PHA's which goes against the original intent of the Section 42 program.

Commenter (40) expressed support for the one point bonus for the financing terms of the commitment and recommended the due date for the resolution be moved to April 1, 2014 instead of requiring the resolution at the time of application.

Commenter (40) stated that since HOME funds from the state do not qualify under this scoring item then no HOME funds should be allowed. Commenter (40) believed the item, as drafted, gives larger metropolitan areas a distinct advantage which could be in violation of Fair Housing. Commenter (40) suggested language for this item; the first one noted is the most preferred, followed by the second preferred suggested language:

> "(2) …An Application may receive up to fourteen (14) points for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located….HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas ~~cannot~~ can be utilized for points under this scoring item. ~~except where the city, county, or instrumentality is an actual applicant for and subrecipient of such funds for use in providing financial support to the proposed Development.~~"

> "(2) …An Application may receive up to fourteen (14) points for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located….HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas

cannot be utilized for points under this scoring item ~~except where the city, county or instrumentality is an actual applicant for and subrecipient of such funds for use in providing financial support to the proposed Development~~."

STAFF RESPONSE:
In response to Commenters (1), (22), (25), and (28), staff does not believe that a reduction in the funding levels is necessary. This is a scoring item and reduction in funding levels on the basis that the highest point level needs to be more achievable undermines the purpose of a scoring item as opposed to a threshold item. This scoring item provides differentiation. In the 2013 cycle, some applicants receiving less than the maximum point received awards and some applicants receiving the maximum point did not receive an award. This scoring item operates within an overall scoring system and functioned precisely as intended in the 2013 cycle. Therefore, staff does not believe a change in the funding levels is necessary for the 2014 cycle.

In response to Commenters (1) and (37), a seven point tier is not recommended due to a very similar local resolution already being present in the second highest scoring position.

Concerning Commenter (37)'s comments regarding Section 8 and public housing funds counting for points, these sources of funds are not precluded from being considered eligible sources under this scoring item. Staff's methodology in drafting the QAP is to provide the framework for what may be eligible without identifying specific sources unless necessary. Additionally, there are multiple mechanisms to provide Section 8 funds to a development. Some of the mechanisms may meet all of the requirements where as others may not. For example, Section 8 project-based assistance is sometimes administered directly by HUD with the oversight of a regional contractor. This kind of Section 8 assistance cannot be considered development funding from a local political subdivision as the funds do not flow through any local political subdivisions.

Several Commenters recommend removal of language that prevents an application from receiving points in which the LPS is related to the applicant. There appears to be some misunderstanding about this particular restriction. First, a public housing authority can be and often is a local political subdivision and provision of PHA funds to a not related applicant can result in an application receiving points under this item. This restriction simply requires that an Applicant seek funds from a LPS that is not a related party. This is consistent with the restriction that disallows an applicant from providing funds to a LPS for the purpose of having those funds granted back to the applicant and thereby receiving points. The removal of the related party restriction would have the effect of providing a disproportionate advantage to certain types of applicants and would have larger sweeping effects than simply allowing PHAs to lend funds and thereby score points for transactions in which they have an ownership interest. Staff does not believe the scoring item was ever intended to give one class of applicant a particular advantage over another class of applicant and no change in this regard is recommended.

Several Commenters also attempt to draw parallels between the ability for an applicant to provide collateral for a loan and still receive points and an applicant having a related party relationship with an LPS lender. Staff does not believe such a comparison is pertinent to this particular issue. Provision of collateral to support a promissory note is a standard best practice and the Department believes it would be imprudent to encourage or restrict an LPS's ability to require standard forms of collateral as is exceedingly common in real estate finance. However, it is also common in real estate financing to impose requirements and restrictions related to self dealing and lending to related parties.

In response to Commenter (24), staff understands that some rural communicates may have limited funds. This is precisely the reason why the scoring tiers are population based to account for the limited resources in smaller communities. Delay for the fee payments provides very little actual economic benefit to a development although one may be able to document some interest carry savings in such an instance. There is no provision precluding a TIRZ contribution from counting; however, a review of the specific contribution and TIRZ would be necessary to provide better guidance.

In response to Commenter (40), staff disagrees with the assertion that larger cities have an advantage due to their ability to use HOME funds. While larger cities may have access to HOME funds and smaller cities may not have access to such funds, the rule is drafted so the smaller cities do not have to provide as much funding as larger cities. Additionally, use of TDHCA HOME funds for LPS points would not be considered funding from a LPS since the funds would be provided directly from TDHCA to an Applicant without the city having any involvement. If, however, CDBG or HOME funds are subawarded to a local political subdivision by the state and that local political subdivision elects to provide funding to the applicant then such funds would not be precluded from points solely because the state was the original administrator of the funds.

Staff recommends no changes.

24. §11.9(d)(4) – Selection Criteria – Quantifiable Community Participation (1), (27), (34), (39), (40)

COMMENT SUMMARY: Commenter (40) recommended modifications to subparagraph (A) of this scoring item to indicate that neighborhood organizations have the right to form and govern their organizations as they see fit and further stated that as long as support or opposition is given in accordance with the neighborhood organizations' rules, nothing further should be needed for the Department. The modifications from commenter (40) included the following:

> "(A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph….
>
> …(iii) certification that support, opposition, or neutrality was given at a public meeting in accordance with the organization's governing documents; ~~no person required to be listed in accordance with Texas Government Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, including any votes taken;~~
>
> ~~(iv) certification that at least 80 percent of the current membership of the Neighborhood Organization consists of persons residing or owning real property within the boundaries of the Neighborhood Organization; and~~
>
> (iv~~v~~) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization is encouraged to be prepared to provide additional information with regard to opposition."

Commenters (1), (34), (40) recommended a point adjustment to this scoring item that would allow such applications to qualify for points under this criteria as well as §11.9(d)(6)(A) – Input from Community Organizations.

> "…(iv) ~~five~~four (4~~5~~) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;.."

In addition to the point modification above, commenter (34) recommended subparagraph (C)(iii) also be reduced to 4 points and allow applicants that qualify under this criteria to also qualify under §11.9(d)(6)(A) – Input from Community Organizations, while commenter (40) recommended subparagraph (C)(iii) be increased to 5 points with the ability to qualify under §11.9(d)(6)(A) as well. Commenter (34) indicated the intent behind their modification is to provide applications that receive statements of neutrality or the equivalent from a neighborhood organization the opportunity to achieve the same points as an application that is located in an area where no neighborhood organization is in existence when combined with points under the scoring item relating to Input from Community Organizations.

Commenter (27) stated this scoring item should be broad enough to include consideration of comments from economic development organizations such as chambers of commerce.

Commenter (39) recommended the points associated with neighborhoods that historically have opposed tax credit developments should be removed because it sets up inappropriate incentives for organizations to game the system with spurious letters of false opposition.

STAFF RESPONSE: In response to Commenter (40), staff believes the restrictions prohibiting a party with a specific interest in the outcome of an application from participating in the deliberations is reasonable and does not cause an undue burden. Additionally, staff believes that organizations in which large number of the organization membership do not live within the boundaries of the organization does not align with the statutory purpose.

Staff agrees with the change recommended by Commenters (1), (34), and (40) concerning reducing the points in provision (C)(iv) from 5 to 4. However, staff does not believe that allowing points under the Input from Community Organizations item for those applications that are located within the boundaries of a neighborhood organization retains the integrity of the a neighborhood's decision to express neutrality through a letter or lack thereof.

In response to Commenter 27, chambers of commerce generally are not neighborhood organizations but may qualify under Input from Community Organizations.

Staff disagrees with Commenter (39). While the theoretical possibility of "gaming" exists, staff believes on balance the work necessary to "game" the system, likelihood of changes in scoring incentives from year to year, and cost and risk of engaging in such an activity effectively neutralizes any perceived incentive to engage in gaming. Moreover, this conduct has not been observed. If, however, it is observed, staff will consider changes to the scoring item in future years. Staff considers Commenter's reference to the term "game the system" to refer an act that is counter to the intent of a provision, albeit technically not explicitly disallowed.

Staff recommends the following change to provision (C)(iv):

> "(iv) ~~five~~ four (~~5~~4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;"

25. §11.9(d)(5) – Selection Criteria – Community Support from State Representative (28), (39)

COMMENT SUMMARY: Commenter (28) indicated that in the past application round a state legislator was allowed to withdraw a letter of support even though the QAP stated such letters could not be withdrawn once submitted. If the withdrawal of a letter, for any reason, is going to be allowed, commenter (28) suggested the scoring item be modified accordingly.

Commenter (39) expressed that this scoring item is the only item that is eligible for both positive and negative points which effectively grants a 16-point spread and increases the ranking of this item in the scoring priority beyond what is required in statute. Commenter (39) recommended letters indicating lack of support by a state representative be scored zero points so as to reduce the potential of discriminatory impacts that would make housing choices unavailable to families with children and persons with disabilities.

STAFF RESPONSE:
In response to Commenter (28) withdrawal of a letter is not allowed except in instances in which a state representative did not authorize the letter to be submitted in which case the letter is not "withdrawn" but was actually unauthorized and thus not validly submitted. Staff may encounter other similar scenarios but staff believes this to be the specific instance which gave rise to the comment.

Concerning the Commenter (39)'s assertion that the difference between the lowest possible score and highest possible score under this specific provision is problematic, staff believes that §2306.6710(f) mandates that both positive and negative points are awarded under this criterion. Moreover, staff believes that this is the appropriate harmonization of §2306.6710(b)(1) with §2306.6710(f).

26. §11.9(d)(6)(A) – Selection Criteria – Input from Community Organizations (1), (18), (23), (26), (34), (35), (39), (40), (42)

COMMENT SUMMARY: Commenters (1), (23) recommended point adjustments to this scoring item as noted below, and these Commenters, along with Commenters (34), (40) suggested it allow applicants to receive the points if they received points under Quantifiable Community Participation for the equivalent of neutrality or lack of objection from a neighborhood organization or if the development site does not fall within the boundaries of any qualifying neighborhood organization. Commenters (1), (18), (26), (35) indicated that the point adjustment in subparagraph (A) will allow for a level playing field for smaller urban and rural areas where there are less community and civic organizations compared to larger metropolitan areas. Commenter (1) indicated that their recommended point adjustments to subparagraphs (B) and (C) recognize that property owner associations and special management districts serve

similar functions as a neighborhood organization and should be worth equal or similar weight. Commenter (34) expressed similar thoughts regarding the functions of special management districts and property owner associations. Commenter (40) also recommended the point adjustments revert back to two points per letter.

> "(A) An Application may receive ~~one~~two (2~~1~~) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located…
>
> (B) An Application may receive ~~one~~two (2~~1~~) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site…
>
> (C) An Application may receive two~~one~~ (2~~1~~) points for a letter of support from a Special Management District whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site."

Commenter (34) recommended the following point modifications to this item:

> "(A) An Application may receive ~~one~~two (2~~1~~) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located…
>
> (B) An Application may receive ~~one~~four (~~1~~) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site…
>
> (C) An Application may receive ~~one~~four (~~1~~) points for a letter of support from a Special Management District whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site."

Commenter (39) expressed support for subparagraph (D) of this scoring item and recommended that such language be expanded and included under the following, although not limited to, these scoring items: Local Government Support, Quantifiable Community Participation and Community Support from State Representatives.

Commenter (40) recommended the deductive points for opposition be removed and indicated that it creates opportunities for foul play.

Commenter (42) expressed concern over the need to obtain four letters in order to achieve maximum points under this scoring item.

STAFF RESPONSE: Staff agrees with the Commenters recommending a change in the point values. While differing recommendations were made, staff believes it is reasonable to increase each point value from 1 to 2. In response to Commenter (40), staff believes that community organization not supporting an application should have their opinion considered in addition to those expressing support.

Staff recommends the following changes to provisions (6)(A), (B), and (C):

(A) An Application may receive ~~one~~ two (~~1~~2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose of the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide some documentation of its tax exempt status and its existence and participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), or taxing entities.

(B) An Application may receive ~~one~~ two (~~1~~2) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application may receive ~~one~~ two (~~1~~2) points for a letter of support from a Special Management District whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site.

27. §11.9(d)(7) – Selection Criteria – Community Revitalization Plan (CRP) (1), (23), (24), (25), (27), (29), (30), (37), (39), (42), (46)

COMMENT SUMMARY: Commenter (40) recommended the CRP be allowed to be in place by the full application delivery date instead of at the time of pre-application and further stated that it benefits everyone when communities are given adequate time to comply with clear direction.

Commenter (40) recommended that only four of the seven factors under subparagraph (A)(i)(II) of this item be required which would still require the CRP to meet more than half of the factors.

(A) For Developments located in an Urban Area of Region 3.

(i) An Application may qualify to receive up to six (6) points if the Development Site is located in an area targeted for revitalization in a community revitalization plan that meets the criteria described in subclauses (I) – (VI) of this clause:

(II) The adopting municipality or county must have performed, in a process providing for public input, an assessment of the factors in need of being addressed as a part of such community revitalization plan. Factors

assessed must include at least four~~five~~ (4~~5~~) of the following seven (7) factors:

Commenters (1), (23), (25) recommended the distance limitation in this scoring item be modified from ¼ mile to 1 mile. Commenter (23) further recommended modifications for rural revitalization as noted below:

"(C) For Developments located in a Rural Area.

(I) New paved roadway (may include paving an existing non-paved road but excludes overlays or other limited improvements) or expansion of existing paved roadways by at least one lane (excluding very limited improvements such as ~~new turn lanes or~~ restriping), or addition of non-traversable raised medians and/or dedicated left or right turn lanes in which a portion of the new road or expansion, median or turn lanes is within one ~~quarter~~ (1~~/~~4) mile of the Development Site;

(II) New water service line (or new extension) of at least 500 feet, in which a portion of the new line is within one ~~quarter~~ (1~~/~~4) mile of the Development Site;

(III) New wastewater service line (or new extension) of at least 500 feet, in which a portion of the new line is within one ~~quarter~~ (1~~/~~4) mile of the Development Site;.."

Commenter (30) recommended the distances for community revitalization projects in rural areas be changed from ¼ mile to within two miles of the development site to reflect a more realistic distance in rural Texas.

Commenter (25) recommended there be a $20,000 monetary requirement added for the water and waste water lines as another option to the 500 foot extension for each; such addition would allow lift stations and pumps to be taken into account. Commenter (25) requested clarification that private water/sewer providers can issue letters committing improvements to the area of the proposed development site if the private company is the utility provider for the community.

Commenter (42) recommended subparagraph (C)(i)(IV) and (V) under this scoring item relating to construction of a new law enforcement, emergency services station, construction of a new hospital or expansion be extended to a period of two years on either side of the application, instead of 12 months, because these facilities take a long time to get approved and built.

Commenter (24) stated there is a disadvantage for rural communities that are receiving CDBG-DR funds and suggested this scoring item be revised to allow CDBG-DR funds under subparagraph (B)(ii) in order to assist rural communities.

Commenter (27) suggested that this scoring item should reflect higher points and further suggested that it should include strategies that would attract higher income residents to that area instead of simply adding more affordable housing.

Commenter (29) recommended the QAP be modified to recognize disaster recovery areas as equivalent in points under this scoring item and further stated that while the City of Houston has a plan that meets the requirements under subparagraph (B)(ii)(I) – (IV) of this section, it may not

be approved as meeting the new requirements of this section. Commenter (46) provided similar comments and recommended staff consider community revitalization plan terms that were agreed upon last year since there will be some areas that cannot meet the plan terms this year. Commenter (29) suggested the following modification and commenter (46) concurred with the revision that would not require a commitment of CDBG-DR funds at the time of application:

> "(ii) An Application will qualify for ~~four (4)~~six (6) points if the city or county has an existing plan for Community Development Block Grant - Disaster Relief Program (CDBG-DR) funds that meets the requirements of subclauses (I) - (IV) of this clause. To qualify for points, the Development Site must be located in the target area defined by the plan~~, and the Application must have a commitment of CDBG-DR funds.~~ The plan (in its entirety) and a letter from a local government official with specific knowledge and oversight of implementing the plan are included in the Application and must…"

Commenter (37) recommended adding the following language:

> "A plan adopted for a Choice Neighborhoods Planning Grant or a Public Housing plan approved by a local government may qualify as a Community Revitalization Plan under this section."

Commenter (39) asserted the Department must pursue community revitalization while achieving fair housing and indicated a significant portion of housing tax credits must be awarded outside minority segregated neighborhoods and compel developers and owners to engage in affirmative marketing plans that actually produce integration that is not currently being achieved. Commenter (39) suggested this scoring item define eligible community revitalization areas whereby jurisdictions should be required to provide an acceptable strategy achieving the integration of government subsidized housing within the community revitalization area and explicitly address how the introduction of new housing tax credits will overcome existing patters of racial, ethnic and economic segregation in the area. Moreover, commenter (39) recommended the Department require the jurisdiction to acknowledge its commitment to comply with fair housing and affirmatively further fair housing. The jurisdiction must explicitly state the community revitalization plan that it offers in order to obtain tax credits is part of the jurisdiction's plan to affirmatively further fair housing and that it is consistent with the local Analysis of Impediments to Fair Housing.

Commenter (39) recommended the Department institute follow-up on monitoring the outcomes of accepted community revitalization plans and offered that at periods of time after construction of the development in such an area (i.e. 2 years, 5 years and 10 years) an assessment of ethnic/racial composition of the tenants in the tax credit developments in CRP areas and the population in the surrounding neighborhoods should be undertaken to determine criteria used to designate CRP areas and the public revitalization commitments produced the required outcomes.

Commenter (39) suggested the following modifications to subparagraph (B)(ii):

> "(B) For Developments located in Urban Areas outside of Region 3.
>
> …(ii) An Application will qualify for four (4) points if the city or county has an existing plan for Community Development Block Grant - Disaster Relief Program (CDBG-DR) funds that meets the requirements of subclauses (I) - (IV) of this

clause. To qualify for points, the Development Site must be located in the target area defined by the plan, and the Application must have a commitment of CDBG-DR funds. The plan (in its entirety) and a letter from a local government official with specific knowledge and oversight of implementing the plan are included in the Application and must:

(I) define specific target areas for redevelopment of housing that do not encompass the entire jurisdiction;

(II) ~~affirmatively address Fair Housing demonstrated through~~ be subject to administration in a manner consistent with an approved Fair Housing Activity Statement-Texas (FHAST) if a FHAST Form is in place within the jurisdiction;

(III) be subject to administration in a manner consistent with the findings of an Analysis of Impediments approved or accepted by HUD within the last three (3) calendar years ~~or an approved Fair Housing Activity Statement-Texas (FHAST), approved by the Texas General Land Office; and~~

(IV) certify that the plan and the Application are consistent with the adopting municipality or county's plan to affirmatively further fair housing under the Fair Housing Act (42 USC 3608(d) and Executive Order 12892; and

(~~I~~V) be in place prior to the Pre-Application Final Delivery Date.

Commenter (42) questioned if a community revitalization plan was approved last year and it has not changed whether it must be re-submitted. Commenter (49) did not object to any of the changes made to this scoring item from the 2013 QAP.

STAFF RESPONSE: Staff agrees with Commenter (40) concerning the date the community revitalization plan must have been in place and staff is recommending it be moved from the pre-application to application submission deadline.

Staff disagrees with Commenter (40) concerning the reduction in factors necessary for a qualifying revitalization plan from 5 of 7 to 4 of 7. However, staff agrees with Commenter (27) concerning the addition of a factor related to specific efforts to promote more integration along socioeconomic strata within target areas and has added an 8th factor to the list of options.

Staff agrees with Commenters (1), (23), (25), and (30) concerning increasing the distance requirement for the rural community revitalization area options but recommends moving from ¼ mile to ½ mile rather than to 1 mile or 2 miles.

Staff agrees with Commenter (24) concerning the addition of a CDBG-DR option for Rural Areas outside of Region 3 and staff is recommending a change accordingly.

Staff agrees with Commenter (25) concerning the allowance for utilities provided by private utility companies and is recommending a change accordingly. However, staff feels that it is unnecessary to add monetary thresholds to any of the items for rural community revitalization.

In response to Commenter (39), staff is recommending changes to incorporate a fair housing certification into the CDBG-DR option for community revitalization plan points. In addition, an additional factor for promoting more demographic diversity in a particular area has also been

incorporated into the point item. However, changes are not necessary to implement a review of performance in future years but staff is reviewing the possibility of performing such reviews.

Commenter (42) recommended changes to subparagraphs (C)(i)(IV) and (V) to allow for a longer timeframe for the kinds of projected reflected under this provisions. Staff does not believe a change is necessary as more than 24 months may elapse between the approval and completion as long as completion occurs within the 24 month timeframe provided for in the rule. However minor clarifying language has been added.

Staff disagrees with Commenters recommending an increase in the point levels for this item. The point levels are carefully crafted to maintain a balance in the various paths an applicant may pursuing in applying for housing tax credits and to ensure that high opportunity areas, on balance, have a higher level of incentive. Staff does not recommend any changes to diminish the impact of the high opportunity area priority as drafted.

Commenter (37) recommends a specific scoring option for a Neighborhood Choice Planning Grant or public housing plan. Staff does not find it necessary to add such specific options. Such plans are not precluded from being utilized to meet the requirements for community revitalization in urban areas. Such plans would need to meet the requirements for a community revitalization plan. This requirement would help maintain the high standard staff recommends for community revitalization plans and the requirements that they document a meaningful revitalization effort with funding dedicated to accomplishing revitalization of many aspects of a neighborhood beyond simply the housing stock.

In response to Commenter (42), any community revitalization plan would undergo a completely new review based on the rules in place for the 2014 cycle.

Staff recommends the following changes:

"(7) Community Revitalization Plan. An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(A) For Developments located in an Urban Area of Region 3.

(i) An Application may qualify to receive up to six (6) points if the Development Site is located in an area targeted for revitalization in a community revitalization plan that meets the criteria described in subclauses (I) – (VI) of this clause:

(I) The community revitalization plan must have been adopted by the municipality or county in which the Development Site is located.

(II) The adopting municipality or county must have performed, in a process providing for public input, an assessment of the factors in need of being addressed as a part of such community revitalization plan. Factors assessed must include at least five (5) of the following ~~seven~~ eight (~~7~~8) factors:

(-a-) adverse environmental conditions, natural or manmade, that are material in nature and are inconsistent with the general quality of life in typical average income neighborhoods. By way of example, such conditions might include significant and recurring flooding, presence of hazardous waste sites or ongoing localized emissions not under appropriate remediation, nearby heavy

industrial uses, or uses presenting significant safety or noise concerns such as major thoroughfares, nearby active railways (other than commuter trains), or landing strips; significant and widespread (e.g. not localized to a small number of businesses or other buildings) rodent or vermin infestation acknowledged to present health risks requiring a concerted effort; or fire hazards;

(-b-) presence of blight, which may include excessive vacancy, obsolete land use, significant decline in property value, or other similar conditions that impede growth;

(-c-) presence of inadequate transportation or infrastructure;

(-d-) lack of accessibility to and/or presence of inadequate health care facilities, law enforcement and fire fighting facilities, social and recreational facilities, and other public facilities comparable to those typically found in neighborhoods containing comparable but unassisted housing;

(-e-) the presence of significant crime;

(-f-) the lack of or poor condition and/or performance of public education; ~~or~~

(-g-) the lack of local business providing employment opportunities; or~~.~~

(-h-) efforts to promote diversity, including multigenerational diversity, economic diversity, etcetera, where it has been identified in the planning process as lacking.

…

(VI) To be eligible for points under this item, the community revitalization plan must already be in place as of the ~~Pre-~~Full Application Final Delivery Date pursuant to §11.2 of this chapter evidenced by a letter from the appropriate local official stating that:

…

(B) For Developments located in Urban Areas outside of Region 3.

…

(ii) An Application will qualify for four (4) points if the city or county has an existing plan for Community Development Block Grant - Disaster Relief Program (CDBG-DR) funds that meets the requirements of subclauses (I) - (IV) of this clause. To qualify for points, the Development Site must be located in the target area defined by the plan, and the Application must have a commitment of CDBG-DR funds. The plan (in its entirety) and a letter from a local government official with specific knowledge and oversight of implementing the plan are included in the Application and must:

(I) define specific target areas for redevelopment of housing that do not encompass the entire jurisdiction;

(II) ~~affirmatively address Fair Housing demonstrated~~be subject to administration in a manner consistent with ~~through~~ an approved Fair Housing Activity Statement-Texas (FHAST);

(III) be subject to administration in a manner consistent with the findings of an Analysis of Impediments approved or accepted by HUD within the last three (3) calendar years or an approved Fair Housing

Activity Statement-Texas (FHAST), approved by the Texas General Land Office; ~~and~~

(IV) certify that the plan and the Application are consistent with the adopting municipality or county's plan to affirmatively further fair housing under the Fair Housing Act; and

(~~I~~V) be in place prior to the Full ~~Pre-~~Application Final Delivery Date.

(C) For Developments located in a Rural Area.

(i) An Application may qualify for up to four (4) points for meeting the criteria under subparagraph (B) of this paragraph if located outside of Region 3 (with the exception of being located in an Urban Area); or

(ii) The requirements for community revitalization in a Rural Area are distinct and separate from the requirements related to community revitalization in an Urban Area in that the requirements in a Rural Area relate primarily to growth and expansion indicators. An Application may qualify for up to four (4) points if the city, county, state, or federal government has approved expansion of basic infrastructure or projects, as described in this paragraph. Approval cannot be conditioned upon the award of tax credits or on any other event (zoning, permitting, construction start of another development, etc.) not directly associated with the particular infrastructure expansion. The Applicant, Related Party, or seller of the Development Site cannot contribute funds for or finance the project or infrastructure, except through the normal and customary payment of property taxes, franchise taxes, sales taxes, impact fees and/or any other taxes or fees traditionally used to pay for or finance such infrastructure by cities, counties, state or federal governments or their related subsidiaries. The project or expansion must have been completed no more than twelve (12) months prior to the beginning of the Application Acceptance Period or ~~be~~ have been approved and is projected to be completed within twelve (12) months from the beginning of the Application Acceptance Period. An Application is eligible for two (2) points for one of the items described in subclauses (I) – (V) of this clause or four (4) points for at least two (2) of the items described in subclauses (I) – (V) of this clause:

(I) New paved roadway (may include paving an existing non-paved road but excludes overlays or other limited improvements) or expansion of existing paved roadways by at least one lane (excluding very limited improvements such as new turn lanes or restriping), in which a portion of the new road or expansion is within one ~~quarter~~ half (1/~~4~~2) mile of the Development Site;

(II) New water service line (or new extension) of at least 500 feet, in which a portion of the new line is within one ~~quarter~~ half (1/~~4~~2) mile of the Development Site;

(III) New wastewater service line (or new extension) of at least 500 feet, in which a portion of the new line is within one ~~quarter~~ half (1/~~4~~2) mile of the Development Site;

(IV) Construction of a new law enforcement or emergency services station within one (1) mile of the Development Site that has a service area that includes the Development Site; and

(V) Construction of a new hospital or expansion of an existing hospital's capacity by at least 25 percent within a five (5) mile radius of the Development Site and ambulance service to and from the hospital is available at the Development Site. Capacity is defined as total number of beds, total number of rooms or total square footage of the hospital.

(iii) To qualify under clause (ii) of this subparagraph, ~~T~~the Applicant must provide a letter from a government official with specific knowledge of the project (or from an official with a private utility company, if applicable) which must include:

(I) the nature and scope of the project;
(II) the date completed or projected completion;
(III) source of funding for the project;
(IV) proximity to the Development Site; and
(V) the date of any applicable city, county, state, or federal approvals, if not already completed."

28. 11.9(d)(8) – Selection Criteria – Transit Oriented Development Developments (1), (34), (37)

COMMENT SUMMARY: Commenters (1), (34), (37) recommended adding the following scoring item:

"(8) Transit Oriented Development. An Application may qualify to receive one (1) point if the proposed site of the Development is within ½ mile of light rail transit, commuter rail, rapid bus transit or other high capacity transit. The distance will be measured from the development to the nearest transit station."

Commenter (37) further suggested this new scoring item allow for one (1) point for transit oriented funding or funding by a local transit authority.

STAFF RESPONSE: The court order requires that no location specific scoring criteria be added to the QAP unless specifically mandated by statute. The addition suggested by the Commenters would be location specific and so would require staff to request approval from the court, adding uncertainty to the rules. In addition, because this concept was not included in the originally published draft, it would be difficult to characterize it as a logical outgrowth and subsequently be included in the final version.

Staff recommends no change.

29. §11.9(e)(2) – Selection Criteria – Cost of Development per Square Foot (1), (17), (23), (30), (31), (34), (36), (42)

COMMENT SUMMARY: Commenter (42) provided a general statement of whether the costs per square foot calculations were realistic. Commenters (17), (31) expressed concern over increases in construction costs and the far reaching implications of a policy that results in the cheapening of affordable housing properties that would lead to increased neighborhood push back, properties that are not sustainable over the affordability period and properties that have little or no green features. Commenter (31) suggested the consideration of high cost

developments in this scoring item does not reflect cost thresholds required to be competitive and are not feasible, particularly in Austin. Commenter (31) requested the Department consider the unintended consequences of keeping the costs per square foot at their current level because the policy of building cheap developments does not result in a quality product. Commenters (17), (31) recommended the following modifications to this scoring item:

> "(B) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:
>
> (i) The Building Cost per square foot is less than $~~6~~80 per square foot;
>
> (ii) The Building Cost per square foot is less than $~~6~~85 per square foot, and the Development is a meets the definition of a high cost development;
>
> (iii) The Hard Cost per square foot is less than $~~8~~100 per square foot; or
>
> (iv) The Hard Cost per square foot is less than $10590 per square foot, and the Development meets the definition of high cost development."

Commenters (1), (34) recommended subparagraph (A) as noted below be modified to include development sites in rural areas.

> (A) A high cost development is a Development that meets one of the following conditions:
>
> (iv) the Development Site qualifies for five (5) or seven (7) points under subsection (c)(4) of this section, related to Opportunity Index~~, and is located in an Urban Area~~.

Commenters (1), (23), (34) recommended the following modifications to this scoring item due to increases in construction costs:

> (B) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:
>
> (i) The Building Cost per square foot is less than $~~6~~70 per square foot;
>
> (ii) The Building Cost per square foot is less than $~~6~~75 per square foot, and the Development is a meets the definition of a high cost development;
>
> (iii) The Hard Cost per square foot is less than $~~8~~90 per square foot; or
>
> (iv) The Hard Cost per square foot is less than $10090 per square foot, and the Development meets the definition of high cost development.
>
> (C) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:
>
> (i) The Building Cost per square foot is less than $~~6~~75 per square foot;
>
> (ii) The Building Cost per square foot is less than $~~7~~80 per square foot, and the Development meets the definition of a high cost development;
>
> (iii) The Hard Cost per square foot is less than $~~8~~95 per square foot; or
>
> (iv) The Hard Cost per square foot is less than $~~9~~105 per square foot, and the Development meets the definition of high cost development.
>
> (D) Applications proposing New Construction or Reconstruction will be eligible for nine (9) points if one of the following conditions is met:

(i) The Building Cost is less than $~~80~~90 per square foot; or

(ii) The Hard Cost is less than $110~~100~~ per square foot.

Commenters (1), (23) recommended the following modifications to this scoring item:

(E) Applications proposing Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $110~~100~~ per square foot;

(ii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $140~~130~~ per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $140~~130~~ per square foot.

Commenter (34) recommended that applications proposing adaptive reuse should be eligible for points under subparagraph (E) of this scoring item.

Commenter (30) recommended the costs in this scoring item be increased by no less than $15 in all categories and indicated that building costs in Texas are not uniform across the state, nor are they stable within seasons and small developments do not achieve the economies of scale that larger developments do; therefore, setting an artificially low number can prove more harmful in the long-term. Commenter (36) expressed similar concerns regarding the rising construction costs and cost differential in rural compared to urban areas and recommended an adjustment from $15 to $20 per square foot to this scoring item.

Moreover, commenters (1), (23), (34) recommended deleting the following criterion in this scoring item, indicating that it seems to reward luck rather than merit.

~~"(F) Applications proposing New Construction or Reconstruction will be eligible for one (1) point, in addition to those under subparagraph (B) or (C) of this paragraph, if the Hard Cost per square foot is within 5 percent of the mean cost per square foot. The mean will be calculated separately for high cost developments."~~

STAFF RESPONSE: Several commenters suggested that the thresholds for scoring points in this category were unrealistically high. Staff agrees that the thresholds were difficult to achieve and is recommending that all of the thresholds for New Construction or Reconstruction developments be raised by $10 per square foot. However, staff believes that the thresholds for rehabilitation developments are reasonable based on the costs submitted in the 2013 applications. Staff also points out that this is a scoring item meant to provide differentiation when evaluating applications and that if applicants are struggling to meet certain thresholds that they are not required to request the maximum number of points.

In response to Commenter (4) with respect to adaptive reuse developments, staff agrees and is recommending the change.

In response to Commenters (1) and (34) with respect to including rural developments as high cost areas, staff disagrees that these sites warrant the same consideration as high opportunity sites in urban areas where stringent building requirements and/or infill development are more typical.

Staff agrees with Commenters regarding the removal of the criterion involving being within a certain percentage of the mean cost per square foot for submitted applications.

Staff recommends the following changes:

"(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on either the Building Cost or the Hard Costs per square foot of the proposed Development, as originally submitted in the Application. For purposes of this paragraph, Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule.

(A) A high cost development is a Development that meets one of the following conditions:

(i) the Development is elevator served, meaning it is either a Qualified Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;

(ii) the Development is more than ~~at least~~ 75 percent single family design;

(iii) the Development is Supportive Housing; or

(iv) the Development Site qualifies for five (5) or seven (7) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area.

(B) Applications proposing New Construction or Reconstruction will be eligible for ~~eleven~~ twelve (~~11~~12) points if one of the following conditions is met:

(i) The Building Cost per square foot is less than $~~60~~ 70 per square foot;

(ii) The Building Cost per square foot is less than $~~65~~ 75 per square foot, and the Development is a meets the definition of a high cost development;

(iii) The Hard Cost per square foot is less than $~~80~~ 90 per square foot; or

(iv) The Hard Cost per square foot is less than $~~90~~ 100 per square foot, and the Development meets the definition of high cost development.

(C) Applications proposing New Construction or Reconstruction will be eligible for ~~ten~~ eleven (~~10~~11) points if one of the following conditions is met:

(i) The Building Cost per square foot is less than $~~65~~ 75 per square foot;

(ii) The Building Cost per square foot is less than $~~70~~ 80 per square foot, and the Development meets the definition of a high cost development;

(iii) The Hard Cost per square foot is less than $~~85~~ 95 per square foot; or

(iv) The Hard Cost per square foot is less than $~~95~~ 105 per square foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for ~~nine~~ ten (~~9~~10) points if one of the following conditions is met:

(i) The Building Cost is less than $~~80~~ 90 per square foot; or

(ii) The Hard Cost is less than $~~100~~ 110 per square foot.

(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $100 per square foot;

(ii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $130 per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $130 per square foot.

~~(F) Applications proposing New Construction or Reconstruction will be eligible for one (1) point, in addition to those under subparagraph (B) or (C) of this paragraph, if the Hard Cost per square foot is within 5 percent of the mean cost per square foot. The mean will be calculated separately for high cost developments.~~"

30. §11.9(e)(3)(A) – Selection Criteria – Pre-application Participation (1), (22), (28), (35)

COMMENT SUMMARY: Commenters (1), (22), (28), (35) recommended the following revision relating to qualifying for pre-application participation points and commenter (35) further elaborated that such modification would allow for unforeseen zoning requirements that may force a smaller project than originally contemplated.

"(A) The total number of Units does not ~~change~~increase by more than ten (10) percent from pre-application to Application;.."

STAFF RESPONSE: Staff agrees with the commenter and is recommending the change. This language is also consistent with requirements to re-notify neighborhood organizations and elected officials in §10.203 of the Uniform Multifamily Rules.

31. §11.9(e)(4)(A) – Selection Criteria – Leveraging of Private, State and Federal Resources (1), (17), (18), (23), (25), (26), (31), (34), (35), (37), (40)

COMMENT SUMMARY: Commenters (1), (18), (23), (25), (26), (34), (35) recommended the percentages relating to the total housing development costs for this scoring item be increased by one percentage respectively, as noted below. Commenters (18), (26) further stated that many applications in the prior application round increased the number of market units in their

developments in order to fit within the prescribed percentages, thus putting their development at risk or deeming it high risk on the syndication market.

"(ii) If the Housing Tax Credit funding request is less than 8~~7~~ percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than 9~~8~~ percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than 10~~9~~ percent of the Total Housing Development Cost (1 point)."

Commenters (17), (31) indicated this scoring item, as drafted, undermines the definition of supportive housing as debt-free and further stated that a nonprofit or supportive housing applicant is going to apply for the maximum amount of credits and therefore will almost always have a larger percentage of tax credits to total development costs. Commenters (17), (31) recommended raising the leveraging percentages by one percent for supportive housing and nonprofit housing that carries no permanent debt (or that limits debt) in addition to the other changes as noted below:

"(A) An Application may qualify to receive up to three (3) points if at least five (5) percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) – (iv) of this subparagraph:

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, or Choice Neighborhoods funding or the Development is Supportive Housing or the Development has a Nonprofit Guarantor who meets qualification in (B) below and the Housing Tax Credit Funding Request is less than 8 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of the CDBG Disaster Recovery, HOPE VI, Choice Neighborhoods or Nonprofit Owner Contribution with application~~such funding~~; or

(ii) If the Housing Tax Credit funding request is less than 7 percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than 8 percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than 9 percent of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred. In this section, an owner contribution that is a part of a supportive housing or nonprofit guaranteed

application will not count as part of the deferred developer fee per §10.204(7)(C) of the Uniform Multifamily Rules. In subparagraph (A), a nonprofit guarantor is a guarantor whose annual budget for the past three years is comprised of revenue from grants from private sources in at least the amount of the owner contribution determined for the application. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect."

Commenter (37) suggested that Rental Assistance Developments be added to this scoring item to qualify for points.

Commenter (40) recommended this scoring item remain as currently drafted and not limit the number of market rate units; the inclusion of market rate units allows the Department to leverage more credits.

STAFF RESPONSE: Several Commenters suggested that the thresholds for scoring points in this category were unrealistically low. Staff agrees that the thresholds were difficult to achieve and is recommending that all of the thresholds be increased by one percentage point. However, staff also points out that this is a scoring item meant to provide differentiation when evaluating applications and that if applicants are struggling to meet certain thresholds that they are not required to request the maximum number of points. Staff does appreciate commenter (40) but understands the difficulty in dealing with the syndication market when proposing more than 20% market rate units.

In response to Commenter (17) and (31), staff does not believe it is appropriate to single out supportive housing developments in this scoring category. While staff appreciates that these types of developments have unique financial structures, the goal of the scoring item is to efficiently utilize the tax credit allocation; therefore these applications should be subject to the same thresholds. HOPE VI is specifically identified in §2306.6725(a)(3), and staff has given meaning to this portion of statute through the creation of a different leveraging requirement specifically for HOPE VI. The Choice Neighborhood program is often identified to be a program succeeding the HOPE VI program as is HUD most recent demonstration program, RAD.

In response to Commenter (37), staff agrees that it is appropriate to include the RAD program, in addition to HOPE VI and Choice Neighborhood programs, due to the similarities between the programs. Staff recommends the following language:

"(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least five (5) percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) – (iv) of this subparagraph:

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than ~~8~~ 9

percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii) If the Housing Tax Credit funding request is less than ~~7~~ 8 percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than 9~~8~~ percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than 10~~9~~ percent of the Total Housing Development Cost (1 point)."

32. §11.9(e)(5) – Selection Criteria – Extended Affordability or Historic Preservation (10), (11), (12), (13), (14), (15), (16), , (34), (43), (48)

COMMENT SUMMARY: Commenters (10), (11), (12), (13), (14), (15), (16), (34), (43) asserted the QAP does not allow affordable housing developments located in downtown central business districts to be competitive, primarily due to the income and school based provisions placed in the QAP over the past several years. Moreover, commenters (10), (11), (12), (13), (14), (15), (16), (34), (43), (48) asserted the QAP does not recognize historic tax credit equity as a significant source of leverage which would allow the Department to spread its credits further. House Bill 500, passed by the 83rd legislature, provides a 25% state historic tax credit which when combined with the 20% federal historic preservation tax credit, according to commenters (10), (11), (12), (13), (14), (15), (16), (48), could generate approximately 35% additional equity for adaptive reuse historic preservation developments. Commenters (10), (11), (12), (13), (14), (15), (16) suggested the scoring item be revised to reflect a maximum of 9 points as indicated below and indicated that the points will counteract the unintended bias of the opportunity index, further affordable housing development, spread out the housing tax credits and help communities achieve their community development and historic preservation needs. Commenter (13) expressed that the new changes to the QAP have created an uneven playing field for many cities and towns who wish to have community based development projects occur in their historic downtowns and further suggested, along with commenter (15), that Historic Preservation should be a separate scoring item from Extended Affordability.

"…(A) In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Development Owners that agree to extend the affordability period for a Development to thirty-five (35) years total may receive ~~two~~ one (1~~2~~) point~~s~~; or

(B) An Application proposing the use of historic (rehabilitation) tax credits for at least 80 percent of the development project (calculated as the lesser of square footage or unit count) and providing a letter from the Texas historical Commission determining preliminary eligibility for said credits may qualify to receive eight (8) points. ~~and providing documentation that an existing building that will be part of the Development will reasonably be able to qualify to receive and document receipt of historic credits by issuance of Forms 8609 may qualify to receive two (2) points.~~"

Commenter (34) recommended subparagraph (A) relating to the extended affordability period be reduced to one point and recommended that subparagraph (B) relating to historic preservation be eligible to receive two points.

STAFF RESPONSE: Staff agrees that it is appropriate to incentivize the use of the state historic tax credit. However, it would not be consistent with statute to introduce a scoring item that is worth a greater number of points than those included in §2306.6710. Staff is therefore recommending that an additional two points be awarded to applications that are utilizing this historic tax credit. Because this recommendation is based, in part, on the understanding that the leveraging of the historic credits can significantly reduce the number of competitive 9% HTCs per unit necessary to fund the development, staff is also requiring that these developments meet a certain level of competitive 9% HTCs per unit in order to be eligible for the points. Staff recommends the following change:

"(5) Extended Affordability or Historic Preservation. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) An Application may qualify to receive up to four (~~2~~4) points~~)~~ for this scoring item.

(A) In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Development Owners that agree to extend the affordability period for a Development to thirty-five (35) years total may receive two (2) points; or

(B) An Application includes a tax credit request amounting to less than or equal to $7,000 per HTC unit, that has received a letter from the Texas Historical Commission determining preliminary eligibility for historic (rehabilitation) tax credits and is proposing the use of historic (rehabilitation) tax credits (whether federal or state credits). ~~and providing documentation that an~~At least one existing building that will be part of the Development ~~will~~ must reasonably be ~~able~~ expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609. An Application may qualify to receive ~~two~~ four (~~4~~2) points under this provision."

33. §11.9(e)(7) – Selection Criteria – Development Size (23), (34), (35)

COMMENT SUMMARY: Commenters (23), (34) recommended this scoring item be eliminated citing that limiting the number of HTC units to 50 and the credit request to $500,000 does not improve the quality of the housing provided and in many cases results in less feasible developments.

Commenter (35) indicated the limitation of 50 units should remain, but recommended the cap of $500,000 on the funding request be replaced with a new cap based on the total credits available in a region to help improve the financial feasibility of 2014 developments that are funded. Commenter (35) further added that there are other scoring items that control development cost and the percent of credits requested to the total cost which by themselves effectively limit a project's credit request to about $500,000 to $600,000.

STAFF RESPONSE: Staff agrees with Commenters (23) and (34) and is recommending eliminating the limit on number of units. Staff also agrees with Commenter (35) with respect to

the financial viability of smaller transactions and sees value for the entire cycle in incentivizing requests that are within the limits of the sub-region. Staff is recommending the following change:

> "(7) ~~Development~~ Funding Request ~~Size~~Amount. An Application may qualify to receive one (1) point if the ~~Development is proposed to be fifty (50) total HTC Units or less and the~~ Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission, of ~~$500,000 or less~~no more than 100% of the amount available within the sub-region or set-aside as estimated by the Department as of December 1, 2013."

34. §11.10 – Challenges (19), (22), (26), (28), (40)

COMMENT SUMMARY: Commenter (19) requested clarification on what is meant by the following statement in this section "*the challenge must be received by the Department no later than seven (7) days after the Application Challenges Deadline as identified in §11.2 of this chapter…*" and further asserted, along with commenter (40) that the stated deadline in §11.2 should constitute a drop dead deadline just as all the other deadlines in the program.

Commenters (22), (28) suggested that if a challenge is not reviewed by staff for any reason, or if, as stated in this section, a matter even if raised as a challenge is determined by staff to be treated as an administrative deficiency and not as a challenge, then the challenge fee should be refunded to the challenger.

Commenter (26) requested the challenge determination be made at the Board level rather than staff level and further stated the applicant should have the opportunity to argue their challenge and present information to the Board and have the Board make the final determination since it involves the rules and policies they've approved. Moreover, commenter (26) suggested that in addition to the challenges themselves, the responses to the challenges in their entirety should be published rather than require someone to submit an open records request. Commenter (26) further stated that the challenge log that reflected staff determinations was vague and didn't fully capture the thought process or reasoning behind the determinations that were made; publishing the information online will help in this regard.

STAFF RESPONSE: In response to Commenter (19), staff is recommending clarifying language.

In response to Commenters (22) and (28), staff disagrees with the belief that the challenge fee should be refunded for any reason. Staff continually updates the development community on the competitive status of applications, and potential challengers can take into consideration, based on the competitive status of an application, whether or not staff will consider any application (and its corresponding challenges) a priority for review. Likewise, the review priority status of applications frequently changes, so a challenge that is not reviewed in July may very well be reviewed as late as December. Challengers choose what issues they would like to challenge including whether they want to challenge issues that are non-substantive in nature. Moreover, staff performs the same review and response regardless how whether the issue is resolved through the administrative deficiency process.

In response to Commenter (26), staff will consider posting the challenge responses online. Regardless of whether or not they are posted, they will still be available through an open records request. Additionally, staff is frequently available to clarify determinations made on challenged issues. However, staff does not recommend making any adjustments to the overall process with respect to board decisions. State statute (§2306.6715) clearly only allows applicants to appeal decisions made with respect to their own applications and specifically prohibits appeals about another application. Whether identified by an alternative term, crafting a process whereby the disposition of an issue in which one applicant disagrees with a staff decision concerning another unrelated applicant's application is inconsistent with the limitations expressed in statute.

Staff recommends the following change:
"(1) The challenge must be received by the Department no later than ~~seven (7) days after~~ the Application Challenges Deadline as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) and must be accompanied by the corresponding non-refundable challenge processing fee as described in §10.901 of this title (relating to Fee Schedule). Unless the required fee is received with the challenge, no challenge will be deemed to have been submitted, and the challenge fee must be paid for each Application challenged by a challenger."

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

INDEX OF COMMENTERS

(1) Texas Affiliation of Affordable Housing Providers (TAAHP)
(2) State Representative Roland Gutierrez
(3) San Antonio Housing Authority (SAHA)
(4) State Senator Leticia Van De Putte
(5) State Representative Ruth Jones McClendon
(6) Mayor Julian Castro, City of San Antonio
(7) Harris County Housing Authority
(8) Breck Kean, Prestwick Companies
(9) Darrell Jack, Apartment MarketData
(10) Steve Dieterichs, Corsicana Main Street Program
(11) Craig Lindholm, City of Texarkana
(12) Texarkana, Texas Historic Landmark Preservation Committee (Frances Holcombe, Gerry Archibald, Douglas Cogdill, Travestine Nash Turner, Georgia Randall)
(13) JoAnn Dunman
(14) State Representative Byron Cook
(15) Larry Foerster, Montgomery County Historical Commission
(16) Catherine Sak, Texas Downtown Association
(17) Joy Horak-Brown, New Hope Housing
(18) Robbye Meyer, Arx Advantage
(19) Bobby Bowling, Tropicana Building Corporation
(20) Justin Hartiz, LDG Development
(21) Barry Palmer, Coats Rose
(22) Sarah Anderson, S. Anderson Consulting
(23) Valentin DeLeon, DMA Development Company
(24) Chris Akbari, ITEX Group
(25) Doak Brown, Brownstone Affordable Housing
(26) Lora Myrick, BETCO Consulting
(27) Bob Stimson, Oak Cliff Chamber of Commerce
(28) Alyssa Carpenter, S. Anderson Consulting
(29) Neal Rackleff, City of Houston Housing and Community Development Department
(30) Marlon Sullivan, Rural Rental Housing Association of Texas
(31) Walter Moreau, Foundation Communities
(32) Debra Guerrero, NRP Group
(33) Gene Watkins
(34) Donna Rickenbacker, Marque Real Estate Consultants
(35) Sean Brady, REA Ventures
(36) Jay Collins, Charter Contractors
(37) Toni Jackson, Coats Rose
(38) Belinda Carlton, Texas Council for Developmental Disabilities
(39) John Henneberger (Texas Low Income Housing Information Service and Madison Sloan (Texas Appleseed)
(40) Stuart Shaw, Bonner Carrington
(41) State Representative's Debbie Riddle, Jodie Laubenberg, Trent Ashby, Dwayne Bohac, Travis Clardy, Brandon Creighton, Drew Darby, Pat Fallon, Allen Fletcher, Lance Gooden, Patricia Harless, Jeff Leach, Rick Miller, Tan Parker, Ron Simmons, Van Taylor, Scott Turner, Sylvester Turner
(42) Claire Palmer

(43) Main Street Texarkana Board of Directors
(44) Kim Youngquist, Hamilton Valley Management
(45) Ron Kowal, Austin Affordable Housing Corporation
(46) Barry Kahn, Hettig-Kahn
(47) Granger MacDonald, MacDonald Companies
(48) Jim Serran, Serran Company Landmark Group
(49) Mike Daniel, Inclusive Communities Project, Inc.

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Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC, Chapter 11, §§11.1 – 11.10, concerning the 2013 Housing Tax Credit Program Qualified Allocation Plan, without changes to the proposed text as published in the September 27, 2013 issue of the *Texas Register* (38 TexReg 6435) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the repeal will replace the sections with a new QAP applicable to the 2014 application cycle.

The Department accepted public comments between September 27, 2013 and October 21, 2013. Comments regarding the repeal sections were accepted in writing and by fax. No comments were received concerning the repeal section.

The Board approved the final order adopting the repeal section on November 7, 2013.

STATUTORY AUTHORITY. The repealed sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the repealed sections are adopted pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

§11.1 General
§11.2 Program Calendar for Competitive Housing Tax Credits
§11.3 Housing De-Concentration Factors
§11.4 Tax Credit Request and Award Limits
§11.5 Competitive HTC Set-Asides
§11.6 Competitive HTC Allocation Process
§11.7 Tie Breaker Factors
§11.8 Pre-Application Requirements
§11.9 Competitive Selection Criteria
§11.10 Challenges of Competitive HTC Applications

TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS
Building Homes. Strengthening Communities.

2014 Final Qualified Allocation Plan Scoring Criteria

	Scoring Rank	Scoring Item	Maximum Points
"Top Eleven" Scoring Items (Tx Government Code Sec. 2306.6710)	1	Financial Feasibility	18
	2	Local Government Support	17
	3	Income Levels of Tenants	16
	4	Size and Quality of Units	15
	5	Commitment of Funding by LPS	14
	6	Rent Levels of Tenants	13
	7	Cost of Development per Square Foot	12
	8	Tenant Services	11
	9	Declared Disaster Area	10
	10	Quantifiable Community Participation evaluated based on input from neighborhood organizations	9
	11	Community Support by State Representative	8
"Below the Line" Scoring Items	12	Opportunity Index	7
	13	Pre-application Participation	6
	14	Community Revitalization Plan	6
	15	Input from Community Organizations	4
	16	Leveraging of Private, State and Federal	3
	17	Educational Excellence	3
	18	Underserved Area	2
	19	Tenant Populations with Special Housing Needs	2
	20	Extended Affordability or Historic Preservation	2
	21	Right of First Refusal	1
	22	Development Size	1
	23	Sponsor Characteristics	1
	24	Location Outside of Food Deserts	1

§11.1. General.

(a) Authority. The rules in this chapter apply to the awarding and allocation by the Texas Department of Housing and Community Affairs (the "Department") of Housing Tax Credits. The federal laws providing for the awarding and allocation of Housing Tax Credits require states to adopt a qualified allocation plan. Pursuant to Texas Government Code, Chapter 2306, Subchapter DD, the Department is assigned responsibility for this activity. As required by Internal Revenue Code (the "Code"), §42(m)(1), the Department has developed this Qualified Allocation Plan (QAP) and it has been duly approved to establish the procedures and requirements relating to an award and allocation of Housing Tax Credits. All requirements herein and all those applicable to a Housing Tax Credit Development or an Application under Chapter 10 of this title (relating to Uniform Multifamily Rules), or otherwise incorporated by reference herein collectively constitute the QAP required by Texas Government Code, §2306.67022.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP or be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and/or the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application. These rules may need to be applied to facts and circumstances not contemplated at the time of their creation and adoption. When and if such situations arise the Board will use a reasonableness standard in evaluating and addressing Applications for Housing Tax Credits.

(c) Competitive Nature of Program. Applying for competitive housing tax credits is a technical process that must be followed completely. As a result of the highly competitive nature of applying for tax credits, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants should further ensure that all required documents are included, legible, properly organized, and tabbed, and that materials in required formats involving digital media are complete and fully readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Staff, when accepting Applications, may conduct limited reviews at the time of intake as a courtesy only. If staff misses an issue in such a limited review, the fact that the Application was accepted by staff or that the issue was not identified does not operate to waive the requirement or validate the completeness, readability, or any other aspect of the Application.

(d) Definitions. The capitalized terms or phrases used herein are defined in §10.3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Any capitalized terms that are defined in Texas Government Code, Chapter 2306, §42 of the Code, or other Department rules have, when capitalized, the meanings ascribed to them therein. Defined terms when not capitalized, are to be read in context and construed according to common usage.

(e) Census Data. Where this chapter requires the use of census or American Community Survey data, the Department shall use the most current data available as of October 1, 2013, unless specifically otherwise provided in federal or state law or in the rules. The availability of more current data shall generally be disregarded.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted on or before 5:00 PM Central Standard Time on the day of the deadline.

§11.2. Program Calendar for Competitive Housing Tax Credits.

Non-statutory deadlines specifically listed in the Program Calendar may be extended for good cause by the Executive Director for a period of not more than five (5) business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline. Extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party.

Deadline	Documentation Required
1~~2~~/~~16~~02/201~~3~~4	Application Acceptance Period Begins.
01/16/2014	Pre-Application Final Delivery Date (including pre-clearance and waiver requests).
02/28/2014	Full Application Delivery Date (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Property Condition Assessments (PCAs); Appraisals; Market Analysis Summary; Site Design and Development Feasibility Report; and all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors).
04/01/2014	Final Input from Elected Officials Delivery Date (including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5) (after opportunity to review materially complete Applications)). Market Analysis Delivery Date pursuant to §10.205 of this title.
05/01/2014	Challenges to Neighborhood Organization Opposition Delivery Date.
05/~~15~~07/2014	Application Challenges Deadline.
Mid-May	Final Scoring Notices Issued for Majority of Applications Considered "Competitive."
06/13/2014	Deadline for public comment to be included in a summary to the Board at a posted meeting.

Deadline	Documentation Required
June	Release of Eligible Applications for Consideration for Award in July.
July	Final Awards.
Mid-August	Commitments are Issued.
11/03/2014	Carryover Documentation Delivery Date.
07/01/2015	10 Percent Test Documentation Delivery Date.
12/31/2016	Placement in Service.
Five (5) business days after the date on the Deficiency Notice (without incurring point loss)	Administrative Deficiency Response Deadline (unless an extension has been granted).

§11.3. Housing De-Concentration Factors.

(a) Two Mile Same Year Rule (Competitive HTC Only). As required by Texas Government Code, §2306.6711(f), staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application within said county that is awarded in the same calendar year.

(b) Twice the State Average Per Capita. As provided for in Texas Government Code, §2306.6703(a)(4), if a proposed Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins (or for Tax-Exempt Bond Developments at the time the Certificate of Reservation is issued by the Texas Bond Review Board), the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must include a resolution adopted by the Governing Body of the municipality or county, as applicable, setting forth a written statement of support, specifically citing Texas Government Code, §2306.6703(a)(4) in the text of the actual adopted resolution, and authorizing an allocation of Housing Tax Credits for the Development. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) or Resolutions Delivery Date in §10.4 of this title (relating to Program Dates), as applicable.

(c) One Mile Three Year Rule. (§2306.6703(a)(3))

(1) An Application that proposes the New Construction or Adaptive Reuse of a Development that is located one linear mile or less (measured between closest boundaries by a straight line on a map) from another development that meets all of the criteria in subparagraphs (A) – (C) of this paragraph shall be considered ineligible.

(A) The development serves the same type of household as the proposed Development, regardless of whether the Development serves families, elderly individuals, or another type of household; and

(B) The development has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and

(C) The development has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a Development:

(A) that is using federal HOPE VI (or successor program) funds received through HUD;

(B) that is using locally approved funds received from a public improvement district or a tax increment financing district;

(C) that is using funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.);

(D) that is using funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.);

(E) that is located in a county with a population of less than one million;

(F) that is located outside of a metropolitan statistical area; or

(G) that the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(3) Where a specific source of funding is referenced in paragraph (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application or prior to the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(d) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 20 percent Housing Tax Credit Units per total households as established by the 5-year American Community Survey shall be considered ineligible unless:

(1) the Development is in a Place that has a population is less than 100,000; or

(2) the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and submits to the Department a resolution referencing this rule. In providing a resolution a municipality or county should consult its own staff and legal counsel to as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any FHAST form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(e) Developments in Certain Sub-Regions and Counties. In the 2014 Application Round the following Counties are ineligible for Qualified Elderly Developments: ~~Wichita;~~ Collin; Denton; Ellis; Johnson; ~~Henderson;~~ Hays; and ~~Lamar; Gillespie;~~ Guadalupe~~; Kendall; and Starr~~, unless the Application is made in a Rural Area. In the 2014 Application Round Regions five (5); six (6); and eight (8) are ineligible for Qualified Elderly

Developments, unless the Application is made in a Rural Area. These limitations will be reassessed prior to the 2015 Application Round and are based on the fact that data evaluated by the Department has shown that in the ineligible areas identified above, the percentage of qualified elderly households residing in rent restricted tax credit assisted units exceeds the percentage of the total Qualified Elderly-eligible low income population for that area.

(f) Additional Phase. Applications proposing an additional phase of an existing tax credit Development serving the same Target Population, or Applications proposing Developments that are adjacent to an existing tax credit Development serving the same Target Population, or Applications that are proposing a Development serving the same Target Population on a contiguous site to another Application awarded in the same program year, shall be considered ineligible unless the other Developments or phase(s) of the Development have been completed and have maintained occupancy of at least 90 percent for a minimum six (6) month period as reflected in the submitted rent roll. If the Application proposes the Rehabilitation or replacement of existing federally-assisted affordable housing units or federally-assisted affordable housing units demolished on the same site within two years of the beginning of the Application Acceptance Period, this provision does not apply.

§11.4. Tax Credit Request and Award Limits.

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater than $3 million in a single Application Round. All entities that are under common Control are Affiliates. For purposes of determining the $3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate or Guarantor solely because it:

(1) raises or provides equity;

(2) provides "qualified commercial financing;"

(3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or

(4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments and other Developments in which an entity that is exempt from federal income taxes owns at least 50% of the General Partner) to be paid or $150,000, whichever is greater.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the sub-region based on estimates released by the Department on December 1, or $1,500,000, whichever is less, or $2,000,000 for Applications under the At-Risk Set-Aside. The Department will consider the amount in the Funding Request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than $2 million in a single Application Round. (§2306.6711(b))

(c) Increase in Eligible Basis (30 percent Boost). Applications will be evaluated for an increase of up to but not to exceed 30 percent in Eligible Basis provided they meet the criteria identified in paragraph (1) or (2) of this subsection. Staff will recommend no increase or a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. The criteria in paragraph (2) of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20 percent Housing Tax Credit Units

per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. For New Construction or Adaptive Reuse ~~any~~ Developments located in a ~~census tract~~QCT with 20 percent or greater Housing Tax Credit Units per total households, the Development is eligible for the boost if ~~a~~ the Application includes a resolution ~~is submitted. T~~stating that the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and ~~submits to the Department a resolution~~ referencing this rule. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable. Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT.

(2) The Development meets one of the criteria described in subparagraphs (A) - (D) of this paragraph pursuant to §42(d)(5) of the Code:

(A) the Development is located in a Rural Area;

(B) the Development is proposing entirely Supportive Housing and is expected to be debt free or have no foreclosable or non-cash flow debt;

(C) the Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria);

(D) the Applicant elects to restrict an additional 10 percent of the proposed low income Units for households at or below 30 percent of AMGI. These Units must be in addition to Units required under any other provision of this chapter; and~~.~~

(E) the Development is a non-Qualified Elderly Development not located in a QCT that is in an area covered by a community revitalization plan. A Development will be considered to be in an area covered by a community revitalization plan if it is eligible for and elects points under §11.9(d)(7) of the chapter.

§11.5. Competitive HTC Set-Asides (§2306.111(d)) This section identifies the statutorily-mandated set-asides which the Department is required to administer. An Applicant may elect to compete in each of the set-asides for which the proposed Development qualifies.

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)) At least 10 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of §42(h)(5) of the Code and Texas Government Code, §2306.6729 and §2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this set-aside (*e.g.,* greater than 50 percent ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, for Qualified Nonprofit Development in the Nonprofit Set-Aside the nonprofit entity or its nonprofit Affiliate or subsidiary must be the Developer or a co-Developer as evidenced in the development agreement. An Applicant that meets the requirements to be in the Qualified Nonprofit Set-Aside is deemed to be applying under that set-aside unless their Application specifically includes an affirmative election to not be treated under that set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department reserves the right to request a change in this election and/or not recommend credits for those unwilling to change elections if insufficient Applications in the Nonprofit Set-Aside are received. Applicants may not use different organizations to satisfy the state and federal requirements of the set-aside.

(2) USDA Set-Aside. (§2306.111(d-2)) At least 5 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this set-aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-Aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region and will compete within the applicable sub-region. Commitments of Competitive Housing Tax Credits issued by the Board in the current program year will be applied to each set-aside, Rural Regional Allocation, Urban Regional Allocation and/or USDA Set-Aside for the current Application Round as appropriate. Applications must also meet all requirements of Texas Government Code, §2306.111(d-2).

(3) At-Risk Set-Aside. (§2306.6714; §2306.6702)

(A) At least 15 percent of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-Aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6 of this chapter (relating to Competitive HTC Allocation Process). Through this set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to 5 percent of the State Housing Credit Ceiling associated with this set-aside may be given priority to Rehabilitation Developments under the USDA Set-Aside.

(B) An At-Risk Development must meet all the requirements of Texas Government Code, §2306.6702(a)(5). For purposes of this subparagraph, any stipulation to maintain affordability in the contract granting the subsidy, or any federally insured mortgage will be considered to be nearing expiration or nearing the end of its term if expiration will occur or the term will end within two (2) years of July 31 of the year the Application is submitted. Developments with HUD-insured mortgages qualifying as At-Risk under §2306.6702(a)(5) may be eligible if the HUD-insured mortgage is eligible for prepayment without penalty. To the extent that an Application is eligible under §2306.6705(a)(5)(B)(ii)(b) and the units being reconstructed were demolished prior to the beginning of the Application Acceptance Period, the Application will be categorized as New Construction.

(C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Texas Government Code, §2306.6702(a)(5) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. Alternatively, an Applicant may propose relocation of the existing units in an otherwise qualifying At-Risk Development if:

(i) the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred to the Development Site (*i.e.* the site proposed in the tax credit Application) prior to the tax credit Commitment deadline ~~February 28, 2013~~;

(ii) the Applicant seeking tax credits must propose the same number of restricted units (*e.g.* the Applicant may add market rate units); and

(iii) the new Development Site must qualify for points on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria).

(D) Developments must be at risk of losing affordability from the financial benefits available to the Development and must retain or renew the existing financial benefits and affordability unless regulatory barriers necessitate elimination of a portion of that benefit for the Development. For Developments qualifying under §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25 percent of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1))

(E) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under §42 of the Code. Evidence must be provided in the form of a copy of the recorded LURA, the first years' IRS Forms 8609 for all buildings showing Part II of the form

completed and, if applicable, documentation from the original application regarding the right of first refusal.

(F) An amendment to any aspect of the existing tax credit property sought to enable the Development to qualify as an At-Risk Development, that is submitted to the Department after the Application has been filed and is under review will not be accepted.

§11.6. Competitive HTC Allocation Process. This section identifies the general allocation process and the methodology by which awards are made.

(1) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region ("sub-region") Housing Tax Credits in an amount consistent with the Regional Allocation Formula developed in compliance with Texas Government Code, §2306.1115. The process of awarding the funds made available within each sub-region shall follow the process described in this section. Where a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate a recommendation for the Board's consideration based on the objectives of regional allocation together with other policies and purposes set out in Texas Government Code, Chapter 2306 and the Department shall provide Applicants the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the priority of Applications within a particular sub-region or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the $3 million credit limit per Applicant, the Department will make its recommendation by selecting the Development(s) that most effectively satisfy the Department's goals in meeting set-aside and regional allocation goals. Where sufficient credit becomes available to award an application on the waiting list late in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline to ensure to the fullest extent feasible that available resources are allocated by December 31.

(2) Credits Returned and National Pool Allocated After January 1. For any credits returned after January 1 and eligible for reallocation, the Department shall first return the credits to the sub-region or set-aside from which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may ultimately flow from the sub-region and be awarded in the collapse process to an Application in another region, sub-region or set-aside. For any credit received from the "national pool" after the initial approval of awards in late July, the credits will be added to and awarded to the next Application on the waiting list for the state collapse.

(3) Award Recommendation Methodology. (§2306.6710(a) - (f); §2306.111) The Department will assign, as described herein, Developments for review by the program and underwriting divisions. In general, Applications will be prioritized for assignment, with highest priority given to those identified as most competitive based upon the Applicant self-score and an initial program review. The procedure identified in subparagraphs (A) - (F) of this paragraph will also be used in making recommendations to the Board.

(A) USDA Set-Aside Application Selection (Step 1). The first level of priority review will be those Applications with the highest scores in the USDA Set-Aside until the minimum requirements stated in §11.5(2) of this chapter (relating to Competitive HTC Set-Asides. (§2306.111(d))) are attained. The minimum requirement may be exceeded in order to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement;

(B) At-Risk Set-Aside Application Selection (Step 2). The second level of priority review will be those Applications with the highest scores in the At-Risk Set-Aside statewide until the minimum requirements stated in §11.5(3) of this chapter are attained. This may require the minimum requirement to be exceeded to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement. This step may leave less than originally anticipated in the 26 sub-regions to award under the remaining steps, but these funds would generally come from the statewide collapse;

(C) Initial Application Selection in Each Sub-Region (Step 3). The highest scoring Applications within each of the 26 sub-regions will then be selected provided there are sufficient funds within the sub-region to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the sub-regions;

(D) Rural Collapse (Step 4). If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region ("Rural sub-region") that remain after award under subparagraph (C) of this paragraph, those tax credits shall be combined into one "pool" and then be made available in any other Rural Area in the state to the Application in the most underserved Rural sub-region as compared to the sub-region's allocation. This rural redistribution will continue until all of the tax credits in the "pool" are allocated to Rural Applications and at least 20 percent of the funds available to the State are allocated to Applications in Rural Areas. (§2306.111(d)(3)) In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) – (ii) of this subparagraph will be used to select the next most underserved sub-region:

(i) the sub-region with no recommended At-Risk Applications from the same Application Round; and

(ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any sub-region in the State, will be combined into one "pool." The funds will be used to award the highest scoring Application (not selected in a prior step) in the most underserved sub-region in the State compared to the amount originally made available in each sub-region. This process will continue until the funds remaining are insufficient to award the next highest scoring Application in the next most underserved sub-region. In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved sub-region:

(i) the sub-region with no recommended At-Risk Applications from the same Application Round; and

(ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(F) Contingent Qualified Nonprofit Set-Aside Step (Step 6). If an insufficient number of Applications participating in the Nonprofit Set-Aside are selected after implementing the criteria described in subparagraphs (A) – (E) of this paragraph to meet the requirements of the 10 percent Nonprofit Set-Aside, action must be taken to modify the criteria described in subparagraphs (A) – (E) of this paragraph to ensure the set-aside requirements are met. Therefore, the criteria described in subparagraphs (C) – (E) of this paragraph will be repeated after selection of the highest scoring Application(s) under the Nonprofit Set-Aside statewide are selected to meet the minimum requirements of the Nonprofit Set-Aside. This step may cause some lower scoring Applications in a sub-region to be selected instead of a higher scoring Application not participating in the Nonprofit Set-Aside.

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. ~~Applications on the waiting list are selected for an award when the remaining balance of tax credits is sufficient to award the next Application on the waiting list.~~ The waiting list is not static. The allocation process will be used in determining the Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or sub-region from which they were originally awarded. This means that the first Application on the waiting list is in part contingent on the nature of the credits that became available for award. The Department shall hold all credit available after the late-July awards until September 30 in order to collect credit that may become available when tax credit Commitments are submitted. Credit confirmed to be available, as of September 30, may be awarded to Applications on the waiting list unless insufficient credits are available to fund the next Application on the waiting list. For credit returned after September 30, awards from the waiting list will be made when the remaining balance is sufficient to award the next

Application on the waiting list based on the date(s) of returned credit. Notwithstanding the foregoing, if decisions related to any returns or rescissions of tax credits are under appeal or are otherwise contested, the Department may delay awards until resolution of such issues. (§2306.6710(a) - (f); §2306.111)

§11.7. Tie Breaker Factors. In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or statewide collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. The tie breaker factors are not intended to specifically address a tie between equally underserved sub-regions in the rural or statewide collapse.

(1) Applications scoring higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

(2) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. The linear measurement will be performed from closest boundary to closest boundary.

§11.8. Pre-Application Requirements (Competitive HTC Only).

(a) General Submission Requirements. The pre-application process allows Applicants interested in pursuing an Application to assess potential competition across the thirteen (13) state service regions, sub-regions and set-asides. Based on an understanding of the potential competition they can make a more informed decision whether they wish to proceed to prepare and submit an Application. A complete pre-application is a pre-application that meets all of the Department's criteria, as outlined in subsections (a) and (b) of this section, with all required information and exhibits provided pursuant to the Multifamily Programs Procedures Manual.

(1) The pre-application must be submitted, along with the required pre-application fee as described in §10.901 of this title (relating to Fee Schedule), no later than the Pre-application Final Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). If such pre-application and corresponding fee are not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

(2) The pre-application shall consist of one (1) CD-R containing a PDF copy and Excel copy submitted to the Department in the form of single files as required in the Multifamily Programs Procedures Manual.

(3) Only one pre-application may be submitted by an Applicant for each Development Site.

(4) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the pre-application is more limited in scope than an Application, pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as a full Application, and pre-applications will thus be subject to the same consequences for violation, including but not limited to loss of points and termination of the pre-application.

(b) Pre-Application Threshold Criteria. Pursuant to Texas Government Code, §2306.6704(c) pre-applications will be terminated unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection:

(1) Submission of the competitive HTC pre-application in the form prescribed by the Department which identifies at a minimum:

(A) Site Control meeting the requirements of §10.204(9) of this title (relating to Required Documentation for Application Submission);

(B) Funding request;

(C) Target Population;

(D) Requested set-asides (At-Risk, USDA, Nonprofit, and/or Rural);

(E) Total Number of Units proposed;

(F) Census tract number in which the Development Site is located; and

(G) Expected score for each of the scoring items identified in the pre-application materials;

(2) Evidence in the form of a certification provided in the pre-application, that all of the notifications required under this paragraph have been made. (§2306.6704)

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the local elected officials, or that the Applicant has knowledge of as of the date of pre-application submission. It is the responsibility of the Applicant to identify all such Neighborhood Organizations.

(B) Notification Recipients. No later than the date the pre-application is submitted, notification must be sent to all of the persons or entities prescribed in clauses (i) – (viii) of this subparagraph. Developments located in an ETJ of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format required in the Pre-application Notification Template provided in the pre-application. The Applicant is encouraged to retain proof of delivery in the event the Department requires proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of delivery for fax and e-mail. Officials to be notified are those officials in office at the time the pre-application is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

(i) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site;

(ii) Superintendent of the school district in which the Development Site is located;

(iii) Presiding officer of the board of trustees of the school district in which the Development Site is located;

(iv) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(v) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(vi) Presiding officer of the Governing Body of the county in which the Development Site is located;

(vii) All elected members of the Governing Body of the county in which the Development Site is located; and

(viii) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(C) Contents of Notification.

(i) The notification must include, at a minimum, all of the information described in subclauses (I) – (VI) of this clause.

(I) the Applicant's name, address, an individual contact name and phone number;

(II) the Development name, address, city and county;

(III) a statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(IV) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;

(V) the physical type of Development being proposed (*e.g.* single family homes, duplex, apartments, townhomes, high-rise etc.); and

(VI) the approximate total number of Units and approximate total number of low-income Units.

(ii) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve the elderly unless 100 percent of the Units will be for Qualified Elderly and it may not indicate that it will target or prefer any subpopulation unless such targeting or preference is in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

(c) Pre-application Results. Only pre-applications which have satisfied all of the pre-application requirements, including those in §11.9(e)(3) of this chapter, will be eligible for pre-application points. The order and scores of those Developments released on the Pre-application Submission Log do not represent a Commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the Pre-application Submission Log. Inclusion of a pre-application on the Pre-application Submission Log does not ensure that an Applicant will receive points for a pre-application.

§11.9. Competitive HTC Selection Criteria.

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsections (b) - (e) of this section include those items required under Texas Government Code, Chapter 2306, §42 of the Code, and other criteria established in a manner consistent with Chapter 2306 and §42 of the Code. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. Due to the highly competitive nature of the program, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency. However, Department staff may provide the Applicant an opportunity to explain how they believe the Application, as submitted, meets the requirements for points or otherwise satisfies the requirements.

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)) An Application may qualify for up to fifteen (15) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (8 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form.

(i) five-hundred fifty (550) square feet for an Efficiency Unit;

(ii) six-hundred fifty (650) square feet for a one Bedroom Unit;

(iii) eight-hundred fifty (850) square feet for a two Bedroom Unit;

(iv) one-thousand fifty (1,050) square feet for a three Bedroom Unit; and

(v) one-thousand two-hundred fifty (1,250) square feet for a four Bedroom Unit.

(B) Unit and Development Features (7 points). Applicants that elect in an Application to provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded

points based on the point structure provided in §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) (1 point). An Application may qualify to receive one (1) point provided the ownership structure contains a HUB~~, as~~ certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date, or Qualified Nonprofit Organization~~,~~ provided the Application is under the Nonprofit Set-Aside. The HUB or Qualified Nonprofit Organization must have~~,~~ ~~has~~ some combination of ownership interest in the General Partner of the Applicant, cash flow from operations, and developer fee which taken together equal at least 80 percent and no less than 5 percent for any category. For example, a HUB or Qualified Nonprofit Organization may have 20 percent ownership interest, 30 percent of the developer fee, and 30 percent of cash flow from operations. The HUB or Qualified Nonprofit Organization must also materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. ~~The~~A Principal~~s~~ of the HUB or Qualified Nonprofit Organization cannot be a Related Party to any other Principal~~s~~ of the Applicant or Developer (excluding another Principal~~s~~ of said HUB or Qualified Nonprofit Organization).

(c) Criteria to serve and support Texans most in need.

(1) Income Levels of Tenants. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(I)) An Application may qualify for up to sixteen (16) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A) or (B) of this paragraph.

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs:

(i) At least 40 percent of all low-income Units at 50 percent or less of AMGI (16 points);

(ii) At least 30 percent of all low income Units at 50 percent or less of AMGI (14 points); or

(iii) At least 20 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph:

(i) At least 20 percent of all low-income Units at 50 percent or less of AMGI (16 points);

(ii) At least 15 percent of all low-income Units at 50 percent or less of AMGI (14 points); or

(iii) At least 10 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(G)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. These levels are in addition to those committed under paragraph (1) of this subsection.

(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments qualifying under the Nonprofit Set-Aside only (13 points);

(B) At least 10 percent of all low-income Units at 30 percent or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low-income Units at 30 percent or less of AMGI (11 points); or

(C) At least 5 percent of all low-income Units at 30 percent or less of AMGI (7 points).

(3) Tenant Services. (§2306.6710(b)(1)(I) and §2306.6725(a)(1)) A Supportive Housing Development qualifying under the Nonprofit Set-Aside may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points. By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §10.101(b)(7) of this

title, appropriate for the proposed tenants and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application will remain the minimum. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

(4) Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials.

(A) For Developments located in an Urban Area, if the proposed Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (or 35 percent for Developments in Regions 11 and 13), an Application may qualify to receive up to seven (7) points upon meeting the additional requirements in clauses (i) – (iv) of this subparagraph. The Department will base poverty rate on data from the five (5) year American Community Survey.

(i) the Development targets the general population or Supportive Housing, the Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (7 points);

(ii) the Development targets the general population or Supportive Housing, the Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (5 points);

(iii) any Development, regardless of population served, if the Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable (3 points); or

(iv) any Development, regardless of population served, if the Development Site is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (1 point).

(B) For Developments located in a Rural Area, an Application may qualify to receive up to seven (7) cumulative points based on median income of the area and/or proximity to the essential community assets as reflected in clauses (i) – (v) of this subparagraph if the Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (35 percent for regions 11 and 13) or within a census tract with income in the top or second quartile of median household income for the county or MSA as applicable or within the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement.

(i) The Development Site is located within the attendance zone and within one linear mile of an elementary, middle, or high school with a Met Standard rating. (For purposes of this clause only, any school, regardless of the number of grades served, can count towards points. However, schools without ratings, unless paired with another appropriately rated school, or schools with a Met Alternative Standard rating, will not be considered.) (3 points);

(ii) The Development Site is within one linear mile of a ~~school-age before or after-school program that meets the minimum standards established~~center that is licensed by the Department of Family and Protective Services ~~for such~~specifically to provide a school-age program~~s~~ (2 points);

(iii) The Development Site is located within one linear mile of a full service grocery store (2 points);

(iv) The Development Site is located within one linear mile of a ~~child care~~ center that is licensed by the Department of Family and Protective Services ~~and~~to provide ~~s day~~a child care program for ~~children ages 6 months through 5 years~~infants, toddlers, and pre-kindergarten, at a minimum (2 points);

~~(v) The Development Site is located in a census tract with income in the top or second quartile of median household income for the county or MSA as applicable (3 points);~~

(v~~i~~) The Development is a Qualified Elderly Development and the Development Site is located within one linear mile of a senior center (2 points); and/or

(vi~~i~~) ~~Development is a Qualified Elderly Development and t~~The Development Site is located within one linear mile of a health related facility (~~2~~1 point~~s~~).

(C) An elementary school attendance zone for the Development Site does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary schools that may possibly be attended by the tenants. The applicable school rating will be the 2013 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions.

(5) Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools that have achieved a 77 or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency, provided that the schools also have a Met Standard rating. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary, middle, or high schools, respectively, which may possibly be attended by the tenants. The applicable school rating will be the 2013 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with the appropriate rating (3 points); or

(B) The Development Site is within the attendance zone of an elementary school and either a middle school or high school with the appropriate rating (1 point).

(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive two (2) points for general population or Supportive Housing Developments if the Development Site is located in one of the areas described in subparagraphs (A) – (D) of this paragraph.

(A) A Colonia;

(B) An Economically Distressed Area;

(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development; or

(D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population.

(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive two (2) points to meet the Special Housing Needs of the State if the Applicant agrees to participate in the Department's Section 811 Project Rental Assistance Demonstration Program (Section 811 Program) and the Development Site meets the requirements in subparagraph (A) of this paragraph. Development Sites not meeting the requirements in subparagraph (A) of this paragraph may qualify under subparagraph (C) of this paragraph.

(A) Applications meeting the following requirements are eligible to receive two (2) points if they agree to commit at least 10 units (or the maximum allowed) for participation in the Section 811 Program as described in subparagraph (B) of this paragraph. The maximum number of units allowed will be restricted by the Department's Integrated Housing Rule, §1.15 of this title, and the Section 811 Program integration requirements, (the total number of units set-aside for persons with disabilities, including Section 811 units, cannot exceed 18 percent of Units for Developments of 50 Units or more or exceed 25 percent for Developments with less than 50 Units).

(i) The Development must target the general population or be Supportive Housing;

(ii) The units committed to the Section 811 Program in the Development must not have any other sources of project-based rental or operating assistance; and

(iii) The Development Site must be located in one of the following areas: Austin-Round Rock MSA; Brownsville-Harlingen MSA; Dallas-Fort Worth-Arlington MSA; El Paso MSA; Houston-The Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA.

(B) Applicants seeking points under subparagraph (A) and this paragraph are required to satisfy the requirements of the Section 811 Program as outlined in the Section 811 Program guidance and contracts unless a specific requirement of the Section 811 Program is otherwise waived by the Board. The Section 811 Program provides project-based rental assistance to Developments to serve extremely low income persons with disabilities (who meet target population requirements and are age 18 and over, but less than 62 years of age) who are referred to each participating Development by the Department. Participation in the Section 811 Program requires execution of a Rental Assistance Contract by the later of Carryover Allocation deadline or upon preparation of a Rental Assistance Contract by the Department. Because HUD has not yet released Section 811 Program guidance or agreements between the Department and HUD, the Board may make adjustments or accommodations for participation of each Applicant in this Program, however, once elected, Applicants may not withdraw their commitment to participate in the Section 811 Program unless so authorized by the Board or as a result of program eligibility issues. Should an Applicant receive a Housing Tax Credit award, the Department may allow Applicants to identify an alternate existing Development in the Applicant's or an Affiliate's portfolio, consistent with Department Section 811 Program criteria, to participate in the Section 811 Program.

(C) Only if the Applicant that is making application for a Development Site does not meet the requirements in subparagraph (A) of this paragraph may an Application qualify for points under this subparagraph. An Application will receive two points for Developments for which at least 5 percent of the Units are set aside for Persons with Special Needs. For purposes of this scoring item, Persons with Special Needs is defined as households where one individual has ~~with~~ alcohol and/or drug addictions, Colonia resident, Persons with Disabilities, Violence Against Women~~Woman~~ Act

Protections (domestic violence, dating violence, sexual assault, and stalking), persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and migrant farm workers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Needs~~households with special needs~~, but will be required to continue to affirmatively market Units to Persons with Special Needs~~households with special needs~~.

~~(8) Location Outside of "Food Deserts". An Application with a Development Site that is located outside of a "food desert" qualifies for one (1) point. A food desert is a census tract identified as low income and low access at one (1) mile for urban areas and ten (10) miles for rural areas (also known as the Original Food Desert measure) based on the U. S. Department of Agriculture's Food Access Research Atlas. Applicants must submit a map using the Food Access Research Atlas indicating that the Development Site is not located in a food desert. Applicants can access said map at http://www.ers.usda.gov/data-products/food-access-research-atlas/. If the location of the map or data changes, the Department will provide updated information concerning accessing the map or data on the Department's website.~~

(d) Criteria promoting community support and engagement.

(1) Local Government Support. An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) – (C) of this paragraph, as applicable. The resolution(s) must be dated prior to April 1, 2014 and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution a municipality or county should consult its own staff and legal counsel to as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any FHAST form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

(A) Within a municipality, the Application will receive:

(i) seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(B) Within the extraterritorial jurisdiction of a municipality, the Application may receive points under clauses (i) or (ii) of this subparagraph and under clauses (iii) or (iv) of this subparagraph:

(i) eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; and

(iii) eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(iv) seven (7) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

(i) seventeen (17) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(ii) fourteen (14) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6710(b)(1)(E)) An Application may receive up to fourteen (14) points for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located. Development funding from instrumentalities of a city or county will not qualify for points under this scoring item unless such instrumentalities first award the funds to the city or county for their administration, at least 60 percent of the governing board of the instrumentality consists of city council members from the city in which the Development Site is located (if located in a city) or county commissioners from the county in which the Development Site is located, or 100 percent of the governing board of the instrumentality is appointed by the elected officials of the city in which the Development Site is located (if located within a city) or county in which the Development Site is located. The government instrumentality providing Development funding under this scoring item may not be a Related Party to the Applicant. Development funding must be provided in the form of a construction and/or permanent loan with an interest rate no higher than 3 percent per annum and term of at least 5 years, a grant, an in-kind contribution, a contribution which will support the Development, such as vouchers, or combination thereof. Funds cannot have been provided to the Local Political Subdivision by the Applicant or a Related Party. Should the Local Political Subdivision borrow funds in order to commit funding to the Development, the Applicant or a Related Party to the Applicant can provide collateral or guarantees for the loan only to the Local Political Subdivision. HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas cannot be utilized for points under this scoring item except where the city, county, or instrumentality is an actual applicant for and subrecipient of such funds for use in providing financial support to the proposed Development. The Applicant must provide evidence in the Application that an application or request for the development funds has been submitted in the form of an acknowledgement from the applicable city or county. The acknowledgement must also state that a final decision with regard to the awards of such funding is expected to occur no later than September 1. A firm commitment of funds is required by Commitment or points will be lost (except for Applicants electing the point under subparagraph (C) of this paragraph). While the specific source can change, the funding secured must have been eligible at the time the Application was submitted.

(A) Option for Development Sites located in the ETJ of a municipality. For an Application with a Development Site located in the ETJ of a municipality, whether located in an unincorporated Place or not, the Applicant may seek Development funding from the municipality or a qualifying instrumentality of the municipality, provided the Applicant uses the population of said municipality as the basis for determining the Application's eligible points under subparagraph (B) of this paragraph. Applicants are encouraged to contact Department staff where an Applicant is uncertain of how to determine the correct Development funding amounts or qualifying Local Political Subdivisions.

(B) Applications will qualify for points based on the amount of funds at the levels described in clauses (i) – (v) of this subparagraph. For the purpose of this calculation, the Department will use the population of the Place from which the Development Site's Rural or Urban Area designation is derived.

(i) eleven (11) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.15 in funding per Low Income Unit or $15,000 in funding per Low Income Unit;

(ii) ten (10) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.10 in funding per Low Income Unit or $10,000 in funding per Low Income Unit;

(iii) nine (9) points for a commitment by a Local Political Subdivision of the lesser of population of the Place multiplied by a factor of 0.05 in funding per Low Income Unit or $5,000 in funding per Low Income Unit;

(iv) eight (8) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.025 in funding per Low Income Unit or $1,000 in funding per Low Income Unit; or

(v) seven (7) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.01 in funding per Low Income Unit or $500 in funding per Low Income Unit.

(C) Two (2) points may be added to the points in subparagraph (B) (i) – (v) of this paragraph and subparagraph (D) of this paragraph if the Applicant provides a firm commitment for funds in the form of a resolution from the Local Political Subdivision and provides a commitment for the same source(s) at Commitment. The resolution must reflect terms that are consistent with the requirements of this paragraph.

(D) One (1) point may be added to the points in subparagraph (B)(i) – (v) of this paragraph and subparagraph (C) of this paragraph if the financing to be provided is in the form of a grant or in-kind contribution meeting the requirements of this paragraph or a permanent loan with a minimum term of fifteen (15) years, minimum amortization period of thirty (30) years, and interest rate no higher than 3 percent per annum. An Applicant must certify that they intend to maintain the Development funding for the full term of the funding, barring unanticipated events. For Applicants electing this additional point that have not yet received an award or commitment, the structure of the funds will be reviewed at Commitment for compliance with this provision.

(3) Declared Disaster Area. (§2306.6710(b)(1)) An Application may receive ten (10) points if at the time of Application submission or at any time within the two-year period preceding the date of submission, the Development Site is located in an area declared to be a disaster area under the Texas Government Code, §418.014.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(B); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in existence prior to the Pre-Application Final Delivery Date, and its boundaries must contain the Development Site. In addition, the Neighborhood Organization must be on record with the state (includes the Department) or county in which the Development Site is located. Neighborhood Organizations may request to be on record with the Department for the current Application Round with the Department by submitting documentation (such as evidence of board meetings, bylaws, etc.) by the Full Application Delivery Date. The written statement must meet the requirements in subparagraph (A) of this paragraph.

(A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph.

(i) the Neighborhood Organization's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing address) of at least two individual members with authority to sign on behalf of the organization;

(ii) certification that the boundaries of the Neighborhood Organization contain the Development Site and that the Neighborhood Organization meets the definition pursuant to Texas Government Code, §2306.004(23-a) and includes at least two separate residential households;

(iii) certification that no person required to be listed in accordance with Texas Government Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, including any votes taken;

(iv) certification that at least 80 percent of the current membership of the Neighborhood Organization consists of persons residing or owning real property within the boundaries of the Neighborhood Organization; and

(v) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization is encouraged to be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this section, if and only if there is no Neighborhood Organization already in existence or on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of and/or placing on record of a Neighborhood Organization. Technical assistance is limited to:

(i) the use of a facsimile, copy machine/copying, email and accommodations at public meetings;

(ii) assistance in completing the QCP Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process; and

(iii) presentation of information and response to questions at duly held meetings where such matter is considered.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in clauses (i) – (vi) of this subparagraph. Points will not be cumulative. Where more than one written statement is received for an Application, the average of all statements received in accordance with this subparagraph will be assessed and awarded.

(i) nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(ii) eight (8) points for explicitly stated support from a Neighborhood Organization;

(iii) six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(iv) ~~five~~ four (~~5~~4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;

(v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; or

(vi) zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such statement is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §11.2 of this chapter. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make

determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

(5) Community Support from State Representative. (§2306.6710(b)(1)(F); §2306.6725(a)(2)) Applications may receive up to eight (8) points or have deducted up to eight (8) points for this scoring item. To qualify under this paragraph letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and clearly state support for or opposition to the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. Neutral letters or letters that do not specifically refer to the Development or specifically express support or opposition will receive zero (0) points. A letter that does not directly express support but expresses it indirectly by inference (*e.g.* "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral letter.

(6) Input from Community Organizations. Where the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters must be submitted within the Application. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item.

(A) An Application may receive ~~one~~ two (~~1~~2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose of the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide some documentation of its tax exempt status and its existence and participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), or taxing entities.

(B) An Application may receive ~~one~~ two (~~1~~2) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application may receive ~~one~~ two (~~1~~2) points for a letter of support from a Special Management District whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input

that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(7) Community Revitalization Plan. An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(A) For Developments located in an Urban Area of Region 3.

(i) An Application may qualify to receive up to six (6) points if the Development Site is located in an area targeted for revitalization in a community revitalization plan that meets the criteria described in subclauses (I) – (VI) of this clause:

(I) The community revitalization plan must have been adopted by the municipality or county in which the Development Site is located.

(II) The adopting municipality or county must have performed, in a process providing for public input, an assessment of the factors in need of being addressed as a part of such community revitalization plan. Factors assessed must include at least five (5) of the following ~~seven~~ eight (~~7~~8) factors:

(-a-) adverse environmental conditions, natural or manmade, that are material in nature and are inconsistent with the general quality of life in typical average income neighborhoods. By way of example, such conditions might include significant and recurring flooding, presence of hazardous waste sites or ongoing localized emissions not under appropriate remediation, nearby heavy industrial uses, or uses presenting significant safety or noise concerns such as major thoroughfares, nearby active railways (other than commuter trains), or landing strips; significant and widespread (*e.g.* not localized to a small number of businesses or other buildings) rodent or vermin infestation acknowledged to present health risks requiring a concerted effort; or fire hazards;

(-b-) presence of blight, which may include excessive vacancy, obsolete land use, significant decline in property value, or other similar conditions that impede growth;

(-c-) presence of inadequate transportation or infrastructure;

(-d-) lack of accessibility to and/or presence of inadequate health care facilities, law enforcement and fire fighting facilities, social and recreational facilities, and other public facilities comparable to those typically found in neighborhoods containing comparable but unassisted housing;

(-e-) the presence of significant crime;

(-f-) the lack of or poor condition and/or performance of public education; ~~or~~

(-g-) the lack of local business providing employment opportunities; or.

(-h-) efforts to promote diversity, including multigenerational diversity, economic diversity, etcetera, where it has been identified in the planning process as lacking.

(III) The target area must be larger than the assisted housing footprint and should be limited in size along the lines of specific neighborhoods rather than encompassing large areas of a city or county. Staff will review the target areas for presence of the factors identified in subclause (II) of this clause.

(IV) The adopted plan, taken as a whole, must be a plan that can reasonably be expected to revitalize the neighborhood and address in a substantive and meaningful way the material factors identified in subclause (II) of this clause. Generally, because revitalization must identify specific matters needing to be addressed by revitalization and provide a plan and budget specifically directed to those identified issues, revitalization will be considered distinct and separate from broader economic development efforts.

(V) The adopted plan must describe the planned budget and uses of funds to accomplish its purposes within the applicable target area. To the extent that expenditures, incurred within four (4) years prior to the beginning of the Application Acceptance Period, have already occurred in the applicable target area, a statement from a city or county official concerning the amount of the expenditure and purpose of the expenditure may be submitted.

(VI) To be eligible for points under this item, the community revitalization plan must already be in place as of the ~~Pre-~~Full Application Final Delivery Date pursuant to §11.2 of this chapter evidenced by a letter from the appropriate local official stating that:

(-a-) the plan was duly adopted with the required public input processes followed;

(-b-) the funding and activity under the plan has already commenced; and

(-c-) the adopting municipality or county has no reason to believe that the overall funding for the full and timely implementation of the plan will be unavailable.

(ii) Points will be awarded based on:

(I) Applications will receive four (4) points if the applicable target area of the community revitalization plan has a total budget or projected economic value of $6,000,000 or greater; or

(II) Applications will receive two (2) points if the applicable target area of the community revitalization plan has a total budget or projected economic value of at least $4,000,000; and

(III) Applications may receive (2) points in addition to those under subclauses (I) or (II) of this clause if the Development is explicitly identified by the city or county as contributing most significantly to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. A resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application (this resolution is not required at pre-application). If multiple Applications submit resolutions under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application as contributing most significantly to concerted revitalization efforts.

(B) For Developments located in Urban Areas outside of Region 3.

(i) An Application may qualify for up to six (6) points for meeting the criteria under subparagraph (A) of this paragraph (with the exception of being located in Region 3); or

(ii) An Application will qualify for four (4) points if the city or county has an existing plan for Community Development Block Grant - Disaster Relief Program (CDBG-DR) funds that meets the requirements of subclauses (I) - (IV) of this clause. To qualify for points, the Development Site must be located in the target area defined by the plan, and the Application must have a commitment of CDBG-DR funds. The plan (in its entirety) and a letter from a local government official with specific knowledge and oversight of implementing the plan are included in the Application and must:

(I) define specific target areas for redevelopment of housing that do not encompass the entire jurisdiction;

(II) ~~affirmatively address Fair Housing demonstrated~~be subject to administration in a manner consistent with ~~through~~ an approved Fair Housing Activity Statement-Texas (FHAST);

(III) be subject to administration in a manner consistent with the findings of an Analysis of Impediments approved or accepted by HUD within the last three (3) calendar years or an approved Fair Housing Activity Statement-Texas (FHAST), approved by the Texas General Land Office; ~~and~~

(IV) certify that the plan and the Application are consistent with the adopting municipality or county's plan to affirmatively further fair housing under the Fair Housing Act; and

(~~I~~V) be in place prior to the Full ~~Pre-~~Application Final Delivery Date.

(C) For Developments located in a Rural Area.

(i) An Application may qualify for up to four (4) points for meeting the criteria under subparagraph (B) of this paragraph if located outside of Region 3 (with the exception of being located in an Urban Area); or

(ii) The requirements for community revitalization in a Rural Area are distinct and separate from the requirements related to community revitalization in an Urban Area in that the requirements in a Rural Area relate primarily to growth and expansion indicators. An Application may qualify for up to four (4) points if the city, county, state, or federal government has approved expansion of basic infrastructure or projects, as described in this paragraph. Approval cannot be conditioned upon the award of tax credits or on any other event (zoning, permitting, construction start of another development, etc.) not directly associated with the particular infrastructure expansion. The Applicant, Related Party, or seller of the Development Site cannot contribute funds for or finance the project or infrastructure, except through the normal and customary payment of property taxes, franchise taxes, sales taxes, impact fees and/or any other taxes or fees traditionally used to pay for or finance such infrastructure by cities, counties, state or federal governments or their related subsidiaries. The project or expansion must have been completed no more than twelve (12) months prior to the beginning of the Application Acceptance Period or ~~be~~ have been approved and is projected to be completed within twelve (12) months from the beginning of the Application Acceptance Period. An Application is eligible for two (2) points for one of the items described in subclauses (I) – (V) of this clause or four (4) points for at least two (2) of the items described in subclauses (I) – (V) of this clause:

(I) New paved roadway (may include paving an existing non-paved road but excludes overlays or other limited improvements) or expansion of existing paved roadways by at least one lane (excluding very limited improvements such as new turn lanes or restriping), in which a portion of the new road or expansion is within one ~~quarter~~ half (1/~~4~~2) mile of the Development Site;

(II) New water service line (or new extension) of at least 500 feet, in which a portion of the new line is within one ~~quarter~~ half (1/~~4~~2) mile of the Development Site;

(III) New wastewater service line (or new extension) of at least 500 feet, in which a portion of the new line is within one ~~quarter~~ half (1/~~4~~2) mile of the Development Site;

(IV) Construction of a new law enforcement or emergency services station within one (1) mile of the Development Site that has a service area that includes the Development Site; and

(V) Construction of a new hospital or expansion of an existing hospital's capacity by at least 25 percent within a five (5) mile radius of the Development Site and ambulance service to and from the hospital is available at the Development Site. Capacity is defined as total number of beds, total number of rooms or total square footage of the hospital.

(iii) To qualify under clause (ii) of this subparagraph, ~~T~~the Applicant must provide a letter from a government official with specific knowledge of the project (or from an official with a private utility company, if applicable) which must include:

(I) the nature and scope of the project;

(II) the date completed or projected completion;

(III) source of funding for the project;

(IV) proximity to the Development Site; and

(V) the date of any applicable city, county, state, or federal approvals, if not already completed.

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) An Application may qualify to receive a maximum of eighteen (18) points for this item. To qualify for points, a 15-year pro forma itemizing all projected income including Unit rental rate assumptions, operating expenses and debt service, and specifying the underlying growth assumptions and reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party construction or permanent lender. An acceptable form of lender approval letter is found in the application. If the letter evidences review of the Development alone it will receive sixteen (16) points. If the letter evidences review of the Development and the Principals, it will receive eighteen (18) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on either the Building Cost or the Hard Costs per square foot of the proposed Development, as originally submitted in the Application. For purposes of this paragraph, Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule.

(A) A high cost development is a Development that meets one of the following conditions:

(i) the Development is elevator served, meaning it is either a Qualified Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;

(ii) the Development is more than ~~at least~~ 75 percent single family design;

(iii) the Development is Supportive Housing; or

(iv) the Development Site qualifies for five (5) or seven (7) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area.

(B) Applications proposing New Construction or Reconstruction will be eligible for ~~eleven~~ twelve (~~11~~12) points if one of the following conditions is met:

(i) The Building Cost per square foot is less than $~~60~~ 70 per square foot;

(ii) The Building Cost per square foot is less than $~~65~~ 75 per square foot, and the Development ~~is a~~ meets the definition of a high cost development;

(iii) The Hard Cost per square foot is less than $~~80~~ 90 per square foot; or

(iv) The Hard Cost per square foot is less than $~~90~~ 100 per square foot, and the Development meets the definition of high cost development.

(C) Applications proposing New Construction or Reconstruction will be eligible for ~~ten~~ eleven (~~10~~11) points if one of the following conditions is met:

(i) The Building Cost per square foot is less than $~~65~~ 75 per square foot;

(ii) The Building Cost per square foot is less than $~~70~~ 80 per square foot, and the Development meets the definition of a high cost development;

(iii) The Hard Cost per square foot is less than $~~85~~ 95 per square foot; or

(iv) The Hard Cost per square foot is less than $~~95~~ 105 per square foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for ~~nine~~ ten (~~9~~10) points if one of the following conditions is met:

(i) The Building Cost is less than $~~80~~ 90 per square foot; or

(ii) The Hard Cost is less than $~~100~~ 110 per square foot.

(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $100 per square foot;

(ii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $130 per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $130 per square foot.

~~(F) Applications proposing New Construction or Reconstruction will be eligible for one (1) point, in addition to those under subparagraph (B) or (C) of this paragraph, if the Hard Cost per square foot is within 5 percent of the mean cost per square foot. The mean will be calculated separately for high cost developments.~~

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted during the Pre-Application Acceptance Period. Applications that meet the requirements described in subparagraphs (A) – (G) of this paragraph will qualify for four (4) points:

(A) The total number of Units does not ~~change~~ increase by more than ten (10) percent from pre-application to Application;

(B) The designation of the proposed Development as Rural or Urban remains the same;

(C) The proposed Development serves the same Target Population;

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than six (6) points from what was reflected in the pre-application self score;

(F) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application; and

(G) The pre-application met all applicable requirements.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least five (5) percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) – (iv) of this subparagraph:

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than ~~8~~ 9 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii) If the Housing Tax Credit funding request is less than ~~7~~ 8 percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than 9~~8~~ percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than 10~~9~~ percent of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(5) Extended Affordability or Historic Preservation. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) An Application may qualify to receive up to four (~~2~~4) points~~)~~ for this scoring item.

(A) In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Development Owners that agree to extend the affordability period for a Development to thirty-five (35) years total may receive two (2) points; or

(B) An Application includes a tax credit request amounting to less than or equal to $7,000 per HTC unit, that has received a letter from the Texas Historical Commission determining preliminary eligibility for historic (rehabilitation) tax credits and is proposing the use of historic (rehabilitation) tax credits (whether federal or state credits). ~~and providing documentation that an~~At least one existing building that will be part of the Development ~~will~~ must reasonably be ~~able~~ expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609. An Application may qualify to receive ~~two~~ four (4~~2~~) points under this provision.

(6) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Texas Government Code, §2306.6726 and the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).

(7) ~~Development~~ Funding Request ~~Size~~Amount. An Application may qualify to receive one (1) point if the ~~Development is proposed to be fifty (50) total HTC Units or less and the~~ Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission, of ~~$500,000 or less~~no more than 100% of the amount available within the sub-region or set-aside as estimated by the Department as of December 1, 2013.

(f) Point Adjustments.

Staff will recommend to the Board and the Board may make a deduction of up to five (5) points for any of the items listed in paragraph (1) of this subsection, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of deduction by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions. (§2306.6710(b)(2))

(1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10 percent Test deadline(s) or has requested an extension of the Carryover submission deadline, the 10 percent Test deadline (relating to either submission or expenditure).

(2) If the Developer or Principal of the Applicant violates the Adherence to Obligations.

(3) Any deductions assessed by the Board for paragraph (1) or (2) of this subsection based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

§11.10. Challenges of Competitive HTC Applications.

The Department will address challenges received from unrelated entities to a specific active Application. The Department will utilize a preponderance of the evidence standard and determinations made by the Department concerning challenges cannot be appealed by a party unrelated to the Applicant that is the subject of the challenge. The challenge process is reflected in paragraphs (1) - (13) of this section. A matter, even if raised as a challenge, that staff determines should be treated as an Administrative Deficiency will be treated and handled as an Administrative Deficiency, not as a challenge.

(1) The challenge must be received by the Department no later than ~~seven (7) days after~~ the Application Challenges Deadline as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) and must be accompanied by the corresponding non-refundable challenge processing fee as described in §10.901 of this title (relating to Fee Schedule). Unless the required fee is received with the challenge, no challenge will be deemed to have been submitted, and the challenge fee must be paid for each Application challenged by a challenger.

(2) A challenge must be clearly identified as such, using that word in all capital letters at the top of the page, and it must state the specific identity of and contact information for the person making the challenge and, if they are acting on behalf of anyone else, on whose behalf they are acting.

(3) Challengers must provide, at the time of filing the challenge, ally briefings, documentation, and other information that the challenger offers in support of the challenge. Challengers must provide sufficient credible evidence that, if confirmed, would substantiate the challenge. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered.

(4) Challenges to the financial feasibility of the proposed Development are premature unless final underwriting reports on the challenged Application have been posted to the Department's website.

(5) Challenges relating to undesirable area features as described in §10.101(a)(4) of this title (relating to Site and Development Requirements and Restrictions) will not be accepted unless they relate to a failure to disclose substantive issues not already disclosed or a material misrepresentation about a disclosed item.

(6) Challengers are encouraged to be prudent in identifying issues to challenge, realizing that most issues will be identified and addressed through the routine review and Administrative Deficiency process;

(7) Once a challenge on an Application has been submitted, subsequent challenges on the same Application from the same challenger will not be accepted;

(8) The Department shall promptly post all items received and purporting to be challenges and any pertinent information to its website;

(9) The Department shall notify the Applicant that a challenge was received within seven (7) days of the challenge deadline;

(10) Where, upon review by staff, an issue is not clearly resolved, staff may send an Applicant an Administrative Deficiency notice to provide the Applicant with a specific issue in need of clarification and time to address the matter in need of clarification as allowed by the rules related to Administrative Deficiencies;

(11) The Applicant must provide a response regarding the challenge within fourteen (14) days of their receipt of the challenge;

(12) The Department shall promptly post its determinations of all matters submitted as challenges. Because of statutory requirements regarding the posting of materials to be considered by the Board, staff

may be required to provide information on late received items relating to challenges as handouts at a Board meeting; and

(13) Staff determinations regarding all challenges will be reported to the Board.

Public Comment

(1) Texas Affiliation of Affordable Housing Providers (“TAAHP”)

TAAHP
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tel 512.476.9901 fax 512.476.9903 taahp.org texashousingconference.org

October 10, 2013

Board of Directors
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Dear Chairman Oxer & Members of the Board:

On behalf of the Texas Affiliation of Affordable Housing Providers (TAAHP), we would like to submit several recommendations for modifications to the 2014 Multifamily Program Rules and Qualified Allocation Plan (QAP) that are being suggested by our membership. TAAHP has more than 300 members including affordable housing professionals active in the development, ownership and management of affordable housing in the State of Texas.

It is TAAHP's policy to submit only recommendations that represent consensus opinions from the membership. Please note that there are several important provisions of the QAP that are not addressed in these consensus comments because the diverse TAAHP Membership has different views on the best ways to address those issues. TAAHP Members will be raising those issues for which there is no consensus individually. TAAHP's recommendations were developed at a meeting with the TAAHP Membership on September 26, 2013 in response to the QAP and Multifamily Rules approved by the TDHCA Governing Board on September 12, 2013.

Chapter 11. State of Texas 2013 Qualified Allocation Plan Housing Tax Credit Program:

RECOMMENDATION #1
§11.2 Program Calendar for Competitive Housing Tax Credits.
TAAHP recommends that:

- the Market Analysis Summary requirement be deleted and that the final Market Analysis Delivery Date remain on 04/01/2014; and
- the Site Design and Development Feasibility Report and ALL of the resolutions including those necessary under §11.3 of this chapter related to Housing De-Concentration Factors be due on 04/01/2014.

We understand that one of the primary reasons for requesting the market summary or market study earlier than April 1 is that State Representatives may want to see market information before submitting their letters. The developers in our membership report that they do not usually get requests for market information from State Representatives. Rather than impose additional and earlier requirements for market studies for all applications, we recommend leaving it to the State Representatives to request the information that they want with respect to each application from the developer for that particular application.

In addition, all resolutions should be due April 1 because the February 28 deadline will most likely result in only having the opportunity to try to get on the agenda for one council and/or commissioners' court meeting. This means that an applicant may be in a position where it fails to get a resolution if (i) the council needs to table the motion to give council an opportunity to get more information or (ii) there is not a quorum for the meeting.

RECOMMENDATION #2
§11.3(e) Developments in Certain Sub-Regions and Counties.
TAAHP recommends that the prohibition of Qualified Elderly Developments in the urban counties listed, as well as Regions five (5); six (6); and (8) be deleted. If the prohibition continues then TAAHP's recommendation is to limit that not more than 65% of the tax credits available in the sub region be awarded to senior developments and elderly developments should not be ineligible in sub-regions where there are only enough tax credits for one allocation.

RECOMMENDATION #3
§11.4(a)(4) Tax Credit Request and Award Limits.
TAAHP recommends the following revision:

> *(4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for ~~Qualified~~ non-profit developments defined under federal, state, or local codes) to be paid or $150,000, whichever is greater.*

RECOMMENDATION #4
§11.5(3)(b)At Risk Set-Aside.
TAAHP supports public housing developments converting their assistance to long term project based Section 8 rental assistance contracts under HUD's Rental Assistance Demonstration (RAD) Program and those developments should be included to qualify to apply in the at-risk set aside. Pursuant to the legislation, the at-risk set aside is intended for public housing units disposed of or demolished by a housing authority and retaining operating subsidy for the development. The RAD program uses public housing funding, maintains the same tenants and requires PHA ownership. It is HUD's intention that the RAD program "is a central part of the Department's rental housing preservation strategy". Therefore, developments under the RAD program should qualify for the HTC At-Risk Set Aside.

RECOMMENDATION #5
§11.9(c)(4)(B) Opportunity Index.
TAAHP recommends the following revision:

> *(i)The Development Site is located within the attendance zone and within one linear mile of an elementary, middle or high ~~-~~school with a MET Standard rating (3 points);*
>
> *(ii) The Development Site is within one linear mile of a school-age before or after-school program that meets the minimum standards established by the appropriate federal, state or local agencies for such programs ~~Department of Family and Protective Services~~ for such programs (2 points);*

AND

> *(iv) The Development Site is located within one linear mile of a child-care ~~center~~ provider that is licensed by the Department of Family and Protective Services and provides day care for children ages 6 months through 5 years, at a minimum (2 points);*

RECOMMENDATION #6
§11.9(c)(5) Educational Excellence.
TAAHP recommends revising clause (B) and adding the following clause (C):

> *(B) The Development Site is within the attendance zone of an elementary school and either a middle or high school with the appropriate rating (2~~1~~ points);*
>
> *(C) The Development Site is within the attendance zone of an elementary school with the appropriate rating (1 point).~~;~~*

RECOMMENDATION #7
§11.9(c)(6) Underserved Area.
TAAHP recommends the following revision:

(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive two (2) points for general population or Supportive Housing Developments or one (1) point for Qualified Elderly Developments, if the Development Site is located in one of the areas described in subparagraphs (A) – (D) of this paragraph.

RECOMMENDATION #8
§11.9(c)(6)(C) Underserved Area.
TAAHP recommends the following revision:

(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population;

RECOMMENDATION #9
§11.9(c)(7) Tenant Populations with Special Housing Needs.

The Section 811 Project Rental Assistance Demonstration Program is just a pilot program and, as provided in §11.9(c)(7)(B), HUD has not yet released Section 811 Program Guidelines. For these reasons participation in the Section 811 Program should not be required but should be optional. All applicants should have the option to meet the requirements under subparagraphs (A) or (C) of this paragraph. In addition, if an applicant elects to participate in the Section 811 Program, the applicant should have the option to opt out of the Section 811 Program and meet the requirements under subparagraph of (C) of this paragraph after the applicant has been given the opportunity to review the HUD Section 811 Program Guidelines and any agreements between the Department and HUD related to the Section 811 Program.

RECOMMENDATION #10
§11.9(c)(8) Location Outside of "Food Deserts".
TAAHP recommends deleting this scoring item because of the lack of quantifiable comprehensive valid data.

RECOMMENDATION #11
§11.9(d)(2)(B)
TAAHP recommends the following revisions:

(B) Applications will qualify for points based on the amount of funds at the levels described in clauses (i) – (iv) of this subparagraph. For the purpose of this calculation, the Department will use the population of the Place from which the Development Site's Rural or Urban Area designation is derived.

(i) eleven (11) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.075~~15~~ in funding per Low Income Unit or ~~$15,07~~7,500 in funding per Low Income Unit;

(ii) ten (10) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.05~~10~~ in funding per Low Income Unit or ~~$10~~5,000 in funding per Low Income Unit;

(iii) nine (9) points for a commitment by a Local Political Subdivision of the lesser of population of the Place multiplied by a factor of 0.05~~2~~5 in funding per Low Income Unit or ~~$5,02~~2,500 in fundingper Low Income Unit;

(iv) eight (8) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.0125 in funding per Low Income Unit or ~~$1,050~~ $1,0500 in funding per Low Income Unit; or

(v) seven (7) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.005~~1~~ in funding per Low Income Unit or ~~$50~~$50250 in funding per Low Income Unit.

(vi) seven (7) points for a resolution of support from the Governing Body of the city (if located in a city) or county (if not located within a city) in which the Development is located stating that the city or county would provide development funding but has no development funding available due to budgetary or fiscal constraints and despite reasonable efforts, has been unable to identify and secure any such funding. The resolution must be submitted with the Application and dated prior to February 28, 2014. A general letter of support does not qualify.

We recommend the reduction in funding levels referenced above because we are working in an environment in which the funds available to local political subdivisions for housing have been reduced significantly.

RECOMMENDATION #12
§11.9(d)(4)(C) Point Value for Quantifiable Community Participation.

TAAHP recommends the following adjustment in points that an application may qualify for under subparagraph (C)(iv) of this paragraph, which reduces the total points received from five (5) points to four (4) points, but allows those applications that qualify for the points under this subparagraph to earn additional points under §11.9(d)(6)(A) – Input from Community Organizations:

(iv) four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection:

RECOMMENDATION #13
§11.9(d)(6)(A) Input from Community Organizations.

TAAHP recommends the following adjustments in points that an application may qualify for under subparagraphs (A), (B) or (C) of this paragraph, and to allow applicants to receive the points if (i) if they received points under §11.9(d)(4)(C) for the equivalent of neutrality or lack of objection from a Neighborhood Organization, or (ii) if the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization:

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located.....

(B) An Application may receive four (4) points for a letter of support from a property owners association...

(C) An Application may receive four (4) points for a letter of support from a Special Management District...

TAAHP believe that the point adjustment in subparagraph (A) will put smaller Urban and Rural areas where there are less community and civic organizations on a level playing field with larger metropolitan market areas. The adjustment in points under subparagraphs (B) and (C) is recognition that property owners associations and Special Management Districts serve very similar functions as a Neighborhood Organization and therefore should be given equal or similar weight in points.

RECOMMENDATION #14
§11.9(d)(7)(C)(I)(II) and (III) For Developments Located in a Rural Area.
TAAHP recommends the following revisions:

(I) New paved roadway (may include paving an existing non-paved road but excludes overlays or other limited improvements) or expansion of existing paved roadways by at least one lane (excluding very limited improvements such as new turn lanes or restriping), in which a portion of the new road or expansion is within one ~~quarter~~ (1/4) mile of the Development Site;

(II) New water service line (or new extension) of at least 500 feet, in which a portion of the new line is within one ~~quarter~~ (1/4) mile of the Development Site;

(III) New wastewater service line (or new extension) of at least 500 feet, in which a portion of the new line is within one ~~quarter~~ (1/4) mile of the Development Site;

RECOMMENDATION #15
§11.9(d)(8) Transit Oriented Development Developments.
TAAHP recommends adding the following section and point category:

(8) Transit Oriented Development. An Application may qualify to receive one (1) point if the proposed site of the Development is within 1/2 mile of light rail transit, commuter rail, rapid bus transit or other high capacity transit. The distance will be measured from the development to the nearest transit station.

RECOMMENDATION #16
§11.9(e)(2)(B-F) Cost of Development per Square Foot.
Due to the significant and continuing increase in construction costs in Urban and Rural areas, TAAHP recommends the following revisions:

(A) A high cost development is a Development that meets one of the following conditions:

(iv) The Development Site qualifies for five (5) or seven (7) points under subsection (c)(4) of this section, related to Opportunity Index ~~and is located in an Urban Area~~.

(B) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

(i) The Building Cost per square foot is less than $~~6~~70 per square foot;
(ii) The Building Cost per square foot is less than $~~6~~75 per square foot, and the Development is a meets the definition of a high cost development;
(iii) The Hard Cost per square foot is less than $~~8~~90 per square foot; or
(iv) The Hard Cost per square foot is less than $~~9~~100 per square foot, and the Development meets the definition of high cost development.

(C) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:

(i) The Building Cost per square foot is less than $~~6~~75 per square foot;
(ii) The Building Cost per square foot is less than $~~7~~80 per square foot, and the Development meets the definition of a high cost development;
(iii) The Hard Cost per square foot is less than $~~8~~95 per square foot; or
(iv) The Hard Cost per square foot is less than $~~9~~105 per square foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for nine (9) points if one of the following conditions is met:

(i) The Building Cost is less than $890 per square foot; or

(ii) The Hard Cost is less than $1100 per square foot.

(E) Applications proposing Rehabilitation (excluding Reconstruction) will be eligible for points if oneof the following conditions is met:

(i) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $1010 per square foot;

(ii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $1430 per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $1430 per square foot.

AND delete (F) because it appears that this additional one (1) point rewards luck rather than merit.

~~*(F) Applications proposing New Construction or Reconstruction will be eligible for one (1) point, in addition to those under subparagraph (B) or (C) of this paragraph, if the Hard Cost per square foot is within 5 percent of the mean cost per square foot. The mean will be calculated separately for high cost developments.*~~

RECOMMENDATION #17
§11.9(e)(3)(A) Pre-application Participation.
TAAHP recommends the following revisions:

(A) The total number of Units does not ~~change~~ increase by more than ten (10) percent from pre-application to Application;

RECOMMENDATION #18
§11.9(e)(4)(A)(ii-iv) Leveraging of Private, State, and Federal Resources.
TAAHP recommends the following revisions:

(ii) If the Housing Tax Credit funding request is less than ~~7~~8 percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than ~~8~~9 percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than ~~9~~10 percent of the Total Housing Development Cost (1 point).

Chapter 10. Subchapter B – Site and Development Requirements and Restrictions:

RECOMMENDATION #19
§10.101(b)(5)(C)(xxxi)(I) Limited Green Amenities.
Some of the items listed in this section will be difficult to verify at cost certification and during compliance without expensive third party reports by environmental experts. For example, 20% of the water required for irrigation will vary from year to year depending on rainfall, temperature and other factors. Using rainwater for potable uses is very problematic from a health and safety standpoint and probably prohibited by most municipalities. Native trees and plants in Texarkana are different than native trees in El Paso and this option is very vague in scope of landscaping. Are two trees sufficient? What if the site is fully forested before development? How will urban infill or rehabilitation properties meet these requirements?

TAAHP suggests that the variable requirements hard to measure should be removed and replaced with simple requirements that can be verified.

Additionally, Developments that consist of 41 units or more must include at least 2 points "worth" of Green Building Features and to obtain these mandatory 2 points, 6 of 9 items under Limited Green Amenities must be chosen (or an applicant must commit to Enterprise Green Communities, LEED, or National Green Building Standards). Either fewer Limited Green Amenities items should be required or more items should be made available. Rehabilitation projects should have fewer items required (for example, buildings cannot be reoriented).

TAAHP suggest the following changes to the current Limited Green Amenities items:

(-a-) Site irrigation – change to "Rain water harvesting collection system provided for irrigation." Leave the details to the design team.
(-b-) Native trees and plants – remove this option as it is too vague. Replace with "Native landscaping that reduces irrigation requirements as certified by design team at cost certification."
(-c-) verifiable as currently written
(-d-) "... as certified by the design team at cost certification".
(-e-) verifiable as as currently written
(-f-) verifiable as as currently written
(-g-) verifiable as as currently written
(-h-) verifiable as as currently written
(-i-) Add – "... if the local trash provider offers recycling service." This isn't available in some rural areas.

TAAHP also suggests adding additional Limited Green Amenities items, such as:

(-j-) construction waste management system provided by contractor that meets LEEDs minimum standards
(-k-) at least 25% by cost FSC certified salvaged wood products
(-l-) Energy Star rated bath exhaust fans vented to the outside
(-m-) Energy Star rated kitchen exhaust fans vented to the outside
(-n-) clothes dryers vented to the outside
(-o-) maintain a no-smoking policy within 20 feet of all buildings

RECOMMENDATION #20
§10.101(b)(6)(B)(xi) Unit Requirements.
TAAHP recommends the following revision:

(xi) Greater than 30% percent masonry on all building exteriors (includes stone, cultured stone, stucco, and brick but excludes cementitious siding); the percentage calculation may exclude exterior glass entirely (2 points);

Chapter 10. Subchapter C – Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rues or Pre-clearance for Applications:

RECOMMENDATION #21
§10.203 (11)(C) Requesting a Zoning Change.

(C) Requesting a Zoning Change. The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate is in the process of seeking a zoning change and must~~(may~~ include an acknowledgement that a zoning application was received by the political subdivision~~)~~ and that the jurisdiction received a release agreeing to hold the political subdivision and all other parties harmless in the event the

appropriate zoning is denied. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice.

Thank you for your service to Texas.

Sincerely,

Debra Guerrero by Frank Jackson
Debra Guerrero
Co-Chair TAAHP QAP Committee

David Koogler by Frank Jackson
David Koogler
Co-Chair TAAHP QAP Committee

cc: Tim Irvine – TDHCA Executive Director
Cameron Dorsey – TDHCA Staff
Jean Latsha – TDHCA Staff
TAAHP Membership

(2) State Representative
Roland Gutierrez

The State of Texas
House of Representatives

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BUILDING 510, SUITE 2
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ROLAND GUTIERREZ
STATE REPRESENTATIVE • DISTRICT 119

September 27, 2013

Tim Irvine
Executive Director
Texas Department of Housing and Community Development
221 East 11th Street
Austin, Texas 78701

RE: 2014 Draft Qualified Allocation Plan:
§11.9 Competitive HTC Selection Criteria

Dear Mr. Irvine:

I am writing to submit comments to the 2014 Draft Qualified Allocation Plan (QAP) as it relates to §11.9 Competitive HTC Selection Criteria "Funding by Local Political Subdivision" and the removal of the related party language in this section.

Last year, TDHCA removed the ability for public housing authorities to contribute funding to transactions in which they were involved, using the justification that it was "self-dealing". However, public housing authorities (PHA) are public entities and have unique resources that can only be provided by them, for the purpose of building and operating low-income housing.

It is important to consider that some housing authority funding is limited to transactions where the PHA also participates. This does not make it a transaction of self-dealing nor an unfair advantage; instead, this provides opportunity for the PHA to forward its public mission of providing low-income housing through a public-private partnership. When a PHA participates in a transaction, it procures the services of its development partner and the other private entities that participate in the transaction. This provides an open and equal opportunity for any developer, lender or investor to participate in the transaction.

Additionally, a PHA providing funding in a transaction is not unlike the ability of a developer or private owner providing financial and liquidity guarantees to local political subdivisions in order to receive a loan for those funds. The local political subdivision assures repayment of its funds through the guarantees made by developers. Although it is not self-dealing, it is only through self-interest these guarantees are being provided.

ROLAND.GUTIERREZ@HOUSE.STATE.TX.US

The State of Texas
House of Representatives

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ROLAND GUTIERREZ
STATE REPRESENTATIVE • DISTRICT 119

Therefore, it is for these reasons that I support the removal of "Related Party" from this section and the inclusion of "housing authorities" as a local political subdivision.

I thank you for your consideration of this very important recommended change to the draft 2014 QAP regarding the ability of PHA funds to be used as a Commitment of Development Funding by a Local Political Subdivision.

Sincerely,

Roland Gutierrez

ROLAND.GUTIERREZ@HOUSE.STATE.TX.US

(3) San Antonio Housing Authority ("SAHA")

SAHA | SAN ANTONIO HOUSING AUTHORITY
Opportunity Lives Here

818 South Flores Street | San Antonio, Texas 78204 | 210-477-6262 | www.saha.org

September 27, 2013

Tim Irvine
Executive Director
Texas Department of Housing and Community Development
221 East 11th Street
Austin, Texas 78701

RE: 2014 Draft Qualified Allocation Plan:
§11.9 Competitive HTC Selection Criteria

Dear Mr. Irvine:

On behalf of the San Antonio Housing Authority, we are writing to submit comments to the 2014 Draft Qualified Allocation Plan (QAP) as it relates to §11.9 Competitive HTC Selection Criteria "Funding by Local Political Subdivision" and the removal of the related party language in this section.

Last year, TDHCA removed the ability for public housing authorities to contribute funding to transactions in which they were involved, using the justification that it was "self-dealing". However, public housing authorities (PHA) are public entities and have unique resources that can only be provided by them, for the purpose of building and operating low-income housing.

It is important to consider that some housing authority funding is limited to transactions where the PHA also participates. This does not make it a transaction of self-dealing nor an unfair advantage; instead, this provides opportunity for the PHA to forward its public mission of providing low-income housing through a public-private partnership. When a PHA participates in a transaction, it procures the services of its development partner and the other private entities that participate in the transaction. This provides an open and equal opportunity for any developer, lender or investor to participate in the transaction.

Additionally, a PHA providing funding in a transaction is not unlike the ability of a developer or private owner providing financial and liquidity guarantees to local political subdivisions in order to receive a loan for those funds. The local political subdivision assures repayment of its funds through the guarantees made by developers. Although it is not self-dealing, it is only through self-interest these guarantees are being provided.

Therefore, it is for these reasons that I support the removal of "Related Party" from this section and the inclusion of "housing authorities" as a local political subdivision.

We thank you for your consideration of this very important recommended change to the draft 2014 QAP regarding the ability of PHA funds to be used as a Commitment of Development Funding by a Local Political Subdivision.

Sincerely,

Lourdes Castro Ramirez
President and CEO
San Antonio Housing Authority

Ramiro Cavazos
Chairman
San Antonio Housing Authority

(4) State Senator
Leticia Van De Putte

The Senate of The State of Texas

Senator Leticia Van de Putte, R. Ph.
District 26
PRESIDENT PRO TEMPORE, 2013

October 8, 2013

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Dear Mr. Irvine,

Thank you and your staff at the Department of Housing and Community Affairs for working so diligently on the 2014 Draft Qualified Allocation Plan (QAP) for the State. I understand the low income housing tax credits are very competitive and helpful for the development of quality low cost housing.

In the past I have submitted comments on preserving the input by local entities who have developed plans for community revitalization. Public housing authorities should be eligible for points under the commitment of development funding since they typically develop long term strategies to support additional development. Public housing authorities work with neighborhoods to develop comprehensive plans that take into consideration various community needs.

I understand that the intent of the rule on related-party limitation enacted and a part of the 2013 QAP was to prohibit against self-dealing. I believe concerns about self-dealing are justified, however, I believe the changes prevented legitimate and committed public housing authorities from being able to benefit from using their funds as a commitment of development funding by a local political subdivision. I hope they are allowed to benefit under the 2014 QAP.

Thank you for allowing me to share my thoughts and concerns and hope you consider making changes to the 2014 Qualified Allocation Plan.

Sincerely,

Leticia Van de Putte
Senate District 26

101 W. Nueva St., Suite 809
San Antonio, Texas 78205
(210) 733-6604
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E-MAIL: leticia.vandeputte@senate.state.tx.us

Committees: Veteran Affairs and Military Installations, *Chair*
Business & Commerce • Education • State Affairs

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(5) State Representative
Ruth Jones McClendon

TEXAS HOUSE OF REPRESENTATIVES
RUTH JONES MCCLENDON
State Representative, District 120

COMMITTEES:
Rules and Resolutions - Chair
Appropriations
Transportation

TEXAS LEGISLATIVE ORGANIZATIONS:
Mexican American Legislative Caucus
Texas Legislative Sportsman's Caucus
Texas Tourism Caucus
Texas Legislative Black Caucus

October 8, 2013

Mr. Tim Irvine, Executive Director
Texas Department of
Housing and Community Development
221 East 11th Street
Austin, Texas 78701

RE: 2014 Draft Qualified Allocation Plan comments: §11.9 Competitive HTC Selection Criteria

Dear Mr. Irvine:

Public housing authorities (PHA's) need to be in a position to commit development funding to transactions in which they are involved, whether through formal participation or through collaborating with local political subdivisions to facilitate transactions. Therefore, I support the removal of "Related Party" language from the Section 11.9 Competitive HTC Selection Criteria "Funding by Local Political Subdivision," and recommend including "housing authorities" as a local political subdivision.

Last year, TDHCA removed the ability for public housing authorities to contribute funding to transactions in which they were involved, using the justification that it was "self-dealing." However, public housing authorities (PHA) are public entities and have unique resources that can only be provided by them, for the purpose of building and operating low-income housing. When a PHA provides funding in a transaction, it is similar to the action of a developer or private owner providing financial and liquidity guarantees to local political subdivisions in order to receive a loan for those funds. The loan guarantees made by developers assure the local political subdivision of repayment of its funds. Although it is not self-dealing, these guarantees are being provided as a condition of receiving the funds.

It is important to consider that some housing authority funding is limited to transactions where the PHA also participates. This does not make it a transaction of self-dealing nor an unfair advantage; instead, this provides opportunity for the PHA to advance its public mission of providing low-income housing through a public-private partnership. When a PHA participates in a transaction, it procures the services of its development partner and the other private entities that participate in the transaction. This provides an open and equal opportunity for any developer, lender or investor to participate in the transaction.

Please make my comments part of your official record, explaining my position on the 2014 Draft Qualified Allocation Plan (QAP). I favor the removal of the related party language in Section 11.9. Thank you for considering my recommendation of this important change to the draft 2014 QAP to allow the use of PHA funds as a Commitment of Development Funding by a Local Political Subdivision.

Sincerely,

Ruth Jones McClendon

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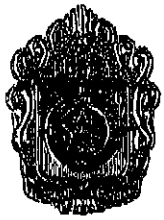
Capitol Office: P.O. Box 2910 • Austin, Texas 78768-2910 • (512) 463-0708 • Fax (512) 463-7071
Email: ruth.mcclendon@house.state.tx.us • 1-800-618-2785

(6) Mayor Julian Castro
City of San Antonio



CITY OF SAN ANTONIO
JULIÁN CASTRO
MAYOR

September 27, 2013

Tim Irvine
Executive Director
TX Department of Housing & Community Development
221 East 11th Street
Austin, Texas 78701

RE: 2014 Draft Qualified Allocation Plan: §11.9 Competitive HTC Selection Criteria

Dear Mr. Irvine:

On behalf of the City of San Antonio and in support of the San Antonio Housing Authority's position, I am writing to submit comments to the 2014 Draft Qualified Allocation Plan (QAP) as it relates to §11.9 Competitive HTC Selection Criteria "Funding by Local Political Subdivision" and the removal of the related party language in this section.

Last year, TDHCA removed the ability for public housing authorities to contribute funding to transactions in which they were involved, using the justification that it was "self-dealing". However, Public Housing Authorities (PHA) are public entities and have unique resources that can only be provided by them, for the purpose of building and operating low-income housing.

It is important to consider that some housing authority funding is limited to transactions where the PHA also participates. This does not make it a transaction of self-dealing nor an unfair advantage; instead, this provides opportunity for the PHA to forward its public mission of providing low-income housing through a public-private partnership. When a PHA participates in a transaction, it procures the services of its development partner and the other private entities that participate in the transaction. This provides an open and equal opportunity for any developer, lender or investor to participate in the transaction.

Additionally, a PHA providing funding in a transaction is not unlike the ability of a developer or private owner providing financial and liquidity guarantees to local political subdivisions in order to receive a loan for those funds. The local political subdivision assures repayment of its funds through the guarantees made by developers. Although it is not self-dealing, it is only through self-interest these guarantees are being provided.

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MAYORJULIANCASTRO@SANANTONIO.GOV

Therefore, it is for these reasons that I support the removal of "Related Party" from this section and the inclusion of "housing authorities" as a local political subdivision.

I thank you for your consideration of this very important recommended change to the draft 2014 QAP, regarding the ability of PHA funds to be used as a Commitment of Development Funding by a Local Political Subdivision.

Sincerely,

JULIAN CASTRO
MAYOR

(7) Harris County Housing Authority

HARRIS COUNTY
HOUSING
AUTHORITY

September 30, 2013

Timothy K. Irvine, Executive Director
Texas Department of Housing and Community Development
221 East 11th Street
Austin, Texas 78701

Re: 2014 Draft Qualified Allocation Plan
§11.9 Competitive HTC Selection Criteria

Dear Mr. Irvine:

I am writing to comment on the 2014 Draft Qualified Allocation Plan ("QAP") as it relates to §11.9 Competitive HTC Selection Criteria "Funding by Local Political Subdivision" and the removal of the related party language from this section. Last year, TDHCA removed public housing authorities' ability to contribute funding to transactions in which they were involved saying that such transactions represented self-dealing.

In order to be self-dealing, an organization must take advantage of its position in order to further its own interests rather than the interests of its clients. Such conduct does not occur when a PHA funds a transaction in which it also participates. In these instances, a PHA does not gain an unfair advantage or further its own interests at the expense of its mission. On the contrary, such transactions are an important opportunity for PHAs to further their mission of providing affordable housing to those in need. These transactions primarily benefit those who PHAs are meant to serve; therefore, the assertion that they represent self-dealing is misguided.

Furthermore, when PHAs participate in such transactions, they do not unduly limit competition or participation in the funding process. PHAs procure the services of a developer partner and other private entities, providing an open and equal opportunity for any developer, lender, or investor to participate in the transaction. A PHA providing funding in this type of transaction is not unlike the ability of a developer or private owner to provide financial and liquidity guarantees to a local political subdivision in order to receive loans to fund a project. The local political subdivision assures repayment of its funds through the guarantees made by developers. Although this transaction is not self-dealing, it is only through self-interest that these guarantees are provided.

Therefore, I support the removal of "related party" from this section and the inclusion of "housing authorities" as a type of local political subdivision.

Very truly yours,

Tom McCasland
Chief Executive Officer

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Houston, Texas 77054
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Fax: (713) 669-4594
www.hchatexas.org

(8) Breck Kean
Prestwick Companies

Teresa Morales

From: Cameron Dorsey
Sent: Thursday, October 03, 2013 3:16 PM
To: Teresa Morales
Subject: FW: QAP Comments - Food Deserts

From: Breck Kean [mailto:breck@prestwickcompanies.com]
Sent: Thursday, October 03, 2013 2:46 PM
To: 'cameron.dorsey@tdhca.state.tx.us'
Cc: 'jean.latsha@tdhca.state.tx.us'
Subject: QAP Comments - Food Deserts

Cameron,

Please consider removing the Food Desert scoring item from the 2014 QAP. The USDA website is not reliable and in many cases, inaccurate.

Thank you for your consideration.

Breck Kean | Vice President | Development

Prestwick Companies

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Building 200, Suite 175

Atlanta, GA 30327

404-949-3874 (o)

404-226-2591 (c)

breck@prestwickcompanies.com

(9) Darrell Jack
Apartment MarketData

From:	Cameron Dorsey
To:	Teresa Morales
Subject:	FW: Food Desserts
Date:	Monday, October 14, 2013 8:35:05 AM
Attachments:	2014 Food Deserts.pdf

This relates to the QAP.

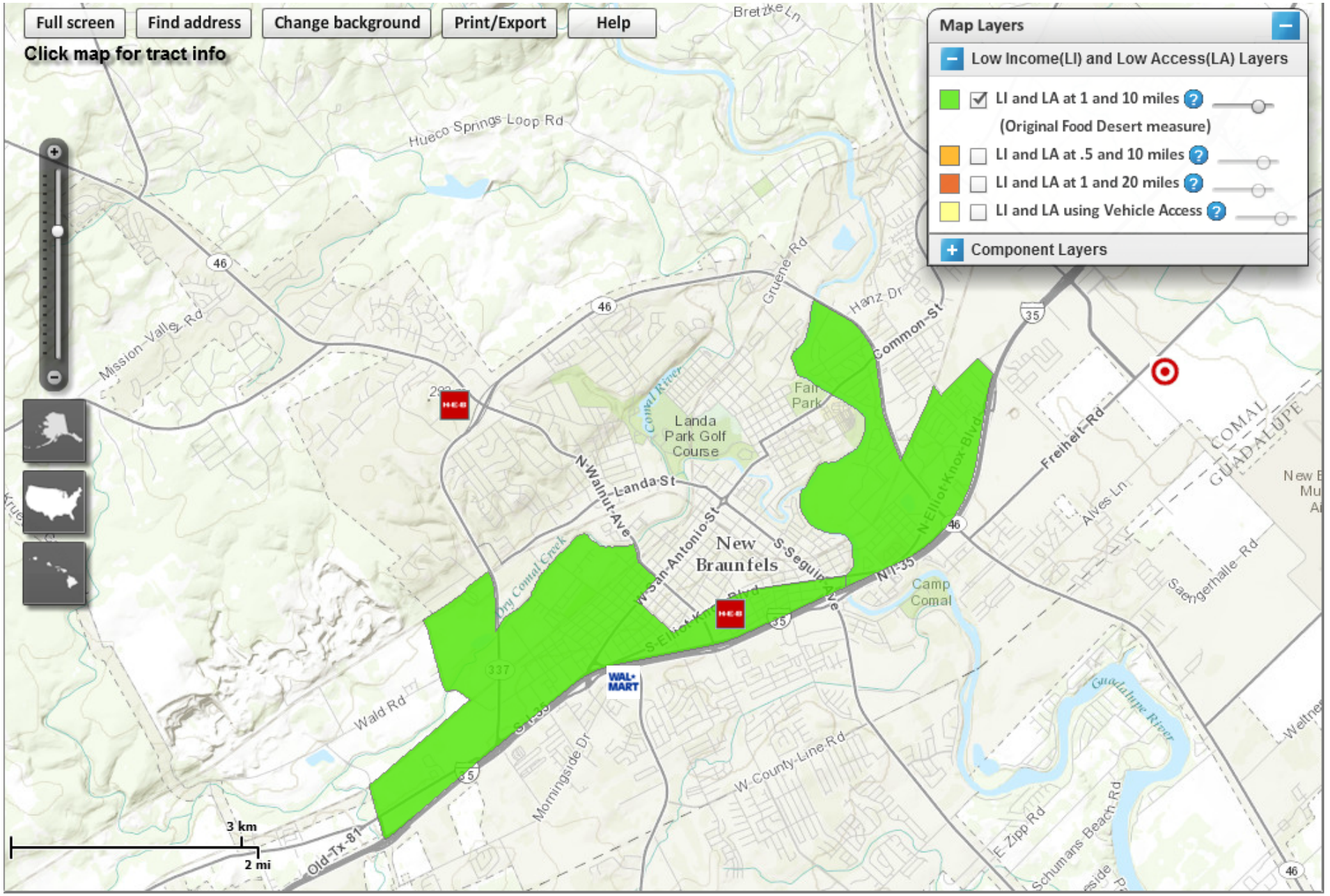
From: Darrell G Jack [mailto:djack@stic.net]
Sent: Friday, September 27, 2013 5:01 PM
To: 'Cameron Dorsey'
Cc: 'Jean Latsha'
Subject: Food Desserts

Cameron:

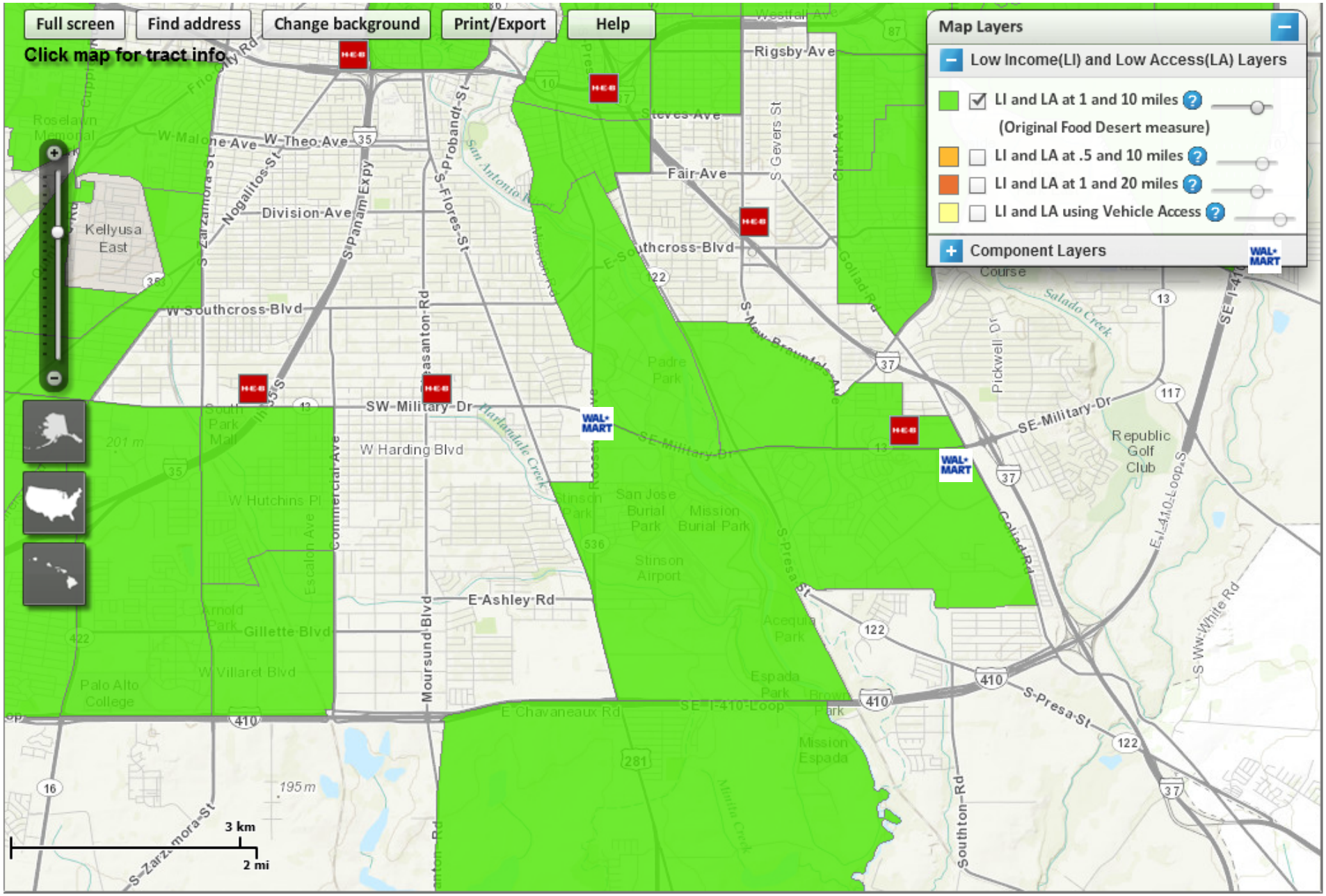
Attached are three maps showing how grossly inadequate the maps from USDA are in identifying food desserts within the state.

Darrell G Jack
Apartment MarketData, LLC
20540 Highway 46 West
Suite 115 - PMD 416
Spring Branch, Texas 78070
(210) 530-0040

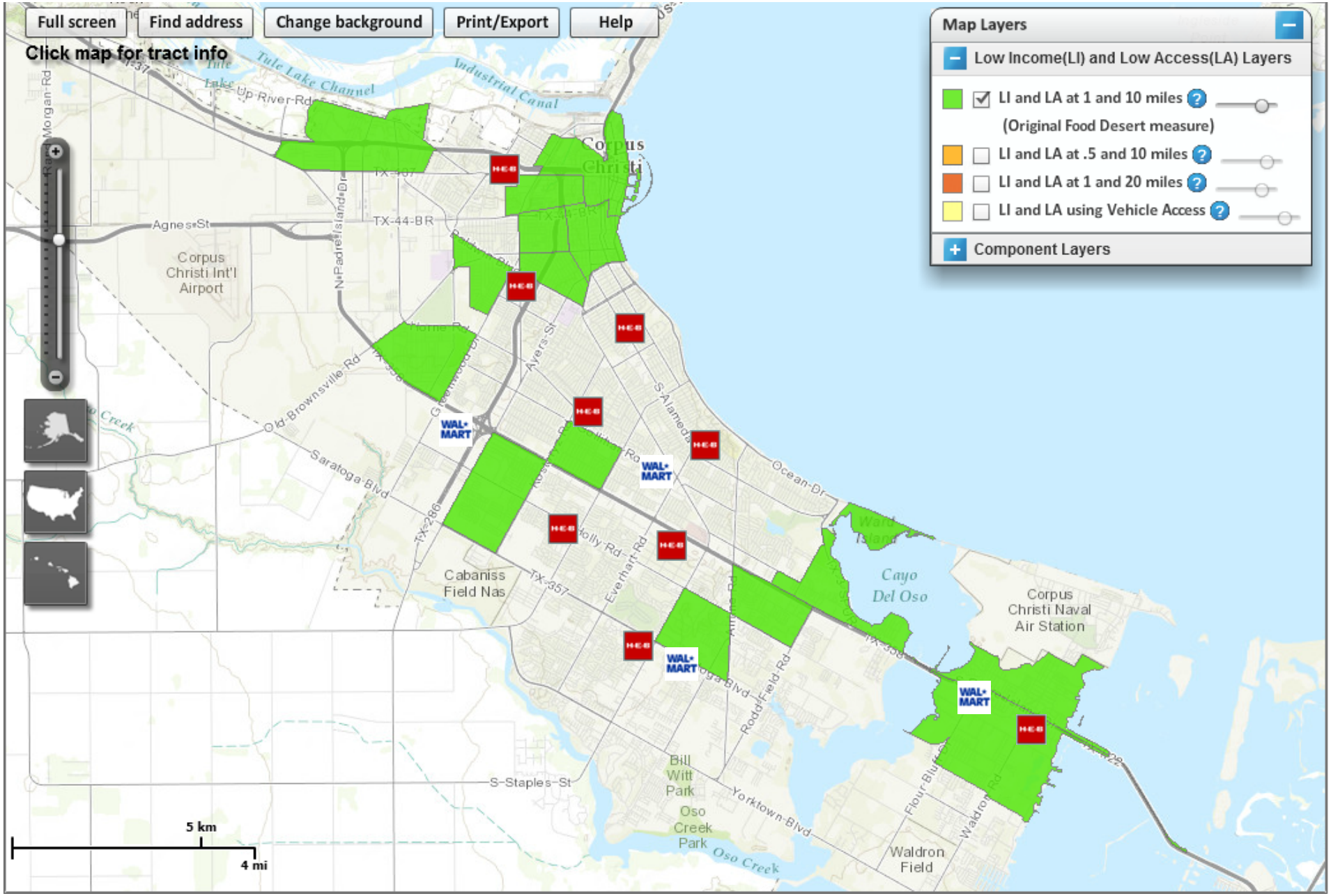
New Braunfels, Texas



SE San Antonio, Texas



Corpus Christi, Texas



(10) Steve Dieterichs
Corsicana Main Street Program

CORSICANA
Main Street Program
PRESERVING YESTERDAY. BUILDING TOMORROW.

October 7, 2013

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

RE: 2014 Draft Qualified Allocation Plan
§11.9 Competitive HTC Selection Criteria

Dear Mr. Irvine:

I am writing to submit comments to the 2014 Draft Qualified Allocation Plan ("QAP") as it relates to §11.9 Competitive HTC Selection Criteria "Extended Affordability or Historic Preservation."

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To achieve these ends, we respectfully recommend the following changes to §11.9 (5) Extended Affordability or Historic Preservation Competitive HTC Selection Criteria:

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Thank you for your consideration of this request.

Regards,

Steve Dieterichs
Director

Teresa Morales

From: Jill McFarren
Sent: Wednesday, October 02, 2013 9:40 AM
To: Tim Irvine; Cameron Dorsey; Teresa Morales
Cc: Gordon Anderson
Subject: FYI: MF post to Twitter

Just as an FYI... another post, albeit a non-public comment variety, by Mr. Dietrichs at 8:30 am 10/02/13

Steve Dieterichs @CorsicanaMainSt

Three major projects knocked out since Thursday! #breathe On to lobbying @TDHCA to #changetheqap for historics with @CraigLindholm

---

From: Jill McFarren
Sent: Tuesday, October 01, 2013 4:34 PM
To: Tim Irvine; Cameron Dorsey; Teresa Morales
Cc: Gordon Anderson
Subject: FYI: MF Public Comment post to Twitter

Hey Tim, Cameron, and Teresa,

Just an FYI to let y'all know that a public comment has been posted in the form of a tweet in response to our 09/27/13 MF public comment period posting:

Our tweet:

Your turn to speak up Texas: Public comment period for draft 2014 Uniform MF Rules, QAP opens Fri 9/27/13. Details at http://www.tdhca.state.tx.us/multifamily/nofas-rules.htm ...

Public Comment post:

Steve Dieterichs_@CorsicanaMainSt_ *Posted around 9:00 am 10/01/13*

@TDHCA TX downtowns want points added for historic projects; dovetails with HB500 and stretches LIHTC farther.

I am going to reply to Mr. Dietrich's tweet with the following post:

Thank you for your comments! We have forwarded them to our multifamily staff.

Please let me know if you have any questions or if any of this gives you heartburn.

Best,

Jill McFarren
Sr. Communications and Marketing Advisor
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
Office: 512.475.2844
Fax: 512.469-9606

About TDHCA
The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership

From:	Cameron Dorsey
To:	Teresa Morales
Subject:	FW: MORE: New Twitter post re: TDHCA
Date:	Friday, October 18, 2013 8:34:19 AM
Importance:	High

From: Jill McFarren [mailto:jill.mcfarren@tdhca.state.tx.us]
Sent: Thursday, October 17, 2013 3:46 PM
To: Tim Irvine; Michael Lyttle; cameron.dorsey@tdhca.state.tx.us; Barbara Deane; Jean Latsha
Cc: Gordon Anderson
Subject: MORE: New Twitter post re: TDHCA
Importance: High

Another comment posted today:

> **Steve Dieterichs** @CorsicanaMainSt
> Historic tax creds + affordable housing creds= too significant for developers to ignore. Help us **#changetheqap** http://on.fb.me/1bFABnU

Note that the link goes to a lengthy Facebook "Event" post, the content of which I posted here: Q:\public-relations\marketing-projects\jill\Public Comment Deadline for TDHCA Rules Change - PLEASE HELP!.htm

---

From: Jill McFarren
Sent: Thursday, October 17, 2013 1:58 PM
To: 'Michael Lyttle'; Gordon Anderson
Subject: New Twitter post re: TDHCA
Importance: High

New comment…

> **Steve Dieterichs** mentioned TDHCA at 1:17 pm today
> **Steve Dieterichs** @CorsicanaMainSt
>
> @TDHCA: #txlege showed their hand w/HB 500, favoring historic preservation. Let's do it w/affordable housing! #changetheqap

Jill McFarren
Sr. Communications and Marketing Advisor
Texas Department of Housing and Community Affairs
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From:	Cameron Dorsey
To:	Teresa Morales
Subject:	FW: New Twitter post re: TDHCA
Date:	Thursday, October 17, 2013 3:21:03 PM
Importance:	High

From: Michael Lyttle
Sent: Thursday, October 17, 2013 2:00 PM
To: Tim Irvine; Barbara Deane; Cameron Dorsey; Jean Latsha
Subject: FW: New Twitter post re: TDHCA
Importance: High

See below

From: Jill McFarren [mailto:jill.mcfarren@tdhca.state.tx.us]
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Subject: New Twitter post re: TDHCA
Importance: High

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(11) Craig Lindholm
City of Texarkana

CITY OF
TEXARKANA, TEXAS
P.O. BOX 1967 TEXARKANA, TX 75504 PHONE 903.798.3900

October 7, 2013

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Development
221 East 11th Street
Austin, Texas 78701

RE: 2014 Draft Qualified Allocation Plan
§11.9 Competitive HTC Selection Criteria

Dear Mr. Irvine:

I am writing to submit comments to the 2014 Draft Qualified Allocation Plan ("QAP") as it relates to §11.9 Competitive HTC Selection Criteria "Extended Affordability or Historic Preservation."

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Thank you for your consideration of this request.

Regards,

Craig Lindholm, PCED
Executive Director
Community Redevelopment and Grants

CITY OF
TEXARKANA, TEXAS
P.O. BOX 1967 TEXARKANA, TX 75504 PHONE 903.798.3900

September 24, 2013

09-27-13P02:14 FILE

Texas Department of Housing and Community Development
221 East 11th Street
Austin, Texas 78701

RE: 2014 Draft Qualified Allocation Plan
§11.9 Competitive HTC Selection Criteria

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These projects will not only further the development of affordable housing and spread the availability of TDHCA Low Income housing Tax Credits (LIHTC), but will also assist Texas communities achieve their community development and historic preservation goals.

In consideration of the added benefit the addition of the State Historic Tax Credit brings in expanding the development of affordable housing for Texans, we respectfully recommend the following changes to §11.9 (5) Extended Affordability or Historic Preservation Competitive HTC Selection Criteria:

- Establish "Historic Preservation" as separate criteria and apart from "Extended Affordability"; and
- Applications qualifying for Historic Preservation under this criteria be qualified to receive up to eight (8) points, or the statutory maximum allowable points (whichever is greater).

The addition of these points will further the development of affordable housing for Texans, spread the availability of TDHCA LIHTC, help communities achieve their community development and historic preservation goals, and provide for the highest possible re-use of existing municipal infrastructure and other resources.

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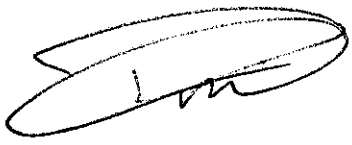

Douglas Cogdill
Acting Chairman
Texarkana, Texas Historical Preservation Committee

(12) Texarkana, Texas Historic Landmark Preservation Committee (Frances Holcombe, Gerry Archibald, Douglas Cogdill, Travestine Nash Turner, Georgia Randall)

P.O. Box 1967
Texarkana, Texas 75504-1976

Texarkana, Texas Historic Landmark Preservation Committee Est. 1970

October 7, 2013

Mr. Tim Irvine
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Texas Department of Housing and Community Development
221 East 11th Street
Austin, Texas 78701

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Frances Holcombe

Frances Holcombe

P.O. Box 1967
Texarkana, Texas 75504-1976

Texarkana, Texas Historic Landmark Preservation Committee Est. 1970

October 7, 2013

Mr. Tim Irvine
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Texas Department of Housing and Community Development
221 East 11th Street
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10-15-13P01:46 RCVD

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Gerry Archibald

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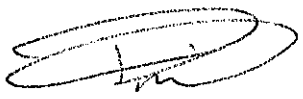

Douglas Cogdill, MD

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Travestine Nash Turner

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Texarkana, Texas Historic Landmark Preservation Committee Est. 1970

October 7, 2013

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- (A) In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Development Owners that agree to extend the affordability period for a Development to thirty-five (35) years total may receive **one (1) point**; or

- (B) An Application proposing the use of historic (rehabilitation) tax credits for **at least 80 percent** of the development project (calculated as the lesser of square footage or unit count,) and providing a letter from the Texas Historical Commission determining preliminary eligibility for said credits, may qualify to receive **eight (8) points**.

The addition of these points will counter-act the unintended bias of the opportunity index, further the development of affordable housing for Texans, spread the availability of TDHCA LIHTC, help communities achieve their community development and historic preservation needs, and provide for the highest possible re-use of existing municipal infrastructure and other resources.

Thank you for your consideration of this request.

Regards,

Georgia Randall

Georgia Randall

(13) JoAnn Dunman

September 19, 2013

Texas Department of Housing and Community Development
221 East 11th Street
Austin, Texas 78701

RE: 2014 Draft Qualified Allocation Plan

Dear Mr. Irvine,

I am writing in regards to the 2014 Draft of the Qualified Allocation Plan (QAP). I am concerned that the new changes have created an "uneven playing field" for many cities and towns who wish to have community based development projects occur in their historic downtowns.

These historic downtowns are desperate for not only preservation, but also revitalization. Affordable housing in these areas is a proven method for achieving both; where there are people, there are businesses. However, because of the income and school based provisions inserted in the QAP over the last couple of years, it has made any competiveness there may have once been, disappear.

It has also been brought to my attention that historic tax credit equity is not recognized as a significant source of leverage. This is unfortunate since recognition of the historic tax credit would enable TDHCA to minimize its contribution, which would allow them to spread their credits further and accomplish so much more with the resources they have to work with.

I have noticed that the 83rd legislature passed House Bill 500 providing a 25% State Historic Tax Credit. This credit, combined with a 20% Federal Historic Tax credit could generate 35 – 38% additional equity for affordable housing projects. This would help Texas communities achieve their historic preservation and downtown revitalization goals because of the further development of affordable housing it would create in these areas. People want to move downtown, developers need your assistance to get them there.

In order to provide the assistance for these types of projects, I ask that you take these suggestions into consideration:

1. Establish "Historic Preservation" as separate criteria and apart from "Extended Affordability", and;
2. Applications qualifying for Historic Preservation under this criteria may be qualified to receive up to 8 points, or the statutory maximum allowable points - whichever is greater- under this criteria.

These minor changes will allow for the further development of affordable housing for Texans and spread the availability of TDHCA LIHTC, all while helping so many Texas communities achieve their downtown historic preservation and revitalization desires. Thank you for your time.

Sincerely,

Jo Ann M. Duman

Jo Ann M. Duman
5803 B Sidney Drive
Texarkana TX 75503-1429

(14) State Representative
Byron Cook

The State of Texas
House of Representatives

P.O. BOX 2910
AUSTIN, TEXAS 78768-2910
512-463-0730
FAX: 512-463-5896

BYRON COOK
State Representative
District 8

P.O. BOX 1397
CORSICANA, TEXAS 75151
903-872-9766

October 7, 2013

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Development
221 East 11th Street
Austin, Texas 78701

Dear Mr. Irvine:

The purpose of this letter is to express two concerns about the 2014 Draft Qualified Allocation Plan (QAP) as it relates to §11.9 Competitive HTC Selection Criteria "Extended Affordability or Historic Preservation", which are as follows: As written, the QAP does not allow affordable housing projects located in downtown central business districts to be competitive. Additionally, the QAP does not recognize historic tax credit equity as a significant source of influence, which, if recognized, could allow the Texas Department of Housing and Community Affairs (TDHCA) to minimize its contribution, and further extend its credits.

HB 500 (83R), which I co-authored, provides a 25% state historic tax credit -- which combined with a 20% Federal Historic Preservation Tax Credit could generate 35-38% additional equity for adaptive utilization of historic preservation affordable housing projects.

In an effort to promote the development of affordable housing and increase the availability of TDHCA Low Income Housing Tax Credits (LIHTC), I respectfully request the following changes to §11.9 (5) Extended Affordability or Historic Preservation Competitive HTC Selection Criteria:

(5) Extended Affordability or Historic Preservation. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) An Application may qualify to receive (9 points) for this scoring item.

- *(A) In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Development Owners that agree to extend the affordability period for a Development to thirty-five (35) years total may receive **one (1) point**; or*
- *(B) An Application proposing the use of historic (rehabilitation) tax credits for at least 80 percent of the development project (calculated as the lesser of square footage or unit count,) and providing a letter from the Texas Historical Commission determining preliminary eligibility for said credits, may qualify to receive **eight (8) points**.*

These changes are necessary and should accomplish the following: expand the development of affordable housing for Texans; broaden the availability of TDHCA LIHTC; help communities realize community development and historic preservation needs; offset the unintended partiality of the opportunity index; and offer the best use of existing municipal infrastructure and other resources.

Thank you for your time and consideration.

Sincerely,

Byron Cook

Anderson ★ Freestone ★ Hill ★ Navarro

(15) Larry Foerster
Montgomery County
Historical Commission

MONTGOMERY COUNTY HISTORICAL COMMISSION
MONTGOMERY COUNTY, TEXAS

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Development
221 East 11th Street
Austin, Texas 78701

October 4, 2004

RE: 2014 Draft Qualified Allocation Plan
§11.9 Competitive HTC Selection Criteria

Dear Mr. Irvine:

I serve as the Chairman of the Montgomery County Historical Commission. I am writing to submit comments to the 2014 Draft Qualified Allocation Plan ("QAP") as it relates to §11.9 Competitive HTC Selection Criteria "Extended Affordability or Historic Preservation."

These comments address the lack of competitiveness of community based development projects involving adaptive reuse (historic tax credits projects) in downtown central business districts by adding additional points for historic tax credit equity and the significant leverage this equity provides to historic downtown areas of Texas cities.

We recognize two problems with the QAP as it is currently written:

1. The QAP written does not allow affordable housing projects located in downtown central business districts to be competitive, primarily due to the income and school based provisions inserted in the QAP over the last couple of years; and
2. The QAP does not recognize historic tax credit equity as a significant source of leverage which could enable TDHCA to minimize its contribution, and spread its credits further.

The 83rd legislature passed House Bill 500 which provides a 25% state historic tax credit. The Texas Historic Tax Credit combined with a 20% Federal Historic Tax credit could generate 35 – 38% additional equity for adaptive reuse historic preservation affordable housing projects. These projects will not only further the development of affordable housing and spread the availability of TDHCA Low Income housing Tax Credits (LIHTC), but will also assist Texas communities achieve their community development and historic preservation needs.

To achieve these ends, we respectfully recommend the following changes to §11.9 (5) Extended Affordability or Historic Preservation Competitive HTC Selection Criteria:

- Establish "Historic Preservation" as separate criteria and apart from "Extended Affordability".
- That an application qualifying for Historic Preservation under this criteria may be qualified to receive up to (8 points) (or the statutory maximum allowable points whichever is greater) under this criteria.

The addition of these points will counter-act the unintended bias of the opportunity index, further the development of affordable housing for Texans, spread the availability of TDHCA LIHTC, help communities achieve their community development and historic preservation needs, and provide for the highest possible re-use of existing municipal infrastructure and other resources consistent with the historic preservation goals of the Texas Historical Commission and county historical commissions across the state of Texas.

Thank you for your consideration of this request.

Sincerely,

Larry L. Foerster, Chairman

(16) Catherine Sak
Texas Downtown Association

October 1, 2013

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Development
221 East 11th Street
Austin, Texas 78701

RE: 2014 Draft Qualified Allocation Plan
§11.9 Competitive HTC Selection Criteria

Dear Mr. Irvine:

On behalf of the Texas Downtown Association Board of Directors, I am submitting comments to the 2014 Draft Qualified Allocation Plan ("QAP") as it relates to §11.9 Competitive HTC Selection Criteria "Extended Affordability or Historic Preservation."

These comments address the lack of competitiveness of community based development projects involving adaptive reuse (historic tax credits projects) in downtown central business districts by adding additional points for historic tax credit equity and the significant leverage this equity provides.

We recognize two problems with the QAP as it is currently written:

- The QAP written does not allow affordable housing projects located in downtown central business districts to be competitive, primarily due to the income and school based provisions inserted in the QAP over the last couple of years; and
- The QAP does not recognize historic tax credit equity as a significant source of leverage which could enable TDHCA to minimize its contribution, and spread its credits further.

The 83rd legislature passed House Bill 500 which provides a 25% state historic tax credit. The Texas Historic Tax Credit combined with a 20% Federal Historic Tax credit could generate 35 – 38% additional equity for adaptive reuse historic preservation affordable housing projects. These projects will not only further the development of affordable housing and spread the availability of TDHCA Low Income housing Tax Credits (LIHTC), but will also assist Texas communities achieve their community development and historic preservation needs.

To achieve these ends, we respectfully recommend the following changes to §11.9 (5) Extended Affordability or Historic Preservation Competitive HTC Selection Criteria:

- Establish "Historic Preservation" as separate criteria and apart from "Extended Affordability".

- That an application qualifying for Historic Preservation under this criteria may be qualified to receive up to (8 points) (or the statutory maximum allowable points whichever is greater) under this criteria.

The addition of these points will counteract the unintended bias of the opportunity index, further the development of affordable housing for Texans, spread the availability of TDHCA LIHTC, help communities achieve their community development and historic preservation needs, and provide for the highest possible re-use of existing municipal infrastructure and other resources.

Thank you for your consideration of this request.

All the best,

Catherine Sak
Executive Director
Texas Downtown Association

October 8, 2013

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Development
221 East 11th Street
Austin, Texas 78701

RE: 2014 Draft Qualified Allocation Plan
§11.9 Competitive HTC Selection Criteria

Dear Mr. Irvine:

On behalf of the Texas Downtown Association Board of Directors, I am submitting revised comments to the 2014 Draft Qualified Allocation Plan ("QAP") as it relates to §11.9 Competitive HTC Selection Criteria "Extended Affordability or Historic Preservation."

These comments address the lack of competitiveness of community-based development projects involving adaptive reuse (historic tax credits projects in downtown central business districts by adding additional points for historic tax credit equity and the significant leverage this equity provides.

We recognize two problems with the QAP as it is currently written:

- The QAP written does not allow affordable housing projects located in downtown central business districts to be competitive, primarily due to the income and school based provisions inserted in the QAP over the last couple of years; and
- The QAP does not recognize historic tax credit equity as a significant source of leverage which could enable TDHCA to minimize its contribution, and spread its credits further.

The 83rd legislature passed House Bill 500 which provides a 25% state historic tax credit. The Texas Historic Tax Credit, combined with a 20% Federal Historic Preservation Tax Credit, could generate 35 – 38% additional equity for adaptive reuse historic preservation affordable housing projects. These projects will not only further the development of affordable housing and spread the availability of TDHCA Low Income housing Tax Credits (LIHTC), but will also assist Texas communities achieve their community development and historic preservation needs.

To achieve these ends, we respectfully recommend the following changes to §11.9 (5) Extended Affordability or Historic Preservation Competitive HTC Selection Criteria:

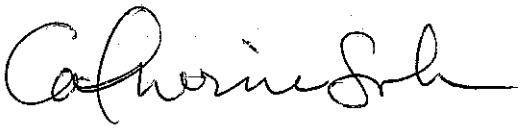
(5) Extended Affordability or Historic Preservation. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) An Application may qualify to receive (9 points) for this scoring item.

- (A) In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Development Owners that agree to extend the affordability period for a Development to thirty-five (35) years total may receive **one (1) point**; or
- (B) An Application proposing the use of historic (rehabilitation) tax credits for **at least 80 percent** of the development project (calculated as the lesser of square footage or unit count,) and providing a letter from the Texas Historical Commission determining preliminary eligibility for said credits, may qualify to receive **eight (8) points**.

The addition of these points will counteract the unintended bias of the opportunity index, further the development of affordable housing for Texans, spread the availability of TDHCA LIHTC, help communities achieve their community development and historic preservation needs, and provide for the highest possible re-use of existing municipal infrastructure and other resources.

Thank you for your consideration of this request.

All the best,



Catherine Sak
Executive Director
Texas Downtown Association

(17) Joy Horak-Brown
New Hope Housing

NEW HOPE
HOUSING, INC.

October 21, 2013

Mr. Cameron Dorsey
Texas Department of Housing and Community Affairs
P. O. Box 13941
Austin, Texas 78711-3941
Sent via email

Dear Cameron,

I am writing to comment on the 2014 Housing Tax Credit Draft Qualified Allocation Plan and Multifamily Rules. Please know that this letter brings with it my appreciation to you and the entire TDHCA staff for your openness to supportive housing and green building.

Let me begin by saying that I have conferred with Walter Moreau and Jennifer Hicks in developing my thoughts, and I am completely supportive of the letter sent to you by Walter on October 7.

1. Section 11.9(e)(2) – Cost of Development per Square Foot –

Typically the costs to build in Houston are higher than in any other city in the State of Texas. Today, this is driven in part by large developments such as those in the medical center and the extensive campus being built by Exxon Mobil just north of the city. The demand for workers and concrete and steel, etc. is simply very high and driving up costs.

Additionally, I am quite concerned about the far reaching implications of a policy that would result in the cheapening of affordable housing developments. My concern is that this 'cheapening' will result in increased neighborhood push back; in properties that are not sustainable over the affordability period due to poor quality systems and construction; in little or nothing in the way of green features; and in community spaces that are wholly inadequate for supportive housing service delivery.

Also, I encourage you to consider a plan that will lead to solid cost per square foot application numbers—numbers that are as close to 'real' as possible.

Proposed Solution - Alter Section 11.9(e)(2) to read as follows:

(B) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

(i) The Building Cost per square foot is less than **$80** per square foot;
(ii) The Building Cost per square foot is less than **$85** per square foot, and the development meets the definition of a high cost development;
(iii) The Hard Cost per square foot is less than **$100** per square foot; or
(iv) The Hard Cost per square foot is less than **$105** per square foot, and the Development meets the definition of high cost development.

I believe that $85 per square foot is an absolute minimum for urban areas. Also note that the figure $100 is underlined and differs from the figure stated in the October 7 letter from Foundation Communities. My suggested figures are consistent, i.e. within $5 in each instance.

2. **Section 11.9(e)(4) – Leveraging of Private, State and Federal Resources –**

New Hope recommends raising the leveraging percentages by one (1) percent for supportive housing and nonprofit housing that carries no permanent debt (or that limits debt). A nonprofit developer such as New Hope Housing must rely heavily on funding from private sources. State and federal resources simple are insufficient to eliminate or limit debt and public/private partnerships are required.

This key factor of zero or very limited debt is what allows New Hope and other nonprofits to executive our mission and serve the most challenged citizens. The leveraging section as presented undermines the definition of supportive housing as debt-free.

Proposed Solution – Alter Section 11.9(e)(4) to read as presented in the letter sent to you by Walter Moreau on October 7.

3. Section 10.204(7)(C) - Owner Contributions –

The addition of any "owner contribution" to the fifty percent (50%) limit of deferred developer fee for purposes of scoring places what I believe to be an unfair restriction on supportive housing and nonprofit housing in general. Once again, this mechanism is key to allowing us to serve those on the lowest rung. A gap closed by fundraising result in zero or very low mortgages.

At the time of application it is *impossible* to have all private fundraising completed/committed. For that reason, a gap must be closed through an owner contribution as a guaranty of those funds. This is usual and customary and the gap is almost always replaced with fundraising by the time a deal closes.

Proposed Solution – Alter Section 11.9(e)(4) to add the following:

…..or where scoring is concerned *with the exception of Section 11.9(e)(4) in the case a development is Supportive Housing or the development has a Non-Profit guarantor who meets the qualification in Section 11.9(e)(4)(B).*

4. Section 11.9(c)(2) – Rent Levels of Tenants

As a nonprofit developer of supportive housing, we appreciate the concept and availability of an additional scoring item for offering to restrict additional units to the lower rent limit, and the greater point value for the most restrictive rent level selection.

However, supportive housing developments typically do not generate robust positive cash flow and creating a significantly higher percentage of 30% units makes an already tight pro-forma, all that more difficult to perform. This additional tightening could result in a reduced developer fee, which further restricts the nonprofit's capacity to develop additional supportive housing units. That seems counterintuitive to the goal of creating a small incentive for supportive and nonprofit housing providers.

In addition, this very steep rent restriction as measured against the available points seems to deter otherwise qualified nonprofits from developing housing that might, in fact, be supportive.

Proposed Solution – Alter 11.9(c)(2) to read:

(A) At least *15 percent* of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments qualifying under the Nonprofit Set-Aside only (13 points);

Thank you in advance for carefully considering my comments. Should you wish to discuss, I welcome hearing from you at 713.628.9113 or at joy@newhopehousing.com

Sincerely,

Joy Horak-Brown
Executive Director

1117 TEXAS AVENUE

HOUSTON, TEXAS 77002

713 . 222 . 0290

(18) Robbye Meyer
Arx Advantage

Arx Advantage, LLC
Robbye G. Meyer
8801 Francia Trail
Austin, Texas 78748
(512) 963-2555
robbyemeyer@gmail.com

October 18, 2013

Texas Department of Housing and Community Affairs
Attention: Mr. Cameron Dorsey
Director of Multifamily Finance
221 E. 11th Street
Austin, Texas 78701

Dear Mr. Dorsey:

§11.2 Program Calendar for Competitive Housing Tax Credits
We support staff's proposal to have a Market Analysis Summary due February 28th with the full application submission and the Full Market Analysis due April 1st.

§11.9(c)(4) Opportunity Index
The developments proposed in the At-Risk set aside are virtually predestined in their location; therefore, the "opportunity" of location is not available for the majority of the existing housing stock. Many rural developers have reviewed their inventory and have determined that the majority of their properties are located in third and fourth quartile income census tracts. We request that At-Risk/USDA developments be exempt from the Opportunity Index scoring item.

§11.9(c)(4) Opportunity Index
We request that the distance for proximity to community assets to be increased from one mile to two miles. Amenities in rural areas are usually spread out and most residents use their own vehicles to move around due to the lack of public transportation.

§11.9(c)(5) Educational Excellence
We request having a point for each high performing school so that there is more of a graduated scale for this point item instead of three points for all schools and one point for the elementary and either of the other schools. One point for elementary, one point for middle and one point for high school. That is simple

§11.9(c)(6) Underserved Area
There are many first quartile census tracts that have strong market potential; however, there is an older HTC property in the census tract. The bottom line still comes down to real estate and many of these areas will make better long term real estate deals.
(C) A Place – never received an allocation serving the same population as propose or has not received an allocation in the last 10 years.

(D) For Rural Areas Only – a census tract that has no more than fifty (50) units serving the same population.

§11.9(c)(8) Location Outside of Food Deserts
We request this section be removed due to lack of reliable data.

§11.9(d)(6)(A) Input from Community Organizations
We request the points for each letter be two points as they have been in previous years. It is difficult to locate these organizations in rural communities. Some rural communities may not have four organizations that will qualify for these letters.

§11.9(e)(4)(A) Leveraging of Private, State and Federal Resources
We request that the percentages for Housing Tax Credit funding requests be increased from 7%, 8% and 9% to 8%, 9% and 10%. In last year's cycle, many applications increased the number of market units in the developments to be able to fit within these percentages. Thus, putting their development at risk or deeming it high risk on syndication market.

Sincerely,

Robbye G. Meyer

Robbye G. Meyer
President

(19) Bobby Bowling
Tropicana Building Corporation

TROPICANA BUILDING CORPORATION

4655 COHEN AVE • 915-821-3550 • EL PASO, TEXAS 79924

October 21, 2013

Cameron Dorsey
TDHCA
VIA e-mail

RE: COMMENTS ON PROPOSED 2014 QAP AND PROPOSED 2014 UNDERWRITNG RULES

Dear Cameron,

We offer the following comment on the Draft 2014 QAP.

1. **Neighborhood Organizations—10.203(1), 10.203(2), 11.8(b)(2)(A) and 11.9(d)(4):** The language in the various rules regarding Neighborhood Organizations is confusing and we believe in need of much clarification at this point. First, even though the term is capitalized, there is no definition for the term in **10.1 Subchapter A—General Information and Definitions.** We believe a definition is in order and we propose the following:

   > *Neighborhood Organization: An organization, on record with the state or county in which the Development Site is located, which is current with all required filings, and in good standing with either the Comptroller of the State of Texas or the Secretary of State of Texas or both, as applicable. The organization's boundaries must contain the Development Site that organization seeks to provide comment on and the boundaries must contain a specific neighborhood. The boundary shall not constitute an entire area of a city, county or place such as "the east side". Further, the boundary cannot encompass more than 1 square mile, as anything larger would not constitute a "neighborhood" as intended in statute.*

   Without clarifying language, we oppose the additional sentence added at the end of **11.8(b)(2)(A)** which makes a developer "responsible to identify all such Neighborhood Organizations" without actually knowing what or who the developer is supposed to identify. There have been many anecdotal instances before the Board over the years that identifies what a "neighborhood" constitutes, however, the rules do not actually codify what the specific requirements are.

   We support the language proposed in **10.203(1)(B)**. Removal of the former language from the 2013 QAP of the requirement of developers to notify

Neighborhood Organizations "… *that the applicant has knowledge of (regardless of whether the organization is on record with the county or state)"* will better address the issue of having competing developers accuse one another of having "*knowledge of*" an organization that is not on record with the county or state in needless and wasteful challenges to applications. The proposed staff draft language currently proposed better defines the exact responsibility of the developer for notifications.

2. **Economically Distressed Area (EDA)—10.3(a)(43):** While we welcome the attempt to broaden this definition, we believe it is too limiting and may lead to the type of discrimination in communities that the recent court remedy seeks to address. The current language being proposed addresses a very RELATIVE level of poverty within an MSA, rather than a more GENERAL level of poverty. We believe that the Legislature intended to address a general measure of poverty, rather than a relative measure of poverty with this section of statute, as the inclusion of "*colonias"* in this section of statute further demonstrates the intent to address as many "*colonias"* or "*EDAs"* throughout the state as possible, regardless of whether an MSA contains zero of these areas or 5,000. We propose a change in the language that removes the term:

> *"…in a census tract that is in the fourth quartile of median household income for the MSA, if located in an MSA, or county, if not located in an MSA…."*

And replaces that language with something that measures general poverty in a census tract such as the "200% of poverty level" (a measure the Department already tracks for the Regional Allocation Formula methodology) or a measure of 80% of the statewide median family income for the state (which is tracked by the Federal Government at www.ers.usda.gov/data-products/food-access-research-atlas/).

3. **Commitment of Funding by Local Political Subdivision—11.9(d)(2):** We strongly support the language in the draft QAP regarding this item, as without it, an unfair advantage would be realized by local Public Housing Authorities (PHAs). Any item that would allow for an unfair advantage to be realized by a public entity over a private entity goes against the original intent of the Section 42 program—a program Congress always intended to be used by private developers—and is innately unfair. We believe Cameron Dorsey stated it best at the October 9, 2012 TDHCA Board Meeting when he stated, "…staff can't really come up with a really great policy reason why we would say a PHA deserves to be able to get more points inherently under this item than another

development type. We just didn't see a reason to distinguish between types of owners." We agree entirely with this statement, as decades of evidence have shown that the private sector is much more efficient in every aspect of delivering products to the market place than a governmental entity, and if anything, the reverse should occur (tax-paying, private entities should get a point advantage over governmental entities). Also, as Mr. Dorsey stated in further testimony at the October 9, 2012 Board Meeting, there are other areas of the QAP and other aspects of the program where PHAs still have a decided advantage over private sector applicants—the ability to exercise their tax-exempt status on both sales and property taxes, as well as re-distribute Section 8 vouchers to themselves on their own tax credit properties are built-in advantages that are quite enough without any expressed QAP point advantages. The Attorney General upheld your authority on this item in 2013, and the Texas Legislature, who weighed-in on several QAP and rules items regarding TDHCA in the 83rd Legislative Session, was conspicuously silent on this item entirely. There is no reason to change the course of action for 2014 regarding this item as it leveled the playing field for all developers (regardless of what type of organization they are) in 2013.

4. **Tenant Populations with Special Housing Needs—11.9(c)(7)(B):** To the extent that the Department wishes to pursue the Section 811 Program we support the last sentence of this paragraph which states:

> *"Should an Applicant receive a Housing Tax Credit award, the Department may allow Applicants to identify an alternate existing Development in the Applicant's or an Affiliate's portfolio, consistent with Department Section 811 Program criteria, to participate in the Section 811 Program."*

   This added language (not in the original draft online) will enable the Department to meet the goals of the program much faster than if it was relying solely on proposed developments with completion deadlines 3 years from now. We have suggested that this alternative be available throughout the discussions with TDHCA at roundtable workshops since the introduction of this item for points and we appreciate the Department's willingness to listen to input from the development community.

5. **Challenges of Competitive HTC Applications—11.10(1):** We are confused as to what is meant by:

TROPICANA BUILDING CORPORATION

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> *"The challenge must be received by the Department no later than seven (7) days after the Application Challenges Deadline as identified in 11.2 of this chapter…."*

Why would this deadline differ from any other deadline in the QAP? We believe that the stated deadline in 11.2 should constitute a "drop dead" deadline, just as all the other deadlines in the program.

We also submit the following comment on the proposed 2013 Draft Real Estate Analysis Rules and Guidelines:

1. **10.302(i)(6)(B) Exceptions:** This section of the rules allow for the TDHCA underwriting feasibility rules to be ignored in their entirety if a PHA dedicates its own Section 8 Project-Based vouchers to at least 50% its development or characterizes at least 50% of its development as "public housing." The supposition in this language (dating back several years) is that the Federal Government will "bail-out" a deal that becomes infeasible—a supposition that we believe is in error and at the very least bad public policy. We believe that this section should be stricken from the rules as it holds private developers to a much stricter standard than for PHAs. The tax credit program has been the most successful affordable housing program ever created by the federal government and in Texas mainly due to the fact that **PRIVATE SECTOR DEVELOPERS** have been the major players in the program, especially in Texas. If it is the Department's wish to allow public sector PHA's to compete with private developers, then at least a level playing field should be established and **ALL DEVELOPERS SHOULD HAVE TO FOLLOW THE SAME UNDERWRITING RULES.** Further, in this economic and fiscal climate, the Federal Government is likely to lessen support of or eliminate entirely both the Section 8 program and the Public Housing program, leaving TDHCA to deal with infeasible projects over the long-term if this rule is not changed. PHAs have repeatedly testified to TDHCA at public hearings that funding from the Federal Government continues to be cut back each year, and HUD funding to PHAs is, at the very least, questionable in the future.

This concludes our comments for the 2014 draft rules regarding the LIHTC program. Thank you in advance for considering our comments.

Sincerely,

R. L. "Bobby" Bowling IV, President

(20) Justin Hartz
LDG Development

LDG Development, LLC
Lechner Dischinger Group

Cameron Dorsey
Texas Department of Housing and Community Affairs
221 East 11st Street
Austin, TX 78701

October XX, 2013

Dear Cameron Dorsey,

On behalf of LDG Development,LLC we are writing in support and recommendation to the 2014 Multifamily Qualified Allocation Plan pertaining to **11.4.C.1 Tax Credit Request and Award Limits**. We recommend no change to the following section:

(1)The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20 percent Housing Tax Credit Units per Households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20 percent Housing Tax Credits Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the development site pursuant to 42(d)(5) of the code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply 30 percent boost in its underwriting evaluation. For any development located in a census tract with 20 percent or greater Housing Tax Credit Units per total households, the development is eligible for the boost if a resolution is submitted. The Governing Body of the appropriate municipality or county containing the Development has by vote specially allowed the construction of the new Development and submits to the Department a resolution referencing this rule……"

*****(Underlined section is strongly recommended)*

LDG Development,LLC supports keeping current QAP language for the following reasons;

1. 30% Basis Boost is required to finance 4% bond projects and RAD projects with current inflation of interest rates and expenses.
2. RAD and Housing Authority projects being developed now or in the future are highly likely to be located in a census tracts with greater than 20 percent Housing Tax Credit Units per Household.
3. The additional 30% basis boost would not reduce any tax credit availability from TDHCA since 4% credits availability is unlimited at the state level.
4. Since a resolution from the Governing Body is required for the 30% basis boost, the project definitively has support from the local authority to be constructed.
5. Current language will deliver additionally units to the State of Texas.

Thank you for the support,

Justin Hartz
LDG Development,LLC

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(21) Barry Palmer
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October 21, 2013

Texas Department of Housing
And Community Affairs
221 East 11th Street
Austin, Texas 78701

RE: Comments on Draft 2014 Qualified Allocation Plan and Draft 2014 Uniform Multifamily Rules.

Ladies and Gentlemen:

Thank you for providing this opportunity to provide our comments on the draft versions of the 2014 Qualified Allocation Plan ("QAP") and the 2014 Uniform Multifamily Rules ("Rules") which were released September 20, 2013 and posted on the TDHCA Website.

GENERALLY:

1. Support for TAAHP Consensus Recommendations

Initially, we wish to indicate our support for the recommendations discussed in the TAAHP letter to the TDHCA Board of Directors dated October 10, 2013.

QAP:

2. Subsection 11.3(f)

Subsection 11.3(f) requires that a subsequent phase of a development be deferred until a prior, adjacent or contiguous phase or third party development serving the same Target Population has reached 90% occupancy for a minimum of six months. While this would appear to be a logical requirement for a new development, it does not make as much sense when applied to the redevelopment of an existing project through multiple phases, since the new phase will be drawing its tenants from existing tax credit units that are being replaced. Accordingly, we recommend that Subsection 11.3(f) be revised by adding as a final sentence:

> **This Subsection does not apply to applications where the Development or phases of the Development replaces in part or in whole an existing tax credit Development.**

3. **Subsection 11.4(c)(1)**

A. Eliminate exception for New Construction and Adaptive Reuse. Draft language would deny the 30% boost to a New Construction or Adaptive Reuse Development located in a QCT with more than 20 percent Housing Tax Credit Units per total households. We believe that 42(d)(5)(B)(i)(I) and (II) of the Internal Revenue Code makes the boost mandatory in a QCT (regardless of the percentage of tax credit units in place) for a new building and for rehabilitation expenditures for an existing building. We further conclude that the State housing credit agency's ability to designate what developments will qualify for the boost under 42(d)(5)(B)(v) of the Code is a right granted to the housing credit agency **in addition to, and not replacing or mitigating** the Code's specification in 42(d)(5)(B)(i). **Accordingly, we recommend that the boost be made available for any Development in a QCT.**

B. Clarify that resolution will qualify any Development in a QCT. In the event that the TDHCA disagrees with us on this point, then we recommend that 11.4(c)(1) be revised in the following manner, to (i) clarify that any development, even if it is New Construction or Adaptive Reuse, can qualify for the 30% increase in Eligible Basis if the Governing Body of the appropriate municipality or county resolved by a vote to support the Development's qualification for a boost; and (ii) clarify that the pertinent sentence only applies to QCTs and not to any census tract with a tax credit units in excess of 20% of the total households. This can be accomplished by replacing the fourth sentence in 11.4(c)(1) with the following:

> **For any Development, including New Construction and Adaptive Reuse Developments, located in a QCT with 20 percent or greater Housing Tax Credit Units per total households, the Development is eligible for the boost if a resolution is submitted.**

4. **Subsection11.5(3)(A)**

The final sentence in 11.5(3)(A) should be harmonized with Subsection 11.5(2) by revising it to clarify that New Construction USDA applications awarded in the sub-region are aggregated with the At-Risk USDA applications in order to meet the USDA Set-Aside. We suggest the following modification:

> **Up to 5 percent of the State Housing Credit Ceiling associated with this set-aside may be given priority to Rehabilitation Developments under the USDA Set-Aside, to the extent necessary to meet the USDA Set-Aside, taking into consideration allocations made to both At-Risk and New Construction applications financed through USDA.**

5. **Subsection 11.5(3)(D)**

This subsection has been revised in such a way that it no longer makes sense, insofar as it requires that no less than 25% of the proposed Units be public housing units. The difficulty is that 2306.6702(a)(5)(B) of the Government Code does not describe public housing projects that are owned and operated by public housing authorities. It describes projects with HOME funds, or 221(d)(3) or (d)(4) financing. Public housing projects do not "terminate". Projects that are described under 2306.6702(a)(5)(B) are unlikely to have public housing units (even though their units may be subsidized). **Accordingly, we recommend that you go back to the 2013**

language, which does reference public housing units, but not in a way that creates problems with non-public housing subsidized units.

6. **New Subsection 11.5(3)(G)**

TAAHP has recommended that developments participating in HUD's Rental Assistance Demonstration (RAD) Program be qualified for the At-Risk Set-Aside, which we support. We recommend that this be implemented by the following new language:

> **(G) A public housing development that has applied to be included in HUD's Rental Assistance Demonstration (RAD) Program is qualified for the At-Risk Set-Aside, provided that the public housing development does actually convert its rental assistance to long term project-based Section 8 rental assistance contract.**

RULES:

7. **Subsection 10.207(a)**

This subsection deals with the general waiver process, and in particular, the requirement that a waiver may only be requested at or prior to submission of the pre-application or the application. Sometimes it is unknown whether a waiver will be required until the TDHCA Staff has evaluated an application because the question in point will turn on an interpretation of the QAP or the Rules. We think that it is unfair to deny an applicant the opportunity to request a waiver under such circumstances, and request that this restriction be eliminated. **This can be done most readily by deleting the second and third sentences in the subsection.**

8. **Subsection 10.207(d)**

This subsection confirms the Board's right to waive any one or more of the rules in Subchapters B, C, E and G, at its discretion. **The Board's right to waive any one or more of the rules in Chapter 11 and Chapter 12, which are also covered by the General Waiver Process set out in Subsection 10.207(a), should be added to this provision.**

Thank you for the opportunity to comment on the draft 2014 QAP and Rules. If you have any questions concerning our comments, please do not hesitate to call.

Very truly yours,

Barry J. Palmer

(22) Sarah Anderson
S. Anderson Consulting

S. Anderson Consulting, LLC 2014 QAP Comments

Section 10.3 Definitions (43) Economically Distressed Area
Currently, the Rules require that an economically distressed area have an income that is 75 percent or less of the statewide median household income as well as be located "in a census tract is in the fourth quartile of median household income for the MSA, if located in an MSA, or county, if not located in an MSA." I propose that the requirement that the area be in a census tract that is in the fourth quartile be removed. The Texas Water Development Board (TWDB) requires an income that is 75 percent of less of the statewide median income for the EDA program and makes no reference to the quartile of an area. Because of this, some areas that have been assisted through the EDA program at 75 percent of less than the median could be considered third quartile according to TDHCA's data. In such a case, it could be an inconsistency for TDHCA to not recognize such an area as an EDA when in fact it met the TWDB requirement of being 75 percent or less than the statewide median income. I propose that the income of the census tract only require that it is 75 percent or less of the statewide median household income with no regard to TDHCA quartile in order to mirror TWDB's requirements and not inadvertently exclude any areas that would be EDAs under the TWDB program.

Section 11.9(d)(2) Commitment of Development Funding by Local Political Subdivision
I propose that the funding amount multipliers based on population be lowered. A city such as Frisco will not have the same financial resources as a city such as Dallas; however, they would need the same amount of funding under this point item as currently proposed. A multiplier of 0.075 would require a city of 200,000 to contribute $15,000 per unit, which would make more sense than a city of 100,000 at a multiplier of 0.15. See proposed multipliers below:

- 11 points: .075
- 10 points: .05
- 9 points: .025
- 8 points: .0125
- 7 points: .005

Section 11.3(f) Additional Phase
I propose that an additional phase or adjacent development to an existing tax credit development or award serving the same population be permitted if (a) the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development and (b) the additional units are supported by a market study.

If this is not acceptable, then I propose that it be limited to an additional phase that is being done to replace units that had previously been demolished, with the second phase adding the same number or less than what was originally there. This circumstance might occur because of the credit limitations in some regions where there simply are not enough credits in a particular year to replace all of the demolished units.

Section 11.9(e)(3) Pre-Application Participation
The current draft states that "The total number of Units does not change by more than ten (10) percent from pre-application to Application." I propose that this reverts back to the previous years' language that the total number of units cannot increase by more than 10 percent

Section 11.10 Challenges to Competitive HTC Applications
I propose that if a challenge is not reviewed by staff for any reason or if, as stated in this section, "A matter, even if raised as a challenge, that staff determines should be treated as an Administrative Deficiency will be treated and handled as an Administrative Deficiency, not as a challenge," then the challenge fee should be refunded to the challenger.

Sarah Anderson
S. Anderson Consulting, LLC
512-554-4721
sarah@sarahandersonconsulting.com

2014 Additional comment

11.4.C.1 Tax Credit Request and Award Limits. We recommend no change to the following section:

(1)The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20 percent Housing Tax Credit Units per Households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20 percent Housing Tax Credits Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the development site pursuant to 42(d)(5) of the code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply 30 percent boost in its underwriting evaluation. <u>For any development located in a census tract with 20 percent or greater Housing Tax Credit Units per total households, the development is eligible for the boost if a resolution is submitted. The Governing Body of the appropriate municipality or county containing the Development has by vote specially allowed the construction of the new Development and submits to the Department a resolution referencing this rule</u>……."

*****(Underlined section is strongly recommended)*

XXXXXX supports keeping current QAP language for the following reasons;

1. 30% Basis Boost is required to finance 4% bond projects and RAD projects with current inflation of interest rates and expenses.
2. RAD and Housing Authority projects being developed now or in the future are highly likely to be located in a census tracts with greater than 20 percent Housing Tax Credit Units per Household.
3. The additional 30% basis boost would not reduce any tax credit availability from TDHCA since 4% credits availability is unlimited at the state level.
4. Since a resolution from the Governing Body is required for the 30% basis boost, the project definitively has support from the local authority to be constructed.
5. Current language will deliver additionally units to the State of Texas.

(23) Valentin DeLeon
DMA Development Company

DMA DEVELOPMENT COMPANY, LLC

October 21, 2013

VIA EMAIL (cameron.dorsey@tdhca.state.tx.us)

Cameron Dorsey
Director, Multifamily Finance
TDHCA
221 E. 11th Street
Austin, TX 78701

Re: DMA comments on TDHCA Board Approved Draft of the Qualified Allocation Plan Chapter 11 of the Texas Administrative Code

Dear Mr. Dorsey:

Please see and accept the following comments on the draft QAP, approved by the Department's Governing Board on September 12, 2013. Should you have any questions, we would be happy to discuss further.

DMA would like to make the following comments/suggestions for the proposed 2014 QAP;

§11.4(a)(4) Tax Credit Request and Award Limits.
DMA suggests a revision to the language discussing the amount of consulting or developer fee an organization may receive without the allocation applying to the consultant's or developer's annual credit limitation. Suggested language:

> *(4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments, developments Controlled by a housing authority organized under Local Government Code chapter 392, developments Controlled by a housing authority Affiliate, or developments Controlled by any non-profit organized under Texas Government Code or Local Government Code) to be paid or $150,000, whichever is greater.*

§11.4(c)(1) Tax Credit Request and Award Limits.
"For any development located in a census tract with 20 percent or greater Housing Tax Credit Units per total households, the development is eligible for the [30 percent] boost if a resolution is submitted." DMA supports keeping current language.

§11.9(c)(4) Opportunity Index.
DMA suggests increasing senior points under the opportunity index to five (5) as allowed in 2013.
Suggested Language:
Any Development, regardless of population served is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable and the Site is in the attendance zone of an elementary school that has a Met Standard Rating and has achieved a 77 or greater on index 1 of the performance index related to student achievement (5 points)

§11.9(c)(6)(C) Underserved Area.

The new language under §11.3(e) limits the location of applications for elderly developments in those parts of the state that have a disproportionate number of existing elderly developments. Given this new ineligibility item, it is not necessary to further penalize elderly developments in the scoring criteria in areas of the state where elderly applications are eligible. Suggested language:

> (6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive two (2) points for general population or Supportive Housing Developments or one (1) point for Qualified Elderly Developments, if the Development Site is located in one of the areas described in subparagraphs (A) – (D) of this paragraph.

§11.9(c)(8) Location Outside of "Food Deserts."

Eliminate this scoring item. However, should the scoring item not be removed, we suggest the Department create a process for identifying full service grocery stores not identified in USDA data.

§11.9(d)(6) Input from Community Organizations.

Allow developments that are in the boundaries of a neighborhood organization to access these points if the neighborhood organization does not provide input or provides a neutral letter.

§11.9(d)(7)(c)(i)(I) Community Revitalization For Developments Located in a Rural Area.

We suggest that the following be added to acceptable forms of rural revitalization.

> (I) New paved roadway (may include paving an existing non-paved road but excludes overlays or other limited improvements) or expansion of existing paved roadways by at least one lane (excluding very limited improvements such as ~~new turn lanes or~~ re-striping), *or addition of non-traversable raised medians and/or dedicated left or right turn lanes* in which a portion of the new road, expansion, *median or turn lanes* is within one ~~quarter (1/4)~~ mile of the Development Site;

DMA also suggests increasing the distance from ¼ mile to 1 mile for section (I) – (III).

§11.9(e)(2)(B)-(F) Cost of Development per Square Foot.

Due to the significant and continuing increase in construction costs in Urban and Rural areas, DMA recommends the following revisions:

> *(B) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:*
>
> *(i) The Building Cost per square foot is less than ~~$60~~ $70 per square foot;*
>
> *(ii) The Building Cost per square foot is less than ~~$65~~ $75 per square foot, and the Development is a meets the definition of a high cost development;*
>
> *(iii) The Hard Cost per square foot is less than ~~$80~~ $90 per square foot; or*
>
> *(iv) The Hard Cost per square foot is less than ~~$90~~ $100 per square foot, and the Development meets the definition of high cost development.*
>
> *(C) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:*

(i) The Building Cost per square foot is less than ~~$65~~ $75 per square foot;

(ii) The Building Cost per square foot is less than ~~$70~~ $80 per square foot, and the Development meets the definition of a high cost development;

(iii) The Hard Cost per square foot is less than ~~$85~~ $95 per square foot; or

(iv) The Hard Cost per square foot is less than ~~$95~~ $105 per square foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for nine (9) points if one of the following conditions is met:

(i) The Building Cost is less than ~~$80~~ $90 per square foot; or

(ii) The Hard Cost is less than ~~$100~~ $110 per square foot.

(E) Applications proposing Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than ~~$100~~ $110 per square foot;

(ii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than ~~$130~~ $140 per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than ~~$130~~ $140 per square foot.

AND: Delete clause (F). It appears that this additional one (1) point rewards luck rather than merit.

§11.9(e)(4)(A)(ii)-(iv) Leveraging of Private, State, and Federal Resources.

DMA recommends the following revisions:

(ii) If the Housing Tax Credit funding request is less than ~~7~~ 8 percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than ~~8~~ 9 percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than ~~9~~ 10 percent of the Total Housing Development Cost (1 point).

§11.9(e)(7) Development Size.

We suggest the elimination of this scoring item. Limiting the number of HTC units to 50 and the credit request to $500,000 does not improve the quality of the housing provided and in many cases results in less feasible developments.

Sincerely,

DMA DEVELOPMENT, LLC

Valentin DeLeon
Development Coordinator
valentind@dmacompanies.com
512-328-3232 Ext. 4514

cc: Diana McIver
JoEllen Smith
Janine Sisak
Audrey Martin

(24) Chris Akbari
ITEX Group

From:	Jean Latsha
To:	Cameron Dorsey; Teresa Morales
Subject:	FW: Comments on Current Draft of QAP
Date:	Monday, October 21, 2013 4:50:06 PM

From: Chris Akbari [mailto:chris.akbari@itexgrp.com]
Sent: Monday, October 21, 2013 4:49 PM
To: Jean Latsha; Miranda Ashline
Subject: Comments on Current Draft of QAP

Jean,
Based upon our review of the current version QAP, I would like to comment or request that staff clarify the following:

1. Third-Party Reports: In the current draft of the QAP the third-party reports are due within less than 45 days from the date of submission of the pre-application. It is very difficult to complete these reports by this deadline when we will not have seen how the project scores and fully determine viability.
2. At-Risk: In Section 11.5(3)(D), please clarify that no less than 25 percent of the proposed Units must receive a form of operating subsidy. The way it is currently interpreted project-based Section 8 properties would not meet this requirement. This was much clearer in the 2013 QAP. In addition, we believe that there is a great opportunity for properties that are public housing to convert their subsidies through the Rental Assistance Demonstration (RAD) program from public housing to project-based rental assistance or project-based vouchers. In order for properties that are converting into the RAD program to be included into at-risk set-aside we propose that you set a new category that will allow for projects that have submitted applications for the conversion to RAD be included in the at-risk set-aside if they are converted and the operating subsidy is preserved.
3. Commitment of Development of Local Funding: 11.9(d)(2) - In rural cities where the cities have limited capacity or funding abilities, we have had cities offer deferring payment of permits for 1 year as a contribution of local funds. They would be willing to loan this payment for up to 1 year. Otherwise, most small cities with a population of 10,000 or less don't have access to any other form of funds and don't have housing finance corporations to assist with housing development.
4. Commitment of Development of Local Funding: 11.9(d)(2) - Most smaller cities are unwilling to loan funds from their general account to assist with housing development.
5. Commitment of Development of Local Funding: 11.9(d)(2) - Would a commitment of funds from a TIRZ or management district qualify for these funds?
6. Community Revitalization Plan - 11.9(d)(7) - Currently, there is a disadvantage for rural communities that are receiving CDBG-DR funds. We suggest you allow for CDBG-DR funds under section (B)(ii) to also allow for a rural community to qualify and receive these points.

I appreciate the opportunity to give comment regarding the draft form of the QAP. Please let me know if you have any questions regarding these comments.

Thanks,

Chris Akbari, Executive Vice President

ITEX Group

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October 21, 2013

Board of Directors
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

VIA FACSIMILE
512-475-0764

Re: Comments/Recommendations to 2014 Qualified Allocation Plan ("QAP")

Dear Chairman Oxer and Members of the Board:

We would like to comment on the following aspects of the draft 2014 QAP:

1) Community Revitalization in Rural Areas:

We submit the following recommendations as proposed to changes to the Community Revitalization section of the 2014 QAP (Section 11.9(d)(7)(C)(i):

1. Add a $20,000 monetary requirement for water and waste water lines as another option to the 500 foot extension for each. This way items such as lift stations and pumps can be taken into account, and it is not quite as restrictive as just a line extension.
2. Change the ¼ mile distance from site to improvements requirement to 1 mile.
3. Clarify that private water/sewer providers can issue letters committing improvements to the area of a proposed development site if the private company is the utility provider for the community. In many rural communities water lines are controlled by private co-ops and not the city or county.

2) Commitment of Development Funding by Local Political Subdivisions:

We strongly support the language as proposed by TAAHP in the 2014 QAP "Recommendations letter" dated October 10, 2014. In today's economy it is very difficult to ask large cities and counties to contribute $15,000 per unit. Often times the areas in need most of quality affordable housing are the same communities with the greatest burden of weathering the current economic storm. Communities with strong schools and real population growth are often times already too taxed with other infrastructure improvements to contribute funds to housing. Scaling back of contribution amounts by 50 percent will certainly help to foster developments in additional areas of need throughout Texas.

3) **Leveraging of Private, State and Federal Resources:**

We recommend that Section 11.9(e)(4)(A)(ii-iv) be revised to be at the 8%, 9% and 10% levels for the 3 point, 2 point and 1 point scoring categories respectively. Many deals in 2013 would not have been funded if they did not pursue full points under this scoring item. In a rising interest rate environment and higher construction cost environment, encouraging applicants to take a lower credit amount could jeopardize the feasibility of many applications if conditions continue to worsen when these deals are actually closed.

4) **At-Risk Set –Aside**

We recommend that Section 11.5(3)(C)(i) be revised to allow more time to get approval of the transfer of the applicable subsidy. In many situations, HUD will be required to approve the transfer of the subsidy, and if a site is not identified until late December having until February 28, 2014 may not be enough time to obtain HUD approval (especially if there is another government shutdown). We recommend extending this date to May 1, 2014.

Thank you for consideration of our recommendations.

Respectfully,

Brownstone Affordable Housing, Ltd., a Texas limited partnership

By: Three B Ventures, Inc., its general partner

By:_____
Doak Brown, Vice President

(26) Lora Myrick
BETCO Consulting

BETCO DEVELOPMENT

Development and Consulting for Affordable Housing in Texas Since 2007

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October 21, 2013

Texas Department of Housing and Community Affairs
Mr. Cameron Dorsey, Director of Multifamily
221 E. 11th Street
P O Box 3941
Austin, TX 78701

Dear Mr. Dorsey:

We would like to thank you for the opportunity to provide written comments to the 2014 draft Qualified Allocation Plan (QAP) for the Texas Department of Housing and Community Affairs (the Department) and offer the following for consideration.

Section 11.2 – Program Calendar: We would like to join others that support the Market Analysis be submitted on April 1st as it has in previous years. This will allow for any adjustments to be made with respect to other submissions made in the same market and allows for the limited number of analysts to complete the work for their clients.

Section 11.3 (e) – Developments in Certain Sub-Regions and Counties: We ask the Department not limit elderly developments throughout the state. Funding elderly developments is already a challenge as they do not qualify for the points associated with Opportunity Index for competitive credits. There is also the added impact of not being able to serve communities that are located in these identified counties that do need and want elderly housing to provide their seniors with alternatives that would allow them continue to live in their community and not have to maintain a home that no longer meets their needs.

Section 11.4 (a) – Tax Credit Request and Award Limits: We request the Department to consider modifying the maximum request. Rather than allow requests up to 150% of what is available in the region, increase the cap in each region to $650,000 and requests cannot exceed what is available.

Section 11.9 (c)(4)(B)(i-vii) – Opportunity Index: We request that the Department increase the distance from one linear mile to two miles for proximity to after-school programs, full service grocery stores, child-care centers and schools. Amenities/services tend to be located further apart in the rural areas. We also request an increase in point potential to include middle and high schools, two points each, in the rural area as these types of schools tend to be limited in number and can be significantly further in distance as they may be serving more than one city/town. Having all three types of educational facilities that have met the standard and the distance requirement should be worth more points.

Section 11.9 (c)(5) – Educational Excellence: We request having a more graduated scale for this point category that rewards sites that will have all three school types serve the development that meet the educational

excellence criteria. If the site is served by at least one high-performing elementary school, the site will receive one point. If the site is served by both the high-performing elementary and a high-performing middle or high school, the site will receive two points. If the site is served by all three school levels that are high-performing, the site will receive the three points.

Section 11.9 (c)(7) – Tenant Populations with Special Housing Needs: We request the Section 811 Project Rental Assistance Demonstration Program be removed from the QAP. There are still many unknowns with respect to the programs guidelines and adding another layer of restrictions and/or requirements to an already complex program for a new development may not be the optimal way to implement this pilot program. It should be a standalone program using existing developments that are already in operation, as they may have an easier transition with incorporating these designated units in their daily operations.

Section 11.9 (c)(7) – Location Outside of "Food Deserts": We request that this category be deleted from the QAP as there is insufficient reliable data.

Section 11.9 (d)(6)(A) – Input from Community Organizations – We request that letters of support from the community be worth two points each, as they have been in years past. In rural areas, it is difficult to find four or more different organizations that would qualify for these points to be on an equal playing field with urban developments.

Section 11.9 (e)(4)(A)(ii-iv) – Leveraging of Private, State and Federal Resources: We request to have the maximum percentages for Housing Tax Credit funding requests increased to 8% to 10% from the current percentages. In this most recent cycle, many developments had to increase the number of market units and these increases in market units made it harder to work with a syndicator that was willing to take on such a high number of market units.

Section 11.10 - Challenges of Competitive HTC Applications: We would like to request that challenge determination be made at the board level rather than staff level. Once a determination is made, it cannot be appealed. The developer should have the opportunity to argue their challenge and present information to the board and have the board make the final determination, as it is rules and policies they have approved. We also encourage the Department to publish not just the challenges submitted in full, but the responses to the challenges in their entirety. During this past cycle, challenges were fully published but the responses to the challenges were not and if we wanted to see a response, we had to submit an open records request. There were also instances where staff had made determinations on the challenges and responses, but the log where this information was captured was vague. The public, including challengers, could not fully understand the reasoning or thought process in reaching some of these determinations. The public should have full information on such matters.

Thank you again for the opportunity to provide these comments. If you have any questions, please feel free to contact me any time.

Sincerely,

Lora Myrick
Vice President
BETCO Consulting, LLC

(27) Bob Stimson
Oak Cliff Chamber of Commerce

OAK CLIFF CHAMBER OF COMMERCE

By Email: Sharon.Gamble@tdhca.state.tx.us
Mr. Cameron Dorsey
Director of Multifamily Finance
Texas Department of Housing & Community Affairs
Multifamily Finance Production
P.O. Box 13941
Austin, TX 78711-3941

Re: TDHCA Board Approved Draft of 2014 Qualified Allocation Plan ("QAP")

Dear Mr. Dorsey:

As President of the Oak Cliff Chamber of Commerce (the "Oak Cliff Chamber"), I write to convey the Oak Cliff Chamber's public comments on the 2014 QAP currently under review by TDHCA. The Oak Cliff Chamber is committed to the economic development of southern Dallas and strongly believes that an increasing over-concentration of low income housing tax credit ("LIHTC") projects is interfering with community efforts to overcome southern Dallas's significant, existing economic challenges. For instance, although southern Dallas is home to 41% of Dallas's population, it contains only 22% of the City's business establishments and less than 19% of the City's jobs. Nevertheless, from 2001 to 2010, 80% of the LIHTC units built in the City of Dallas were built in southern Dallas.

The Oak Cliff Chamber believes that a review of Texas's policy for subsidizing LIHTC at the legislative level is necessary. However, we have identified changes to the proposed 2014 QAP that, if made, we believe would 1) address many of the LIHTC-related challenges areas like southern Dallas face; 2) ensure that existing residents have access to safe, well-maintained, and affordable housing; and 3) encourage long-term sustainability, economic diversity, and increased job opportunities within those communities. Specifically, we propose the following:

- § 11.3: The addition of the spacing requirements reflected in § 11.3 represents progress. However, because of the concentration of LIHTC projects in economically disadvantaged urban areas in Texas and the length of LIHTC-related deed restrictions, we propose removing the time requirements in § 11.3(a) and (c) to ensure that the presence of aging LIHTC projects is considered before new projects are approved nearby.
- § 11.9(c): To achieve the statutory goals of providing "integrated, affordable housing for individuals and families with different levels of income" and prioritizing financially feasible projects, the QAP should award points in a manner that incentivizes projects with mixed-income and/or mixed-use components. *See* Tex. Govt. Code §§ 2306.111(g)(3)(B), 2306.6710(b)(1)(A).
- § 11.9(d)(1): To ensure that Governing Body recommendations reflect a thorough analysis of a proposed project, remove the criteria in § 11.9(d)(A)(ii) for

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OAK CLIFF CHAMBER OF COMMERCE

projects to which a local Governing Body "has no objection" but does not "expressly … support[]."

- § 11.9(d)(4): The QAP should ensure that the Quantifiable Community Participation criteria is broad enough to include consideration of comments from economic development organizations such as chambers of commerce.
- § 11.9(d)(7): The QAP should award higher points to proposed projects located in Community Revitalization Plan areas. In order for a CRP area to become more economically viable, the QAP should also mandate that a CRP contain strategies that would attract higher income residents to that area instead of simply adding more affordable housing.

We appreciate the opportunity to provide these comments on the proposed 2014 QAP and would welcome the chance to discuss them further with you and TDHCA staff.

Sincerely,

Bob Stimson, President

Oak Cliff Chamber of Commerce

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(28) Alyssa Carpenter
S. Anderson Consulting

October 21, 2013

Teresa Morales
Texas Department of Housing and Community Affairs
221 E 11th St
Austin, TX 78701

RE: Comments on Proposed 2014 Multifamily Rules and QAP

Dear Ms. Morales:

Thank you for the opportunity to provide comment on the proposed 2014 TDHCA Multifamily Rules and QAP. Please see my comments and suggestions below.

Section 10.3 Definitions (43) Economically Distressed Area
Currently, the Rules require that an economically distressed area have an income that is 75 percent or less of the statewide median household income as well as be located "in a census tract is in the fourth quartile of median household income for the MSA, if located in an MSA, or county, if not located in an MSA." I propose that the requirement that the area be in a census tract that is in the fourth quartile be removed. The Texas Water Development Board (TWDB) requires an income that is 75 percent of less of the statewide median income for the EDA program and makes no reference to the quartile of an area. Because of this, some areas that have been assisted through the EDA program at 75 percent of less than the median could be considered third quartile according to TDHCA's data. In such a case, it could be an inconsistency for TDHCA to not recognize such an area as an EDA when in fact it met the TWDB requirement of being 75 percent or less than the statewide median income. I propose that the income of the census tract only require that it is 75 percent or less of the statewide median household income with no regard to TDHCA quartile in order to mirror TWDB's requirements and not inadvertently exclude any areas that would be EDAs under the TWDB program.

Section 10.101(a)(2)(T) Designated Public Transportation Stop
Currently, under the Mandatory Community Assets item, the Rules allow a designated public transportation stop on a regular, scheduled basis to qualify as a community asset. Across the state in smaller urban areas, there are public transportation providers that have regular scheduled bus routes, but instead of having designated bus stops along the routes, passengers are instructed to find a convenient place along the route and wave to the bus driver to stop. These are mapped and schedule routes that have published times for intersections along the route, but there are no designated stops; instead, the passenger determines where he or she would like to board the bus and waves to the bus driver. I believe that such a transportation route meets the intent of this section in that the transportation service is on a regular and scheduled basis and the bus driver makes stops along the route for passengers. I propose that the Rules include this type of bus route to qualify as a community asset as long as the development site is located within 1 mile of the route.

Section 10.101(b)(1) Ineligible Developments
I propose that any development that has the characteristics of a senior development be categorized as a Qualified Elderly Development or the application be deemed ineligible. For example, an application that is 70 percent one-bedroom units and 30 percent two-bedroom units is unable to serve family households. In addition, amenity choices such as bocce ball courts and putting greens are typically associated with seniors and are not amenities for children. I understand that the bedroom unit requirements were removed to accommodate central business district developments that would not necessarily have a high percentage of families with children; however, I urge staff to develop language that would prohibit developments that have a unit mix and site plan that looks like a senior development from being called "general"

developments. I believe that this is especially important considering the proposed prohibitions on elderly developments in several regions and counties.

Section 10.201(1)(C) General Requirements
Currently, this section requires that the application be "in a single file and individually bookmarked in the order as required by the Multifamily Programs Procedures Manual." I propose that this section also includes the requirement that the file be a searchable PDF, which is stated in the Manual.

Section 10.204(6) Experience Requirement
Currently, this section states that experience documentation must be provided in the application; however, an experience certificate issued in the past two years is no longer an option to establish experience. I propose that a past experience certificate that confirms the development or placement in service of 150 units or more be accepted in the application to establish the required experience. If an experience certification was issued previously, I do not see any reason why staff time needs to be spent to re-review the same documentation every year.

Section 10.204(8)(E)(ii) Off-Site Costs
This section requires that off-site costs be included on the Off-Site Cost Breakdown form and then also requires that "The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes." Could staff provide an area on the Off-Site Cost Breakdown form where the engineer can describe the necessity of the improvements and the requirements of the local jurisdiction?

Section 10.204(11)(C) Requesting a Zoning Change
Currently, this section states that, "The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate is in the process of seeking a zoning change (may include an acknowledgement that a zoning application was received by the political subdivision)." This is not clear as to whether the applicant must have already submitted an application for a zoning change to the local jurisdiction. "In the process of seeking a zoning change" could include simply inquiring about the process or requesting an application. I propose that the application require proof that the application has submitted a zoning change application and that the zoning change application be included with the Application.

Section 11.3(f) Additional Phase
I propose that an additional phase or adjacent development to an existing tax credit development or award serving the same population be permitted if (a) the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development and (b) the additional units are supported by a market study.

Section 11.8(b)(2)(A) Notifications Certification
This section currently states that, "The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the local elected officials, or that the Applicant has knowledge of as of the date of pre-application submission." Should the statement "as provided by the local elected officials" be included here now that the requirement to request a list of neighborhood groups from the local elected officials has been removed?

Section 11.9(c)(4)(B) Rural Opportunity Index
I have a few comments on this item. First, I think that option (i) that awards 3 points for being within one liner mile of an elementary school with a Met Standard rating should not be expanded to include middle

and high schools. Children in middle and high schools are typically more independent and would not need to rely on a parent for transportation to a school that is more than 1 mile away. For school districts that split elementary grades into different campuses, I propose that any school that serves elementary grades (typically K-5 or K-6) with a Met Standard rating should qualify regardless of the number of grades served at the campus (for example, some school districts may have a separate kindergarten or fifth-grade campus).

Second, items (ii) and (iv) pertaining to childcare should be clarified. For example, item (ii) requires that the program meet the minimum standards while item (iv) requires that the center be licensed. From my research, it would appear that licensed facilities meet the minimum standards, so I wonder if item (ii) should use the same language as item (iv). In addition, according to the Department of Family and Protective Services search for Child Care Centers, there appear to be licensed centers, licensed childcare homes, and registered childcare homes. I propose that items (ii) and (iv) allow for licensed centers and licensed childcare homes to qualify for this item, as the difference in those appears to be the number of children at total capacity. I am not sure that registered childcare homes have the same requirements and therefore am not sure that they should be included.

Finally, items (ii) and (iv) pertaining to childcare should be available to General Developments only and not to Qualified Elderly Developments.

Section 11.9(c)(5) Educational Excellence
I have encountered some school districts that have a dedicated sixth grade campus. Could staff please clarify whether a sixth grade campus should be included with the elementary rating or with the middle school rating? Otherwise, I believe that the 3-point and 1-point language should remain as written.

Section 11.9(c)(6) Underserved Area
There are a limited number of places and census tracts with tax credit developments that have only 1 or 2 units. I propose that items (C) and (D) exclude existing tax credit development that have less than 4 units.

Section 11.9(c)(8) Location Outside of Food Deserts
The current draft includes a point for applications located outside of "Food Deserts." I believe that this item should be deleted. The USDA website appears to use data that is different than the newest 5-year ACS data that TDHCA is using for application purposes, and in some cases this data is contradictory between years. For example, census tract 48085031657 in Plano is a USDA Food Desert for being low income and low access; however, according to the newest ACS data, this tract has an income of $60,313 and a poverty of 6.7%, which would not make it a Food Desert based on this lower poverty rate. In addition, there is a Walmart Supercenter grocery store that is located 1600 feet from the boundary of this census tract. Another example is census tract 48389950400 in Pecos. This tract is also considered a USDA Food Desert; however, the tract is a First Quartile tract with the highest income in the county at $49,286 and the lowest poverty rate in the county at 23.8 percent. Furthermore, the town's main grocery store, La Tienda, is located 600 feet from the boundary of the census tract and all residents of the census tract would be within the USDA's 10-mile rural distance of the grocery store. I do not believe it would be appropriate for TDHCA to effectively penalize a census tract in a county with the highest income and the lowest poverty, especially when the grocery store is less than 1 mile of most of its residents. I propose that this scoring item be deleted due to inconsistencies in the data. If staff proposes to keep this item, then I would propose that an applicant be able to elect a point for this item if it can show that (a) the census tract is not "low income" per the newest census data that is used by TDHCA or (b) that the development site is within 1 mile of a grocery store for urban developments or 2 miles of a grocery store for rural developments.

Section 11.9(d)(2) Commitment of Development Funding by Local Political Subdivision
I propose that the funding amount multipliers based on population be lowered. A city such as Frisco will not have the same financial resources as a city such as Dallas; however, they would need the same amount of funding under this point item as currently proposed. A multiplier of 0.06 would require a city of 250,000 to contribute $15,000 per unit, which would make more sense than a city of 100,000 at a multiplier of 0.15.

Section 11.9(d)(5) Community Support from State Representative
In the prior application round, there was at least one instance where a state legislator was allowed to withdraw a letter of support even though the QAP stated that "Once a letter is submitted to the Department it may not be changed or withdrawn." If staff is going to allow a representative to withdraw a letter for any reason, then this language should be deleted from the 2014 QAP.

Section 11.9(e)(3) Pre-Application Participation
The current draft states that "The total number of Units does not change by more than ten (10) percent from pre-application to Application." I propose that this reverts back to the previous years' language that the total number of units cannot increase by more than 10 percent.

Section 11.10 Challenges to Competitive HTC Applications
I understand that a fee is associated with a challenge. I propose that if a challenge is not reviewed by staff for any reason or if, as stated in this section, "A matter, even if raised as a challenge, that staff determines should be treated as an Administrative Deficiency will be treated and handled as an Administrative Deficiency, not as a challenge," then the challenge fee should be refunded to the challenger.

Thank you for your consideration. Please contact me with any questions.

Regards,

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Mr. Cameron Dorsey
Director, Multifamily Programs
Texas Department of Housing & Community Affairs
PO Box 13941
Austin, Texas 78701

RE: City of Houston Public Comment for the TDHCA 2014 Qualified Allocation Plan

Dear Mr. Dorsey:

Thank you for the opportunity to provide public comment on the TDHCA 2014 Qualified Allocation Plan (QAP). The recommendations outlined in this letter establish the City of Houston Housing and Community Development Department's (HCDD) official public comment for the QAP. As you may know, HCDD has been one of the State's strongest tax credit development partners over the last several years, leveraging approximately $41,500,000 of the City's HOME Investment Partnership (HOME) program funds since 2009. Currently, the Department is preparing to leverage approximately $55,000,000 in Ike Disaster Recovery Round 2 funds for multifamily rental in targeted areas around the City, and approximately $23,000,000 in local and HOME funds for Permanent Supportive Housing projects to end chronic homelessness by 2016.

The City would like to offer the following public comments regarding the QAP.

Recommendation #1: The City is not in support of the complete elimination of funding for Elderly developments, and recommends an incremental cap to the number of Elderly projects in the region.

According to the proposed rule:

> *§11.3. Housing De-Concentration Factors.*
>
> *(e) Developments in Certain Sub-Regions and Counties. In the 2014 Application Round the following Counties are ineligible for Qualified Elderly Developments: Wichita; Collin; Denton; Ellis; Johnson; Henderson; Hays; Lamar; Gillespie; Guadalupe; Kendall; and Starr, unless the Application is made in a Rural Area. In the 2014 Application Round Regions five (5); six (6); and eight (8) are ineligible for Qualified Elderly Developments, unless the Application is made in a Rural Area. These limitations will be reassessed prior to the 2015 Application Round and are based on the fact that data evaluated by the Department has shown that in the ineligible areas identified above, the percentage of qualified elderly households residing in rent restricted tax credit assisted units exceeds the percentage of the total Qualified Elderly-eligible low income population for that area.*

Justification: Neither the methodology nor the data sets used to support the statement, "the percentage of qualified elderly households residing in rent restricted tax credit assisted units exceeds the percentage of the total Qualified Elderly-eligible low income population for that area", was made publicly available for review and comment. Since the City of Houston (in Region 6) is approximately 625 square miles, we utilize and review market studies to determine whether the housing type is appropriate for the neighborhood. A substantial number of elderly residents in the community are not being served by quality affordable housing, and a moratorium on development would further hinder our ability to serve vulnerable seniors in needed areas of the City. If there is a problem regarding the amount of Qualified

Elderly Housing development, the City recommends partnering with the Texas Department of Housing & Community Affairs on a solution and suggests an incremental cap to the number of Qualified Elderly Developments rather than complete elimination.

Recommendation #2: The City recommends that Houston-designated Permanent Supportive Housing Program proposals receive equivalent points to the TDHCA Supportive Housing program in the Qualified Allocation Plan.

Justification: The City of Houston has partnered with surrounding jurisdictions and Housing Authorities in an unprecedented regional initiative to end chronic homelessness by 2016. Over the past year, our Department, Harris County, Houston Housing Authority, Harris County Housing Authority, the City's Department of Health and Human Services, U.S. Department of Veterans Affairs, and the U.S. Interagency Council on Homelessness have worked closely to develop a plan and collaborate on leveraging resources to meet this challenge. The program is well underway with the recent award of a Medicaid waiver from the U.S. Department of Health and Human Services to cover costs of supportive services for the first three years of the program. Additionally, over 1,237 units of Permanent Supportive Housing are in the pipeline. Given the progress to date, it is most appropriate that the State support and leverage tax credit investment toward this initiative.

Recommended changes to QAP:

Of note, for consistency, the City is requesting a definitions change to the term "Supportive Housing" in the Administrative Rule established in Title 10 of the Texas Administrative Code:

> ***§10.3. Definitions.(a)(124) Supportive Housing**--Residential rental developments intended for occupancy by individuals or households in need of specialized and specific medical or non-medical services in order to maintain independent living. Supportive housing developments generally require established funding sources outside of project cash flow and are proposed and expected to be debt free or have no foreclosable or noncash flow debt unless the development is a Tax Exempt Bond Development with a project based rental assistance contract that assures a contract rent for a majority of the Units, in which case the Development is treated as Supportive Housing under all subchapters of this chapter, except Subchapter D of this chapter (relating to Underwriting and Loan Policy). The services offered generally address special attributes of such populations requiring Permanent Supportive Housing and/or, Transitional Housing for persons who are homeless and/or at risk of homelessness, persons who have experienced domestic violence or single parents or guardians with minor children.*

§11.9. Competitive HTC Selection Criteria.

> ***(c) Criteria to serve and support Texans most in need.***
>
> > ***(2) Rent Levels of Tenants.***
> >
> > > *(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments qualifying under the Nonprofit Set-Aside or qualifying for a Permanent Supportive Housing designation from the City of Houston only (13 points);*
> >
> > ***(3) Tenant Services.***
> >
> > *A Supportive Housing Development qualifying under the Nonprofit Set-Aside or qualifying for a Permanent Supportive Housing designation from the City of Houston may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points. By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA or documented as required by the City of Houston Permanent Supportive Housing program. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application will remain the minimum. No fees may be charged to the tenants for any of the services. Services must be provided on-site*

or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

(7) Tenant Populations with Special Housing Needs.
An Application may qualify to receive two (2) points to meet the Special Housing Needs of the State if the Applicant agrees to participate in the Department's Section 811 Project Rental Assistance Demonstration Program (Section 811 Program) or qualify for Supportive Housing vouchers in partnership with the City of Houston Permanent Supporting Housing program and the Development Site meets the requirements in subparagraph (A) of this paragraph. Development Sites not meeting the requirements in subparagraph (A) of this paragraph may qualify under subparagraph (C) of this paragraph.

(A) Applications meeting the following requirements are eligible to receive two (2) points if they agree to commit at least 10 units (or the maximum allowed) for participation in the Section 811 Program or qualifying for a Permanent Supportive Housing designation from the City of Houston, as described in subparagraph (B) of this paragraph. The maximum number of units allowed will be restricted by the Department's Integrated Housing Rule, §1.15 of this title, and the Section 811 Program integration requirements, (the total number of units set-aside for persons with disabilities, including Section 811 units, cannot exceed 18 percent of Units for Developments of 50 Units or more or exceed 25 percent for Developments with less than 50 Units).

Recommendation #3: The City of Houston requests recognition of Disaster Recovery Areas as equivalent in points to Revitalization Areas in the Qualified Allocation Plan scoring mechanism.

Justification: The City of Houston has invested over eighteen (18) months working with community groups, stakeholder partners, City officials, and fair housing advocates to develop a Revitalization Plan which will leverage the City's Disaster Recovery award as investment in targeted areas of the City. Thirteen (13) community meetings with over five hundred (500) Houstonians facilitated by private consultants yielded a comprehensive report that defined the methodology and geography for revitalization, and the plan meets all of the criteria (I) to (IV) as cited below. However, the City is concerned the approach, which had a special and specific purpose, may not be approved as meeting the new Revitalization Plan requirements as established in the 2014 QAP.

Recommended changes to QAP:

(7) Community Revitalization Plan.
(B) For Developments located in Urban Areas outside of Region 3.

(ii) An Application will qualify for six (6) ~~four (4)~~ points if the city or county has an existing plan for Community Development Block Grant -Disaster Relief Program (CDBG-DR) funds that meets the requirements of subclauses (I) -(IV) of this clause. To qualify for points, the Development Site must be located in the target area defined by the plan~~, and the Application must have a commitment of CDBG-DR funds~~. The plan (in its entirety) and a letter from a local government official with specific knowledge and oversight of implementing the plan are included in the Application and must:

(I) define specific target areas for redevelopment of housing that do not encompass the entire jurisdiction;

(II) affirmatively address Fair Housing demonstrated through an approved Fair Housing Activity Statement-Texas (FHAST);

(III) be subject to administration in a manner consistent with the findings of an Analysis of Impediments approved or accepted by HUD within the last three (3) calendar years or an approved Fair Housing Activity Statement-Texas (FHAST), approved by the Texas General Land Office; and

(IV) be in place prior to the Pre-Application Final Delivery Date.

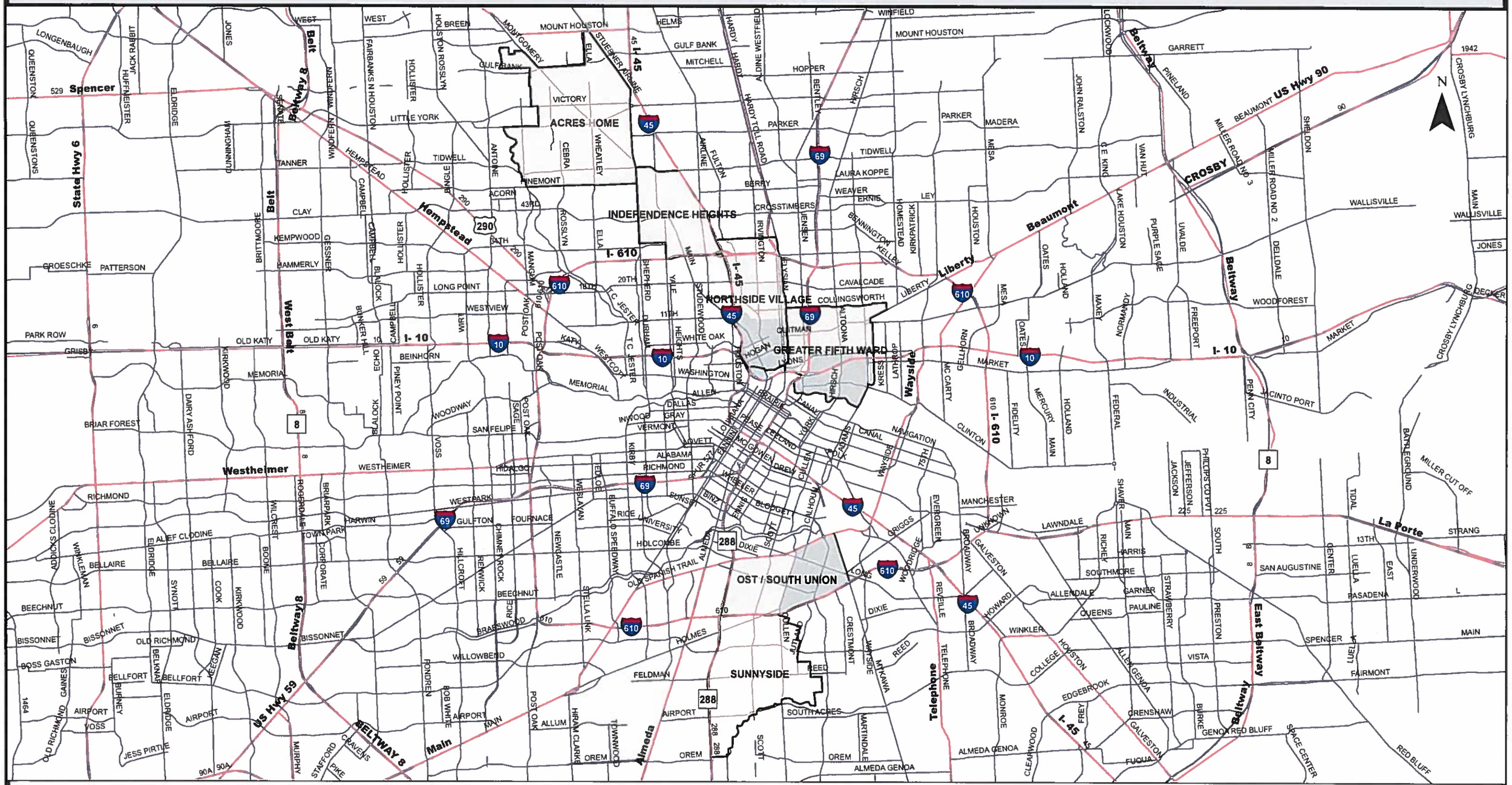
We look forward to continuing our successful partnership with TDHCA in developing quatity, affordable housing for Houstonians. If you have additional questions, please contact Ms. Eta Paransky, Director of Multifamily Programs, by phone at 713-868-8449 or via email at eta.paransky@houstontx.gov.

Sincerely,

Neal Rackleff

Attachment 1: Map of Community Revitalization Areas (CRAs) and CRA Outreach Areas

Community Revitalization Areas (CRAs) and CRA Outreach Areas



Disclaimer: COHGIS data is prepared and made available for general reference purposes only and should not be used or relied upon for specific applications, without independent verification. The City of Houston neither represents, nor warrants COHGIS data accuracy, or completeness, nor will the City of Houston accept liability of any kind in conjunction with its use.

Data Sources: City of Houston GIS and City of Houston Housing and Community Development Department

(30) Marlon Sullivan
Rural Rental Housing
Association of Texas
(“RRHA”)

RRHA OF TEXAS
RURAL RENTAL HOUSING ASSOCIATION OF TEXAS, INC.

October 16, 2013

Board of Directors
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

Dear Chairman Oxer and Members of the Board:

I am writing on behalf of the Rural Rental Housing Association of Texas, Inc. (RRHA) with 715 project members and more than 25,000 rural apartment units in Texas. We appreciate the Department's recognition of the challenges we face in rural Texas on existing properties. We rely almost entirely on the Low Income Housing Tax Credit (LIHTC) program and HOME funds to finance our rehab needs.

RRHA members USDA portfolio shares the common characteristic of initial construction with Section 515 financing. Many, but by no means all (59%) of these units have Rental Assistance (RA). The average household income for a 515 unit is $10,880 and 56% of the units are occupied by elderly residents. The low income of our residents, the rural locations, and the fact that not all units have RA keep our rents low. Most of our properties are 35-50 years old, and in need of normal maintenance and modernization.

With this letter we are submitting recommended changes supported by our membership to the 2014 Qualified Allocation Plan (QAP). Our recommendations follow.

Recommendation #1a: We appreciate the additional community assets added to the **Opportunity Index subsection (c)(4)(B)** in rural areas to include:

(vi) The Development is a Qualified Elderly Development and the Development Site is located within one linear mile of a senior center; and/or
(vii) Development is a Qualified Elderly Development and the Development Site is located within one linear mile of a health related facility.

We support the addition of these two essential community assets to serve elderly residents.

Recommendation #1b: Also under the Opportunity Index rural 11.9(c)(4)(B)(i-iv) and (vi-vii), we **recommend the distances to schools and other amenities be increased from 1 mile to 2 miles** because of the pattern of community growth within a rural town. There is usually one elementary, middle, and high school that serves the entire community. Rural communities are very spread out and less dense than urban areas and for that reason, we believe 2 miles is a reasonable and close distance for amenities to serve a development.

Recommendation #1c: The Opportunity Index 11.9(c)(4)(B)(v) for rural areas located with income in the top or second quartile should be eliminated. One census track often covers an entire rural town, and the effect of this selection is to choose one town over another. **RRHA therefore recommends that these points for quartiles in rural areas be eliminated.**

Recommendation #2: Exempt At-Risk from the Opportunity Index requirements in subsection (c)(4). At-Risk properties often have urgent rehab needs resulting from age and sometimes neglect. Under the current QAP rules, owners of existing properties are going down their list of properties that urgently need rehab and passing up some of the properties most in need for applications on properties that score well on the QAP, often because of their location. The intent of the High Opportunity Area is to identify geographical locations for properties that will meet certain community characteristics. The

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E-Mail: office@rrhatx.com

purpose is to encourage the construction of family developments into those opportunistic areas with good school and neighborhood amenities. The At-Risk set-aside is a category for existing properties--for preservation and rehab. If you believe the category of At-Risk is too broad, **we strongly encourage you to exempt the USDA Set-Aside within the At-Risk category from Opportunity Index Requirements**. The USDA Set-Aside is made up of properties that cannot be relocated to more opportunistic areas based on QAP criteria. Many family and senior 515 properties depend on the ability to access tax credits through the USDA Set-Aside for maintenance and are being passed over for higher scoring applications within an owner's portfolio because of this particular scoring criterion. Our concern is that this requirement will further contribute to the deterioration of many rural USDA 515 apartment communities.

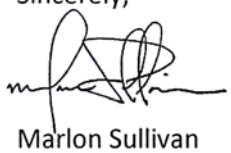
Recommendation #3: 11.9(d)(7)(C)(I)(II) and (III) Developments located in Rural Areas. RRHA recommends the following revisions to distances for community revitalization projects. The reason for our recommendation is because 1/4 mile in a rural area is on the same "benefits" scale as 1/4 mile in an urban neighborhood. Rural communities are often more spread out, and if any revitalization is occurring in the community, then it most likely impacts much of the community. Often there is not a good side or bad side of town. Communities of 1000 residents can be spread out for several miles in all directions, but everyone comes into town to use the same stores, clinics and other amenities. **We therefore recommend that (i)(ii) and (iii) be changed from one quarter (1/4) mile to within two (2) miles of the development site to reflect a more realistic distance in rural Texas.**

Recommendation #4: RRHA recommends that construction costs per square foot are increased by no less than $15 in all categories. Building costs in Texas are not uniform across the state, nor are they stable within seasons, and small complexes do not achieve the economies of scale of the larger developments and so setting an artificially low number can, in the long term, be more harmful than helpful. Currently, finding labor in west Texas, south Texas, or the Panhandle runs into competition with the oil field labor pricing in those areas. Many prior construction workers have left the apartment construction industry to work in the oil fields because the pay is so much higher. One of our members is physically moving construction workers from east Texas to west Texas because he is unable to find construction workers in west Texas at a price he can pay. These factors don't even take into account the fluctuating price of lumber and materials, which can move significantly from application to ground breaking--usually a year or more. Another Association member provided an analysis of his construction hard costs in different parts of Texas and they ranged from $87.62 a square foot in Lufkin, TX to $113.24 a square foot in Sulphur Springs. The five projects average cost of the site work plus "bricks and sticks" came to $86.78 a square foot--adding in general requirements (6%) and overhead (2%) the average cost came to $93.72 a square foot (site work, building cost, overhead, general requirements, and profit). RRHA does not believe this cost factor can be homogenized across the state, but if the Department feels it is an important category for controlling very high costs, **we urge the Department to increase all categories of cost of construction by not less than $15 a square foot** to allow developments impacted by variables mentioned above, the ability to construct a safe, sound and amenity-appropriate development.

Recommendation #5: 11.9(d)(2)(A) Food Deserts. RRHA recommends deleting this category because USDA information on Food Deserts is not reliable in some areas and distances have been miscalculated or stores omitted.

Thank you in advance for the opportunity to provide comments to the QAP from the Rural Rental Housing Association of Texas.

Sincerely,



Marlon Sullivan
President, Rural Rental Housing Association of Texas

cc: Tim Irvine
Cameron Dorsey
Jean Latsha

(31) Walter Moreau
Foundation Communities

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October 7, 2013

Cameron Dorsey
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

Dear Cameron:

Thank you for the opportunity to comment on the 2014 Housing Tax Credit Draft Qualified Allocation Plan and Multifamily Rules. We would like to commend TDHCA staff for the creative expansion of programs and systems that promote supportive housing, green building, targeting of lower incomes, and developments located in urban areas.

We have three main comments on the QAP that we feel would have a detrimental impact on the 9% LIHTC Program. Please find our comments below:

1. **Section 11.9(e)(2) – Cost of Development per Square Foot –** While we appreciate the Department's consideration of "high cost developments", we feel that the cost thresholds required to be competitive are not feasible in Austin. Last year, our Homestead application was right at the limit of cost per square foot ($79/sf for building costs.) We were able to get to this cost only because the impervious cover limited the building footprint size and therefore we had smaller units and a smaller learning center than we would otherwise propose. I would urge the Department to consider the unintended consequences of keeping the costs per square foot at their current level. The only way any developer in Austin can realistically achieve these limits is to build CHEAP. In order for Foundation Communities to develop a deal in Austin that met the current cost per square foot thresholds the units would be of stripped down quality, at their minimum allowed size, no learning center and no green building methods even when paybacks are immediate.

   In our numerous conversations with contractors and market rate developers, our numbers are very much in line with what they are seeing. Below are examples of three market rate developments located in the Austin area and their "all-in" construction costs per net rentable square foot. It should be noted that these are 2012 construction cost with little or no green construction practices incorporated. Per our conversations with contractors and market rate developers, construction costs in the Austin area increased 10%. Our current construction cost estimates for Capital Studios are well above our expectations due to the market change in construction costs.

   This category is very worrisome not merely because of points, but for the policy that is being mandated – build it cheap. Unfortunately, our experience in Austin is that a building cost of $65 per square foot would not result in a quality product.

Building Cost Comparison						
Structure Materials	5 Story Stick/Partial Podium		3 - 5 Story Stick		4 Story Stick	
Parking Configuration	Structured Parking		Structured Parking		Surface Parking	
Number of Units	202 Units		180 Units		222 Units	
All-In Construction Costs *(per NRSF)*	$26,926,640*	($130/SF)	$25,665,360*	($112/SF)	$15,308,804	($75/SF)

* Estimated Per Zoning Application Square Footage

PROPOSED SOLUTION: Change Section 11.9(e)(2)(B)to read as follows:

(B) Applications proposing New Construction or Reconstruction will be eligible for (11) points if one of the following conditions is met:

- ***(i) The Building Cost per square foot is less than $80 per square foot;***
- ***(ii) The Building Cost per square foot is less than $85 per square foot, and the Development meets the definition of a high cost development;***
- ***(iii) The Hard Cost per square foot is less than $95 per square foot; or***
- ***(iv) The Hard Cost per square foot is less than $105 per square foot, and the Development meets the definition of high cost development.***

2. **Section 11.9(e)(4) – Leveraging of Private, State and Federal Resources** – We would recommend raising the leveraging percentages by 1 percent for non-profit housing deals and supportive housing deals with no permanent debt. As a non-profit, Foundation Communities relies heavily on funding from state and federal resources as well as private fundraising; however, we purposefully choose to limit the amount of permanent debt on a property as to maximize cash flow for our supportive service programming. This category also has a major impact on supportive housing that is presented with no permanent debt. A nonprofit or supportive housing applicant is going to apply for the maximum amount of credits and therefore will almost always have a larger percentage of tax credits to total development costs. The funds that are being leveraged against will be a combination of local, state, federal soft loans/grants as well as private foundation grants and owner contributions. The leveraging section undermines the definition of supportive housing as debt-free.

PROPESED SOLUTION: ***PROPOSED SOLUTION: Change Section 11.9(e)(4) to read as follows:***

(A)(i) the Development leverages CDBG Disaster Recovery, Hope VI or Choice Neighborhoods funding OR the Development is Supportive Housing OR the Development has a Non-Profit guarantor who meets qualification in (B) below and the Housing Tax Credit Funding Request is less than 8 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of the CDBG Disaster Recovery, HOPE VI, Choice Neighborhoods or Non-Profit Owner Contribution with application; or

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred. In this section, an owner contribution that is a part of a supportive housing or Non-Profit guaranteed application will not count as part of the deferred developer fee per Section 10.204(7)(C) of the Uniform Multifamily Rules. In subparagraph (A), a Non-Profit guarantor is a guarantor whose annual budget for the past three years is comprised of revenue from grants from private sources in an at least the amount of the owner contribution determined for the application. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

3. **Section 10.204(7)(C) – Owner Contributions** - Also problematic for nonprofit and supportive housing, is the addition of any "owner contribution" to the 50 percent limit of deferred developer fee for purposes of scoring. At the time of application, a nonprofit or supportive housing deal is not going to have all of the private fundraising committed so in order to be feasible, they must commit an "owner contribution" as a guaranty of those funds. This is customary in the underwriting of both our nonprofit family and supportive housing deals and is most always replaced with fundraising by the time the deal closes. We would recommend striking the requirement for the owner contribution to be added to Deferred Developer Fee in scoring under Section 10.204(7)(C) for its unintentional, but very real disadvantage to nonprofit and supportive housing projects.

   Change Section 10.204(7)(C) to read as follows:

   (C) Owner Contributions. If the Development will be financed in part by a capital contribution by the General Partner, Managing General Partner, any other partners that is not a partner providing the syndication equity, a guarantor or a Principal in an amount that exceeds 5 percent of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's banks(s)or repository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds remain readily available at Commitment. Regardless of the amount, all capital contributions other than syndication equity will be added to the Deferred Developer Fee for feasibility purposes under §10.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned with the exception of Section 11.9(e)(4) in the case a development is Supportive Housing or the development has a Non-Profit guarantor who meets the qualification in Section 11.9(e)(4)(B).

Thanks so much for your time and consideration of our comments. Please do not hesitate to contact our team with any questions.

Sincerely,

Walter Moreau
Executive Director

(32) Debra Guerrero
NRP Group

From:	Cameron Dorsey
To:	Teresa Morales
Subject:	FW: Comments to the DRAFT 2014 QAP
Date:	Friday, October 18, 2013 8:51:34 AM

From: Debra Guerrero [mailto:dguerrero@nrpgroup.com]
Sent: Tuesday, October 15, 2013 2:14 PM
To: cameron.dorsey@tdhca.state.tx.us; jean.latsha@tdhca.state.tx.us
Subject: Comments to the DRAFT 2014 QAP

Cameron - Below are my comments regarding the allocation process included in the 2014 QAP along with a suggested change.

Thanks for your attention.

---

§11.6. Competitive HTC Allocation Process.

Recommendation: Allow for maximum Department flexibility in responding to an underfunded sub-region by postponing additional awards to applications on the Waiting List until after all possible tax credit commitments have been combined together into the Statewide Collapse "pool."

Reasoning: Current QAP rules preclude the Department from efficiently addressing underserved sub-regions by requiring that "Applications on the waiting list are selected for an award when the remaining balance of tax credits is sufficient to award the next Application on the waiting list."

Because applications are placed on the Waiting List starting on July 31, this prevents the Department from making an informed decision thorough evaluation of the evidence - including whether or not an underfunded sub-region could be better served.

Proposed Rules Change:

(3)(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any sub-region in the State, and also including any commitments returned to the State before September 15th or the commitment notice deadline of the initial awards, will be combined into one “pool.” The funds will be used to award the highest scoring Application (not selected in a prior step) in the most underserved sub-region in the State compared to the amount originally made available in each sub-region. This process will continue until the funds remaining are insufficient to award the next highest scoring Application in the next most underserved sub-region. In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved sub-region:

(i) the sub-region with no recommended At-Risk Applications from the same Application Round; and

(ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. Applications on the waiting list are selected for an award when the remaining balance of tax credits is sufficient to award the next Application on the waiting list September 15th or the commitment notice deadline of the initial awards. The waiting list is not static. The allocation process will be used in determining the Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or sub-region from which they were originally awarded. This means that the first Application on the waiting list is in part contingent on the nature of the credits that became available for award. (§2306.6710(a) - (f); §2306.111)

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(33) Gene Watkins

From:	Gene Watkins
To:	teresa.morales@tdhca.state.tx.us; "Gene Watkins"
Cc:	""jean.latsha@tdhca.state.tx.us.""@tdhca.state.tx.us
Subject:	Comment
Date:	Friday, October 18, 2013 10:22:34 AM

Ms. Morales, I am writing to comment of the 2014 QAP provision of eliminating the 130 boast for projects in qualified census tracts with over 20% concentration of tax credit properties. It would seem appropriate that if a City and area are experiencing high growth, and the development of Market rate units is impacting the availability of affordable units then such an area be excluded from the boast loss. Of equal concern as concentration the QAP should not promote gentrification of an area.

For example, the Austin Riverside Corridor is an area that is experiencing tremendous market rate development growth. Additional market rate development is anticipated with the light rail installation along the Corridor leading from downtown to the airport.

Although there are more than 20% concentration of tax credit units along this corridor, our development Towne Vista and nearly all others are at full or near full occupancy. We have waiting list. In addition, the City of Austin is highly promoting this area for both Market and Affordable Rate housing units.

Perhaps, if either market data or governing body support development of additional units tax credit projects then the QAP would allow the boast to remain intact.

Thank you for the opportunity to comment

(34) Donna Rickenbacker
Marque Real Estate Consultants

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October 19, 2013

Mr. J. Paul Oxer, Chairman and
Board Members of the
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Draft 2014 QAP and Uniform Multifamily Rules (9.12.13 Release Date)

Dear Chairman Oxer and Members of the TDHCA Governing Board:

Please accept the following as our formal comments and recommended changes to the Draft of the 2014 QAP and Uniform Multifamily Rules (Rules) approved by the TDHCA Governing Board on September 12, 2013.

A. Draft 2014 QAP:

1. ***§11.2 Program Calendar for Competitive Housing Tax Credits.*** If the Department is going to allow 4/1/14 to be the deadline for delivery of Resolutions for Local Government Support as is currently drafted, then we recommend that the deadline for delivery of all other Resolutions be moved from 2/28/14 to 4/1/14, including those necessary under §11.3 relating to Housing De-Concentration Factors. Municipalities will not want to piece meal these resolutions and will want to consider all resolutions at the same time in their deliberation of a particular project.

2. ***§11.9(c)(5) Educational Excellence.*** We recommend that this scoring item be amended as follows:

(i) 3 points if all 3 school types (elementary, middle, and high school) qualify;
(ii) 2 points if elementary plus one (middle or high school) school types qualify; and
(iii) 1 point if only the elementary school type qualifies.

As currently drafted, a site located in an attendance zone with 2 out of 3 good schools will only receive 1 point. The above described point adjustment will enhance the remedial plan objectives by incentivizing Developments targeting the general population that are located in the attendance zones of 2 out of 3 schools with the appropriate rating. This adjustment will also give better treatment to Developments targeting the general population that may not qualify for HOA points but are located in areas that are successfully working to improve the quality of their schools.

3. ***§11.9(c)(6) Underserved Area.*** We recommend that this scoring item be amended as follows:

> "(C) A Place, or if outside the boundaries of a Place, a county that has never received a competitive tax credit application or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population."

This scoring category provides points to general population and Supportive Housing Developments if located in what is defined as an ***Underserved Area***. The intent of the change is to recognize that a Place in an Urban Area is underserved if an age restricted elderly development is the only active tax credit development in such area. This recommendation is already available to Rural Area developments under subparagraph (D) of this scoring item.

We also recommend that the Department define what is required to be submitted in the Application to evidence whether a Development Site is located in a Colonia or an Economically Distressed Area under Subparagraph (A) or (B) respectively, in order to qualify for Underserved Area points.

4. ***§11.9(c)(7) Tenant Population with Special Housing Needs.*** We recommend that an applicant have the option of qualifying for points under this scoring category if meeting the requirements of either subparagraph (A) or (C). The Section 811 Program (Subparagraph (A)) is currently a pilot program with undefined guidelines and requirements. It would be unfair to impose the uncertainty of this program on general population and Supportive Housing developments located in focused MSA areas of our State.

5. ***§11.9(d)(2) Commitment of Development Funding by Local Political Subdivision.*** Please clarify when the firm commitment of funds in the form of a resolution from the LPS is to be submitted to the Department.

6. ***§11.9(d)(4) Quantifiable Community Participation.*** We recommend that the points that an application may qualify for under subparagraphs (C)(iii) and (iv) be reduced to 4 points but allow those applications that qualify for points under these subparagraphs be eligible to earn additional points under *§11.9(d)(6)(A) – Input from Community Organizations*. As currently drafted, subparagraphs (C)(iii) and (iv) allow an Application to receive points for statements of neutrality or the equivalent from a Neighborhood Organization whose boundaries include the Development Site. The intent of the change is to provide applications that receive statements of neutrality or the equivalent from a Neighborhood Organization the opportunity to achieve the same points as an Application that is located in an area where no Neighborhood Organization is in existence when combined with points under *§11.9(d)(6)(A) – Input from Community Organizations*.

7. ***§11.9(d)(6) Input from Community Organizations.*** We recommend that Developments that do not fall within the boundaries of any qualified Neighborhood Organization, or that

qualify for points under subparagraphs (C)(iii) and (iv) of *§11.9(d)(4) Quantifiable Community Participation* be eligible for points under this scoring item, and that the points in the following subparagraphs be adjusted as follows:

(A) 2 points for each letter of support submitted from a community or civic organization that serves the community;
(B) 4 points for a letter of support from a property owners association whose boundaries include the Development Site; and
(C) 4 points for a letter of support from a Special Management District whose boundaries include the Development Site.

Property Owners Associations and Special Management Districts serve very similar functions as Neighborhood Organizations in terms of supporting and controlling development uses within their boundaries and therefore should be given equal or similar weight in points.

8. ***§11.9(e)(2) Cost of a Development per Square Foot.*** We recommend the following changes to this scoring item:

(i) a high cost development should include Development Sites located in Rural Area under subparagraph (A)(iv) of this scoring item;

(ii) Building Costs and Hard Costs in each of subparagraphs (B) (i)-(iv) should be increased by $10, and applicable adjustments should be made to subparagraphs (C) and (D) accordingly;

(iii) Applications proposing Adaptive Reuse should be eligible for points under subparagraph (E); and

(iv) Subparagraph (F) should be deleted. Applicants are already limited by the amount of tax credits that can be awarded to a project at a time when construction costs have reached and are exceeding pre-recession levels.

9. ***§11.9(e)(4) Levering of Private, State and Federal Resources.*** We recommend that the percentages in clauses (ii)-(iv) of this scoring category be increased by 1 percent, such that 3 points be awarded if the Housing Tax Credit funding request is less than 8 percent of the Total Housing Development Costs; 2 points be awarded if the Housing Tax Credit funding request is less than 9 percent of the Total Housing Development Costs; and 1 points be awarded if the Housing Tax Credit funding request is less than 9 percent of the Total Housing Development Costs. We feel that these levels will create more viable projects while still recognizing the Department's intent to encourage Applicants to leverage their transactions with non-tax credit subsidies.

10. ***§11.9(e)(5) Extended Affordability or Historic Preservation.*** We recommend that points under subparagraph (A) of this scoring category for an Application that extends the 15-year compliance period for an additional 15-year extended use period be reduced to 1 point, and that points under subparagraph (B) that are applicable to an Application proposing the use of historic (rehabilitation) tax credits be eligible to receive the maximum 2 points in this scoring item. In light of recent legislative action intended to stimulate historic preservation projects through the granting of state historic tax credits, we recommend that those Applicants proposing historic preservation projects receive additional points under this scoring category. In most instances these types of projects are located in urban core areas that would not in most instances be eligible for HOA points.

11. ***§11.9(e)(7) Development Size.*** This scoring item provides a point to those Applications that propose no more than 50 HTC units and request no more than $500,000 in tax credits. We recommend that this scoring category be deleted. We question whether those Applications that selected this point in 2013 and were awarded tax credits as a result will prove to be quality and financially viable developments over the life of the compliance period especially in light of escalating building and other construction costs not contemplated in their application.

Also, this scoring item causes sub-regions to lose tax credits that were meant to be used in such sub-region especially in sub-regions where only one transaction will be funded if an Applicant seeks the point and request no more than $500,000.

12. ***§11.9(e)(8) Transit Oriented Developments***. We support TAAHP's recommendation that an Application be eligible for 1 point if the Development Site is located within ½ mile of light rail, commuter rail, raid bus transit or other high capacity transit. This scoring item would not be a new concept since the Multifamily Rules already provides for and encourage the location of Developments near public transportation, including §10.101(a)(2) Mandatory Community Assets and (7) Tenant Supportive Services of the Rules.

B. **Draft 2014 Rules.**

Subchapter B - §10.101. Site and Development Requirements and Restrictions. We recommend the following changes to Subchapter B:

(i) ***§10.101(a)(3) – Undesirable Site Features.*** We recommend that Adaptive Re-Use Developments be allowed to request an exemption from the Board if located within applicable distances from an Undesirable Site Features in the same manner as is currently allowed for Rehabilitation Developments.

(ii) ***§10.101(b)(4) – Mandatory Development Amenities.*** We recommend that Adaptive Re-Use Developments be exempt from the same amenities as Rehabilitation Developments.

(iii) ***§10.101(b)(5)(A) - Common Amenities.*** We recommend that Developments with more than 80-units (instead of 41-units as currently drafted) be required to meet at least 2

of the threshold points under subparagraph (C)(xxxi) relating to providing Limited Green Amenities, and that a Development satisfies the threshold requirement if it meets at least 3 (instead of the required 6) items. We agree with the Department's efforts to promote energy and water conservation but given the cost consequences to the proposed development believe that this threshold requirement should be limited to providing 3 of the listed green amenities and should be only applicable to Developments in Urban areas.

(iv) ***§10.101(b)(6) - Unit Requirements.*** We recommend that Adaptive Re-Use developments receive the same treatment under this Paragraph with respect to unit sizes (subparagraph (A)) and unit and development features (subparagraph (B)).

We appreciate the Board's consideration of these comments and recommended changes to the draft of the 2014 QAP and Rules. Thank you very much for all of the hard work that you do for the affordable housing program in Texas.

Sincerely,

Donna Rickenbacker

Donna Rickenbacker

cc: Tim Irvine, Executive Director
Cameron Dorsey, Director of Housing Tax Credits
Jean Latsha, Competitive HTC Program Manager

(35) Sean Brady
REA Ventures

ReaVentures GROUP, LLC

October 18, 2013

Texas Department of Housing and Community Affairs
Attention: Cameron Dorsey
P O Box 13941
Austin, Texas 78711-3941

RE: Comments on Draft 2014 Qualified Allocation Plan

Dear Mr. Dorsey:

Thank you for this opportunity to submit our comments on the draft 2014 Texas Qualified Allocation Plan (QAP) to the Texas Department of Housing and Community Affairs (TDHCA).

Section 11.2. Program Calendar. We support the restoration of the due date for the Market Analysis to April 1, 2014 to allow time following full application submittals for the market analyst to adjust for other projects submitted in the market area.

Section 11.3(e). Development in Certain Sub-Regions and Counties. We request that elderly developments not be explicitly prohibited in any county. Elderly developments are already more challenging to fund, given the scoring disadvantage (not able to claim points for Opportunity Index in Urban areas or in Underserved Area) versus a general population development. This scoring disadvantage makes an elderly development extremely difficult to compete for 9% credits and therefore point scoring already drives developers toward general population developments. Non-competitive 4% credit projects are financially difficult to close without the higher rents available to general population deals and therefore financing needs also drive those developers toward general population targeting. An explicit prohibition is not needed to discourage elderly development on either 9% or 4% credit projects.

Section 11.9(c)(4)(B)(i). Opportunity Index. We recommend adding middle and high schools to the options available for points in rural areas. In most rural areas, facilities are often spread out with the high school located in one town and the elementary school located in another town. Yet each of these school types will serve the same target population over time. Proximity to any public school is a valuable amenity to residents with children and therefore should be scored equally.

Section 11.9(c)(4)(B)(i-vii). Opportunity Index. In keeping with the threshold distances for community amenities in rural areas, we request that the distances for proximity to schools, after-school programs, grocery stores, child-care centers, senior centers, and health facilities all be increased to 2 miles for rural areas. The difference between 1 mile and 2 miles to a rural resident is insignificant since most residents in rural areas would need to use a car to reach these locations due to a lack of public infrastructure (sidewalks, transit, etc.). Also, amenities are more spread out in rural areas and not often clustered together within a tight 1-mile radius of the other community facilities.

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Phone: (800) 605-7608 ▪ Fax: (404) 745-0530

Section 11.9(c)(5). Educational Excellence. We suggest more point gradation for high-performing schools. Communities served by an elementary, middle school, and high school that are all high-performing schools are extremely rare, especially in rural areas. A site served by only a high-performing elementary school should score 1 point, a site served by two high-performing school levels (elementary, middle, or high school) should score 2 points, and a site served by three school levels that are all high-performing should score 3 points.

Section 11.9(c)(8). Location Outside of "Food Deserts." We support removing this scoring item due to lack of reliable data to map these areas.

Section 11.9(d)(6)(A). Input from Community Organizations. We request that 2 points be restored for each letter of support from a community or civic organization to put rural sites on a more even competitive footing with urban sites where more organizations will exist. Acquiring four letters of support from different non-profit organizations may prove impossible in many rural communities, as there may simply not be 4 different non-profit organizations in existence that serve the community.

Section 11.9(e)(3)(A). Pre-Application Participation. We request that TDHCA only cap the increase in units between pre-application and full application, to allow for unforeseen zoning requirements during project development that may force a smaller project than originally contemplated.

Section 11.9(e)(4)(A)(ii-iv). Leveraging of Private, State, and Federal Resources. We suggest that the maximum percentages for Housing Tax Credit funding requests (as a percentage of the total housing development cost) be increased to 8% to 10% from the current range of 7% to 9%. This scoring category is the primary reason that affordable developments included a sizable proportion of market rate units in the 2013 competitive round in order to drop their percentage from around 8% to below 7%. A smaller, pure tax credit development won't get below 7% even at 48 units and operational costs hurt the financial feasibility of projects smaller than 64 units in most areas (especially rural). If TDHCA still desires to lower market rate risk on 2014 applications, it should increase its minimum number to 8% to reduce the pressure on developers to add more market rate units to a project concept.

Section 11.9(e)(7). Development Size. We request that TDHCA keep the affordable unit cap at fifty (50) units but replace the additional cap of $500,000 on the housing tax credit funding request with a new cap based on the total credits available in a region to help improve the financial feasibility of 2014 projects that are funded. Other scoring categories already control development cost and the percent of credits requested to the total cost, which by themselves effectively limit a project's credit request to about $500,000 to $600,000. If a region has $550,000 in credits available, the additional $50,000 credits gained by this change would not often result in TDHCA being able to fund another project but would make a significant difference in the financial viability of the project funded in that region. The 2013 round saw many developers forced to make aggressive financial decisions that would not otherwise do in order to secure enough points to be funded, only to then experience unusual difficulty in attracting investors and closing their projects with a deal that still made financial sense. Rising interest rates following full

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application submittal (an occurrence that can be expected to continue) further complicated matters, with rates jumping almost 100 basis points. We appreciate TDHCA's desire to stretch its resources as far as possible but we encourage a softening of the funding cap to produce more financially viable projects going forward as financial risk and uncertainty can be expected to continue this coming year.

Thank you again for this opportunity to submit comments on the draft 2014 QAP. We appreciate all the hard work of TDHCA in developing quality affordable housing in Texas and are proud to be a part of the team.

Sincerely,

Sean M. Brady, LEED AP
Vice President of Development

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(36) Jay Collins
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October 3, 2013

Cameron Dorsey
Texas Department of Housing & Community Affairs
221 East 11th Street
Austin, TX 78701

RE: 2014 Qualified Allocation Plan – Cost per square foot

Dear Cameron,

The draft 2014 Qualified Allocation Plan has been reviewed in our office this week. We respectfully submit this letter to draw additional attention to §11.9(e)(2) Cost of Development per Square Foot.

Our concern is that the developments would become infeasible due to rising construction labor costs and the possible expiration of the 9% applicable percentage. Also consider that it costs more to build in rural areas than in the large urban areas. Development costs of $60/$65 per square feet are infeasible and unattainable in this market.

We respectfully suggest an adjustment from $15 to $20 per square foot to the allowable costs to ensure that developments awarded tax credits in 2014 will have the financial ability to construct their properties.

Thank you for your consideration.

Sincerely,

Jay Collins

(37) Toni Jackson
Coats Rose

COATS | ROSE

A Professional Corporation

ANTOINETTE M. JACKSON
DIRECTOR

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DIRECT: (713) 653-7392
FAX: (713) 890-3928

October 14, 2013

VIA ELECTRONIC TRANSMITTAL and U.S. Mail
Mr. Timothy Irvine
Texas Department of Housing and Community Development
221 East 11th Street
Austin, Texas 78701

RE: 2014 Draft Qualified Allocation Plan

Dear Mr. Irvine:

Please find attached comments to the Draft 2014 Qualified Allocation Plan which I am submitting in behalf of United Public Housing Authorities throughout the State of Texas. I have am also attaching for you certain support letters from various elected officials which are also being provided in support of these consensus comments.

Thank you for your attention to these comments.

Very truly yours,

Antoinette M. Jackson

AMJ:

Public Housing Authority Consensus Comments

Qualified Allocation Plan – Draft 2014

Submitted October 14, 2013

Public housing authorities ("PHAs") have seen a decrease in federal funding in recent years as public housing stock becomes older and obsolete. In an effort to change the face of public housing, PHAs have begun to revitalize its housing stock with mixed income inventory which integrates more seamlessly into neighboring communities. Utilizing the low income housing tax credit ("LIHTC") program has been one of the tools used by PHAs to revitalize its stock. However, recent changes to the Qualified Allocation Plan ("QAP") have reduced the competitive viability of PHA sponsored applications. As a result, a united collaboration of PHAs ("UPHA") has come together to put forth the recommended revisions to the QAP in an effort to provide a more level playing field in the competitive 9% application process.

§10.3 Definitions: The UPHA would like to see housing authorities added to the definition of Unit of General Local Government. This would be consistent with the §392.006 of the Local Government Code which defines housing authorities as a unit of government.

- Unit of General Local Government--A city, town, county, village, housing authority (or its related entity), tribal reservation or other general purpose political subdivision of the State.

§10.101 Site and Development Requirements and Restrictions: The UPHA would like to see certain undesirable site features addressed in the QAP. Often these features are near existing properties that PHAs seek to reconstruct and redevelop.

- Undesirable site features that have been mitigated through the U.S. Department of Housing and Urban Development (HUD) should be exempted.
- Remove language: Developments located adjacent to or within 300 feet of an active railroad track
- Areas that have been designated as a part of a city or county's revitalization area and have a resolution or letter of support from the city or county shall be exempt

§11.3 Housing Deconcentration Factors: In subsection (d) maintain the requirement that new construction and adaptive reuse developments be located in a census tract of more than 30% HTC units. If the project is within a census tract with 30% or more HTC units, a local governmental resolution of support should automatically allow the 130% basis boost.

§11.4 Tax Credit Request and Award Limits: In subsection (c)(1) maintain the requirement that the development is located in a QCT that has less than 30% HTC units. This reduction further widens the funding gap for these transactions. If the project is within a census tract with 30% or more HTC units, a local governmental resolution of support should automatically allow the 130% basis boost.

§11.5 Competitive HTC Set-Asides

- Public Housing developments converting their assistance to long term project based Section 8 rental assistance contracts under HUD's Rental Assistance Demonstration (RAD) Program should be included to qualify to apply in the at-risk set aside. Pursuant to the legislation, the at-risk set aside is intended for public housing units deposed of or demolished by a housing authority and retaining operating subsidy for the development. Therefore, developments under the RAD program should qualify for the HTC At-Risk Set Aside.

  The Rental Assistance Demonstration program was enacted by H.R. 2112 (the "RAD Act"). In accordance to the RAD Act, several criteria was set out for the funding and implementation of RAD.

  1. Funding for RAD is transferred from the Public Housing Capital Fund and Public Housing Operating Fund to cover the cost of operating the units. The rental adjustments for the units are determined by using the public housing operating cost factor and may only be equal to the amount transferred from the Capital Fund or Operating Fund.

  2. The RAD Act indicates that the tenants of the properties converted under Section 9 shall maintain the same rights under the conversion and the public housing authorities must offer units to those same tenants. The program is intended to recapitalize and operate public housing properties by leveraging additional sources to fund the properties.

  3. Additionally, HUD requires that ownership must be maintained by a public or nonprofit entity except when using tax credits. If tax credits are used a for-profit entity may be the owner if the public housing authority preserves its interest in the property in a manner approved by HUD.

  Based upon the provisions of the RAD Act, HUD intended RAD to not replace Section 9 units but to serve as a way to recapitalize those units. The funding for RAD comes directly from Section 9 and the tenant requirements remain in place. Therefore, it is our opinion that RAD qualifies to meet the set-aside requirements of the state legislation.

- Much of the older public housing stock is located near site features identified as undesirable under the rules of the QAP. The UPHA would like to see Reconstruction sites to be relocated away from undesirable site features, i.e. higher opportunity neighborhood, away from flood plain or railroad tracks, and retain its eligible at-risk set aside status.

§11.7 Tie Breaker Factors: The UPHA proposes the following additional items be considered as alternative tie breakers:

- Lower tax credit request
- Part of completion of an adopted redevelopment plan
- Substantial experience along with good compliance record from previous developments
- General Partner or co-general partner is a non-profit or quasi-governmental entity
- Highest market demand, based on submitted market studies

§11.9 Competitive HTC Selection Criteria: The following is proposed by the UPHA as set forth below:

- Section (c)(4) Opportunity Index
    - Census tracts with a poverty rate below 15% criteria excludes much of the area of the City where we currently work – consider adjusting to a higher percentage

- Section (d)(3) Commitment of Development Funding by Unit of General Local Government
    - Add language: "An Application may receive up to (13 points) for a commitment of Development funding from the city, county, ***a unit of government or its instrumentality*** in which the Development is proposed to be located."
    - Remove language: "The government instrumentality providing Development funding under this scoring item may not be a Related Party to the Applicant."
    - Remove language: "Funds cannot have been provided to the Unit of General Local Government by .... a Related Party".
    - (d)(3)(A): Required funding levels per Low Income Units are too high and should be reduced or set on a sliding scale based upon amount of funds received by the participating jurisdiction
    - Provide an incentive point(s) to projects that don't need additional funds but receive resolution or letter of support from unit of general local government
    - Public housing funds and Section 8 vouchers should qualify as potential sources

- Section (d)(6) Community Revitalization Plan
    - Add language: A plan adopted for a Choice Neighborhoods Planning Grant or a Public Housing plan approved by a local government may qualify as a Community Revitalization Plan under this section.

- Section (e)(4) Leveraging of Private, State and Federal Resources
    - Add language: the Development leverages CDBG Disaster Recovery, HOPE VI, Choice Neighborhoods, Public Housing Capital Funds, Section 8 vouchers ***or RAD*** funding and the Housing Tax Credit Funding Request is less than 8 percent of the Total Housing Development Cost (3 points);

Miscellaneous Items for consideration:

- Currently require 1 washer and dryer per 25 units
    - Recommend 1:40 or 1:50
    - Provide exception if laundry hook-ups are provided
- Allow community rooms to be multi-purpose space not specifically labeled
- More common amenities to offer (for example, Wi-Fi in lounge area)
- Unit amenities to include USB connections
- Add capital funds to development funding
- Update 1 mile/3 year rule to include all public housing, except HOPE VI
- Allow appraised value on owned properties, not original purchase price
- Provide two (2) points for Transit Oriented Development: one (1) point for sites located within ½ mile of light rail and one (1) point for transit oriented funding or funding by local transit authority
- Automatically grant the 130% basis boost if a housing authority has 51% or more ownership interest, project contains RAD units or if the project elects to provide 10% or more 30% AMI units.

Submitted by:

UNITED PUBLIC HOUSING AUTHORITIES:

Authorities:
Abilene Housing Authority
Alamo Housing Authority
Central Texas Housing Consortium
City of Longview Housing Authority
Corpus Christi Housing Authority
Denton Housing Authority
Edgewood Housing Authority
Fort Worth Housing Authority
Fruitvale Housing Authority
Harris County Housing Authority
Housing Authority of Bexar County
Housing Authority of the City of El Paso

Housing Authority of Gladewater
Housing Authority of the City of Texarkana, TX
Houston Housing Authority
Kingsville Housing Authority
Laredo Housing Authority
Odessa Housing Authority
Pharr Housing Authority
Port Arthur Housing Authority
Port Isabel Housing Authority
New Boston Housing Authority
Rio Grande Valley Housing Authority
Robstown Housing Authority
San Antonio Housing Authority
South Texas Housing Authority
Temple/Belton Housing Authorities
Victoria Housing Authority
Weslaco Housing Authority

Trade Organizations:
Texas Chapter of National Association of Housing and Redevelopment Officials (TXNAHRO)
Texas Housing Association
Housing Authority Valley Employees (HAVE)

The State of Texas
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ROLAND GUTIERREZ
STATE REPRESENTATIVE • DISTRICT 119

September 27, 2013

Tim Irvine
Executive Director
Texas Department of Housing and Community Development
221 East 11th Street
Austin, Texas 78701

RE: 2014 Draft Qualified Allocation Plan:
§11.9 Competitive HTC Selection Criteria

Dear Mr. Irvine:

I am writing to submit comments to the 2014 Draft Qualified Allocation Plan (QAP) as it relates to §11.9 Competitive HTC Selection Criteria "Funding by Local Political Subdivision" and the removal of the related party language in this section.

Last year, TDHCA removed the ability for public housing authorities to contribute funding to transactions in which they were involved, using the justification that it was "self-dealing". However, public housing authorities (PHA) are public entities and have unique resources that can only be provided by them, for the purpose of building and operating low-income housing.

It is important to consider that some housing authority funding is limited to transactions where the PHA also participates. This does not make it a transaction of self-dealing nor an unfair advantage; instead, this provides opportunity for the PHA to forward its public mission of providing low-income housing through a public-private partnership. When a PHA participates in a transaction, it procures the services of its development partner and the other private entities that participate in the transaction. This provides an open and equal opportunity for any developer, lender or investor to participate in the transaction.

Additionally, a PHA providing funding in a transaction is not unlike the ability of a developer or private owner providing financial and liquidity guarantees to local political subdivisions in order to receive a loan for those funds. The local political subdivision assures repayment of its funds through the guarantees made by developers. Although it is not self-dealing, it is only through self-interest these guarantees are being provided.

ROLAND.GUTIERREZ@HOUSE.STATE.TX.US

The State of Texas
House of Representatives

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ROLAND GUTIERREZ
STATE REPRESENTATIVE • DISTRICT 119

Therefore, it is for these reasons that I support the removal of "Related Party" from this section and the inclusion of "housing authorities" as a local political subdivision.

I thank you for your consideration of this very important recommended change to the draft 2014 QAP regarding the ability of PHA funds to be used as a Commitment of Development Funding by a Local Political Subdivision.

Sincerely,

Roland Gutierrez

ROLAND.GUTIERREZ@HOUSE.STATE.TX.US

The Senate of The State of Texas

Senator Leticia Van de Putte, R. Ph.

District 26

PRESIDENT PRO TEMPORE, 2013

October 8, 2013

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Dear Mr. Irvine,

Thank you and your staff at the Department of Housing and Community Affairs for working so diligently on the 2014 Draft Qualified Allocation Plan (QAP) for the State. I understand the low income housing tax credits are very competitive and helpful for the development of quality low cost housing.

In the past I have submitted comments on preserving the input by local entities who have developed plans for community revitalization. Public housing authorities should be eligible for points under the commitment of development funding since they typically develop long term strategies to support additional development. Public housing authorities work with neighborhoods to develop comprehensive plans that take into consideration various community needs.

I understand that the intent of the rule on related-party limitation enacted and a part of the 2013 QAP was to prohibit against self-dealing. I believe concerns about self-dealing are justified, however, I believe the changes prevented legitimate and committed public housing authorities from being able to benefit from using their funds as a commitment of development funding by a local political subdivision. I hope they are allowed to benefit under the 2014 QAP.

Thank you for allowing me to share my thoughts and concerns and hope you consider making changes to the 2014 Qualified Allocation Plan.

Sincerely,

Leticia Van de Putte
Senate District 26

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TEXAS HOUSE OF REPRESENTATIVES
RUTH JONES MCCLENDON
State Representative, District 120

COMMITTEES:
Rules and Resolutions - Chair
Appropriations
Transportation

TEXAS LEGISLATIVE ORGANIZATIONS:
Mexican American Legislative Caucus
Texas Legislative Sportsman's Caucus
Texas Tourism Caucus
Texas Legislative Black Caucus

October 8, 2013

Mr. Tim Irvine, Executive Director
Texas Department of
Housing and Community Development
221 East 11th Street
Austin, Texas 78701

RE: 2014 Draft Qualified Allocation Plan comments: §11.9 Competitive HTC Selection Criteria

Dear Mr. Irvine:

Public housing authorities (PHA's) need to be in a position to commit development funding to transactions in which they are involved, whether through formal participation or through collaborating with local political subdivisions to facilitate transactions. Therefore, I support the removal of "Related Party" language from the Section 11.9 Competitive HTC Selection Criteria "Funding by Local Political Subdivision," and recommend including "housing authorities" as a local political subdivision.

Last year, TDHCA removed the ability for public housing authorities to contribute funding to transactions in which they were involved, using the justification that it was "self-dealing." However, public housing authorities (PHA) are public entities and have unique resources that can only be provided by them, for the purpose of building and operating low-income housing. When a PHA provides funding in a transaction, it is similar to the action of a developer or private owner providing financial and liquidity guarantees to local political subdivisions in order to receive a loan for those funds. The loan guarantees made by developers assure the local political subdivision of repayment of its funds. Although it is not self-dealing, these guarantees are being provided as a condition of receiving the funds.

It is important to consider that some housing authority funding is limited to transactions where the PHA also participates. This does not make it a transaction of self-dealing nor an unfair advantage; instead, this provides opportunity for the PHA to advance its public mission of providing low-income housing through a public-private partnership. When a PHA participates in a transaction, it procures the services of its development partner and the other private entities that participate in the transaction. This provides an open and equal opportunity for any developer, lender or investor to participate in the transaction.

Please make my comments part of your official record, explaining my position on the 2014 Draft Qualified Allocation Plan (QAP). I favor the removal of the related party language in Section 11.9. Thank you for considering my recommendation of this important change to the draft 2014 QAP to allow the use of PHA funds as a Commitment of Development Funding by a Local Political Subdivision.

Sincerely,

Ruth Jones McClendon

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CITY OF SAN ANTONIO
JULIÁN CASTRO
MAYOR

September 27, 2013

Tim Irvine
Executive Director
TX Department of Housing & Community Development
221 East 11th Street
Austin, Texas 78701

RE: 2014 Draft Qualified Allocation Plan: §11.9 Competitive HTC Selection Criteria

Dear Mr. Irvine:

On behalf of the City of San Antonio and in support of the San Antonio Housing Authority's position, I am writing to submit comments to the 2014 Draft Qualified Allocation Plan (QAP) as it relates to §11.9 Competitive HTC Selection Criteria "Funding by Local Political Subdivision" and the removal of the related party language in this section.

Last year, TDHCA removed the ability for public housing authorities to contribute funding to transactions in which they were involved, using the justification that it was "self-dealing". However, Public Housing Authorities (PHA) are public entities and have unique resources that can only be provided by them, for the purpose of building and operating low-income housing.

It is important to consider that some housing authority funding is limited to transactions where the PHA also participates. This does not make it a transaction of self-dealing nor an unfair advantage; instead, this provides opportunity for the PHA to forward its public mission of providing low-income housing through a public-private partnership. When a PHA participates in a transaction, it procures the services of its development partner and the other private entities that participate in the transaction. This provides an open and equal opportunity for any developer, lender or investor to participate in the transaction.

Additionally, a PHA providing funding in a transaction is not unlike the ability of a developer or private owner providing financial and liquidity guarantees to local political subdivisions in order to receive a loan for those funds. The local political subdivision assures repayment of its funds through the guarantees made by developers. Although it is not self-dealing, it is only through self-interest these guarantees are being provided.

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MAYORJULIANCASTRO@SANANTONIO.GOV

Therefore, it is for these reasons that I support the removal of "Related Party" from this section and the inclusion of "housing authorities" as a local political subdivision.

I thank you for your consideration of this very important recommended change to the draft 2014 QAP, regarding the ability of PHA funds to be used as a Commitment of Development Funding by a Local Political Subdivision.

Sincerely,

JULIÁN CASTRO
MAYOR

(38) Belinda Carlton
Texas Council for
Developmental Disabilities

TEXAS COUNCIL *for* DEVELOPMENTAL DISABILITIES

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Mary Durheim, Chair
Andrew D. Crim, Vice Chair
Roger A. Webb, Executive Director

Texas Department of Housing and Community Affairs
Public Comments
2014 Qualified Allocation Plan

The Texas Council for Developmental Disabilities (TCDD) appreciates the opportunity to provide comments on the Draft 2014 State of Texas Qualified Allocation Plan (QAP) to be used by the Texas Department of Housing and Community Affairs (TDHCA) for awarding and allocating Housing Tax Credits and the Draft of the Uniform Multifamily Rules that set general requirements for the development of affordable housing. TCDD is established by federal law in the Developmental Disabilities Assistance and Bill of Rights Act. The Council's mission is to create change so that all people with disabilities are fully included in their communities and exercise control over their own lives.

TCDD comments on the Draft 2014 State of Texas Qualified Allocation Plan:

1. TCDD commends TDHCA on the addition of the new provision found in Sec. 11.4 (c) (2) (D) that provides tax credit developers a 30 percent boost to restrict an additional 10 percent of the low income units for housing for people earning at or below 30 percent area median gross income (AMGI).

   Setting a 30% percent boost for developers to restrict units at or below 30% AMGI is a significant step toward expanding housing opportunities for extremely low income Texans with disabilities. The extremely low income level of 30% AMGI is $12,600 for a household of one, according to the U.S. Department of Housing and Urban Development (HUD). The 30% and below incentive could provide access for many people with disabilities who have until now been priced out of affordable housing.

2. TCDD recommends amending Sec. 11.9 (c) (2) by adding (D) At least 5% of all low-income Units at 15% or less AMGI (7 points).

   If a developer takes the 30% percent boost for restricting units at or below 30% AMGI, the likely outcome is that those units will rent close to the 30% threshold. This will still price out individuals with developmental disabilities who largely rely on Supplemental Security Income (SSI). In the nearly 15 years since the first *Priced Out* study, the housing affordability gap for people with disabilities has almost doubled as the cost of a modestly priced rental unit has increased from 69% of SSI in 1998 to 104% in 2012.[i]

   People with disabilities who rely on SSI continue to be among the nation's poorest citizens. In 2013, the SSI payment for a single individual is only $710 monthly – equal to only 16.2% of the national median income and more than 25% below the 2012 federal poverty level of $11,490. Currently, the only way to qualify for affordable housing at this income level is with subsidies, such as HUD Housing Choice Vouchers or other public housing supports. Because of federal sequestration, Texas has lost $59.3 million in rental assistance and affordable housing programs. Additionally, HUD is preparing to cut 100,000 Section 8 vouchers nationwide. Subsidies are a quickly dwindling option for people with disabilities and the failure to secure or the loss of housing supports results in unnecessary

institutionalization or homelessness. An incentive of 5% of low income units at or below 15% AMGI will avert this risk for many who will still be left out with the 30% AMGI boost.

3. TCDD supports Sec. 11.9 (c) (7) that will provide an additional 2 points in scoring to participate in the Section 811 Project Rental Assistance Demonstration (PRA) if the developer commits at least 10 units for participation in the 811 program.

   Under this incentive, according to TDHCA estimates, 20 to 40 new multi-family developments could offer 10% to 20% of their integrated units to persons with disabilities who will receive project based rental vouchers through the Section 811 PRA grant.

TCDD Comments on the Draft of the Uniform Multifamily Rules:

4. TCDD supports Section 10.101(b)(8) that adds language reinforcing the requirement that two-story or single family units normally exempt from Fair Housing accessibility requirements must provide a minimum of 20% of one bedroom, two bedroom, and three bedroom units with an accessible entry level on multi-level units and all common-use facilities in compliance with the Fair Housing Guidelines.

5. TCDD supports the change also found in Section 10.101 b) (8) that will require all applications proposing Rehabilitation (including Reconstruction) to be treated as Substantial Alteration so that 5% of units will be required to be set-aside to accommodate persons with mobility impairments and 2% set-aside for persons with visual impairments.

   According to *Priced Out 2012*, the lack of accessible housing impedes efforts to expand community-based services and supports through Medicaid optional and waiver services and federal initiatives, such as the U.S. Department of Health and Human Services Money Follows the Person Demonstration program.[ii] Adding this requirement is a praiseworthy approach to breaking down barriers to community living for individuals who need an accessible living environment.

TCDD appreciates the responsiveness of TDCHA to increasing community living options for individuals with disabilities who require deeply affordable, integrated, accessible housing options. Thank you.

Respectfully submitted,

Belinda Carlton, CPM
TCDD Public Policy Specialist
Belinda.carlton@tcdd.texas.gov
512 437-5414

---

[i] Cooper, E., et al. *Priced Out 2012 - The Housing Crisis for People with Disabilities.* May 2013. Pg. 5 Retrieved October 15, 2013 from http://www.tacinc.org/media/33368/PricedOut2012.pdf

[ii] Ibid.

(39) John Henneberger
Texas Low Income Housing
Information Service and
Madison Sloan
(“Texas Appleseed”)

Texas
APPLESEED

Texas Low Income Housing
Information Service

October 21, 2013

Mr. Cameron Dorsey
Director of Multifamily Finance
Texas Department of Housing and
Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Dear Mr. Dorsey:

We offer these recommendations regarding the 2014 State of Texas Qualified Allocation Plan (QAP) for allocation of Low Income Housing Tax Credits (LIHTC).

§11.3. Housing De-Concentration Factors.
We strongly support the Housing De-Concentration goal of this section. Sections 11.3(b) and 11.3(d)(2) reference resolutions by local governing bodies that would exempt applications from certain limits addressing De-Concentration. We suggest that such resolutions be required to contain a statement that that governing body has examined the concentration of housing supported by low income housing tax credits in that jurisdiction, and that concentration does not constitute a barrier to fair housing choice, is consistent with local fair housing plans and will affirmatively further fair housing.

We support the language in section 11.3(e). Over-funding of elderly units in certain areas of the state limits the fair housing choice of families with children – a protected class under the Fair Housing Act - and the state has an obligation to affirmatively further fair housing for this population.

§11.4. Tax Credit Request and Award Limits.
11.4(c)(2)(A): Historically, all rural applications were made eligible for the 30% boost because it was difficult for rural deals to compete for the High Opportunity boost. However, High Opportunity points in rural areas are now calculated in a manner specifically targeting the unique nature of rural deals. Given this, we suggest the blanket availability of the 30% boost for rural deals is no longer needed, and undercuts the purpose of the rural high-opportunity points. We suggest removing the blanket rural boost and encouraging rural deals to compete

for the boost via the rural opportunity point calculation.

§11.5. Competitive HTC Set-Asides

The At-Risk Set-Aside (@ 11.5(3): The addition to section (C) of the option to relocate existing units in an otherwise qualifying At-Risk Development instead of rebuilding those units on site is an important and necessary change to the QAP.

First, while the preservation of affordable housing is both laudable and needed, the increasing amount of older subsidized housing that needs recapitalization and rehabilitation means that these incentives can have the effect of preserving affordable housing in neighborhoods that 1) have less need for affordable housing because families can easily use Housing Choice Vouchers to rent units and/or market rents are affordable to low-income families; and 2) are not high-opportunity, while allowing units in higher opportunity areas to be converted to market rate units. Public funds should not be used to lock-in historical patterns that have located affordable housing in segregated low-income areas.

Second, the existing location of the at-risk development may not comply with the Fair Housing Act. Rehabilitating or rebuilding developments in areas that are not high-opportunity, particularly in areas with high levels of racial segregation and concentrated poverty, violates the State and local governments' obligations to affirmatively further fair housing by investing public funds in a way that perpetuates and furthers racial segregation and denies housing to other protected classes including families with children and persons with disabilities.

Third, some existing LIHTC developments are located in areas with high levels of environmental risk. For example, the Prince Hall Village development in Port Arthur, Texas is located on the fenceline of the largest refinery in North America, close to two public housing developments. These developments are currently being relocated, in part because of the environmental risks to the families that live there. In an August 2011 letter, the Environmental Protection Agency noted that;

> "the Carver Terrace housing project and adjacent playgrounds are located such that residents, including the children, are literally living *on the fenceline* of some of the largest oil and gas refineries in the United States. Accordingly, the residents of Carver Terrace face greater risks from air pollution (e.g. releases due to process malfunctions or inefficient equipment shutdowns), as well as a higher risk of emergency events (such as chemical and oil spills). Significantly, during hurricanes, these risks become amplified and more probable."

The families in the LIHTC development face the same risks, but without the proposed change to the QAP, the development could not be moved to a safer area.

We support this change to the QAP, but would go further and require a location analysis of all developments to determine whether the proposed location – including the existing site –

complies with fair housing requirements. We further suggest that TDHCA include an environmental hazard proximity impact factor in the scoring criteria. Developments within certain distances of TCEQ clean-up sites, emissions sites, brownfields, etc. should receive lower scores.

§11.7. Tie Breaker Factors

We support the goals of this section, which is to encourage deals in higher opportunity, lower housing-tax-credit concentrated, areas of the state. In the spirit of constructive feedback, however, we note that the proposed language in 11.7(2) may aggravate the existing, problem of Housing Tax Credit units being located on the peripheral edges of populated areas. To address this, we suggest the 11.7(2) de-concentration tiebreaker be instead calculated as the application with the tract lower concentration index, where the index is calculated as ((**existing HTC units + proposed HTC units)/households)**.

Given this is a tract-level calculation, it is still theoretically possible that two applications in the same census tract could tie. In that case, we suggest a final tie-breaker, unlikely to be reached, of the lower linear distance to the nearest post office. This arbitrary number would be uniquely available for every address in the state and would encourage units closer to, rather than farther, from services.

§11.9. Competitive HTC Selection Criteria

11.9(c)(4)(A): We strongly support the goals of the opportunity index as calculated for Urban Areas of the state. Texas' inclusion of school quality in its Opportunity Index is critical. While the poverty rate of the proposed Development Site is an important measure of opportunity, it does not by itself indicate access to opportunity or racial desegregation. Studies of the Moving to Opportunity (MTO) demonstration project found that despite the program's definition of a high-opportunity neighborhood as one in which fewer than 10% of the residents were below the poverty level, the low-poverty neighborhoods to which MTO families moved were still generally racially segregated, often within the same school system as the family's previous neighborhood, and less likely to have good employment resources and public services because of historic patterns of disinvestment in racially segregated minority neighborhoods.[1]

Much as TDHCA currently limits opportunity points to areas with relatively low poverty rates, we encourage TDHCA to explore limiting Opportunity points to neighborhoods with crime

[1] *See, for example,* Orr, Larry, Judith D. Feins, Robin Jacob, Erik Beecroft, Lisa Sanbonmatsu, Lawrence F. Katz, Jeffrey B. Liebman, and Jeffery R. Kling [2003]. *Moving to Opportunity: Interim Impacts Evaluation.* Prepared for U.S. Department of Housing and Urban Development. Abt Associates Inc. and National Bureau of Economic Research; Kingsley, G. Thomas, and Kathryn L.S. Pettit [2008]. "Have MTO Families Lost Access to Opportunity Neighborhoods Over Time?" Three City Study of Moving to Opportunity, Brief No. 2, Urban Institute; Sanbonmatsu, Lisa, Jens Ludwig, Lawrence F. Katz, Lisa A. Gennetian, Greg C. Duncan, Ronald C. Kessler, Emma Adam, Thomas W. McDate, and Stacy Tessler Lindau [2011]. *Moving to Opportunity for Fair Housing Demonstration Program: Final Impacts Evaluation.* Prepared for U.S. Department of Housing and Urban Development. National Bureau of Economic Research.

rates below the median county or place level.[2]

11.9(c)(4)(B) We support the goals of the opportunity index as calculated for Rural Areas of the state, but question the effectiveness of the proposed scoring regime. The use of a "cumulative" point system with 16 possible points undermines the meaningful guidance provided by this section. We suggest changing the points available for the basic services items (ii), (iii), and (iv) from 2 points to 1 point. This would leave one point only available to general-population applications near schools with a "met standard" rating.

We suggest rewording 11.9(c)(4)(B)(iv) from "a child-care center that is licensed by the Department of Family and Protective Services" to "child-care facility that is licensed by the Department of Family and Protective Service as a licensed child-care center" to emphasize that licensed in-home providers do not qualify for these points.

§11.9. (d) Criteria promoting community support and engagement.
11.9. (d)(1) The points for Local Government Support in §11.9. (d)(1) should be reserved for resolutions containing a statement by the local government body that they have reviewed the application and their support or lack of objection to the application is consistent with their obligation to affirmatively further fair housing.

The high number of points allocated to Local Government Support has the strong potential to result in discriminatory impacts, including perpetuating racial segregation and making housing unavailable to families with children and persons with disabilities. Not only does the number of points present an almost insurmountable barrier for projects that do not receive resolutions of approval or non-objection, points for a resolution of approval in segregated minority areas would prioritize these projects over those in less segregated and higher opportunity areas. Because the forms of local government support eligible for points – resolutions of the local governing body commitments of local government funding – are likely to be tied together, local opposition to the proposed project is multiplied by the cumulative nature of the points.

§11.9. (d)(4)(C)(1): While we appreciate the state's efforts to recognize the higher level of difficulty obtaining support letters in certain neighborhoods, ongoing rewards to neighborhoods for historically opposing tax credit properties in their boundaries sets up inappropriate incentives for organizations to game the system with spurious letters of false opposition. We suggest these points be removed.

[11.9(d)(5)]: Community Support from State Representative: This item is statutorily required to be the eleventh-ranked scoring priority. However, the proposed language makes this the only scoring item eligible for both positive and negative points, effectively granting a 16-point spread between positive and negative support from a State Representative. This 16 point spread increases the ranking of this item in the scoring priority beyond the eleventh priority,

[2] Using sources such as the Texas Department of Public Safety or FBI Uniform Crime Reports.

and is not supported by the statutory language.

In addition to the fact that this ranking is not supported by the statutory language, it has the strong potential to result in discriminatory impacts, including perpetuating racial segregation and making housing choice unavailable to families with children and persons with disabilities. We suggest letters indicating lack of support by state representatives be scored zero points.

§11.9. (d)(6)(D): We support excluding input from community organizations that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing. However, we believe this clause should be moved and expanded to cover all input regarding the application, including, but not limited to: Local Government Support resolutions [11.9(d)(1)], Quantifiable Community Participation [11.9(d)(4)], and Community Support from State Representatives [11.9(d)(5)].

§11.9. (d)(7)(A) and (B): The State of Texas and political jurisdictions such as counties and cities who are developing community revitalization plans and approving housing tax credit applications within such areas each have a responsibility to act in a manner consistent with the Fair Housing Act and the Executive Order directing recipients to "affirmatively further fair housing". The State, counties, and cities are under an obligation to eliminate discrimination and segregation and increase the supply of genuinely open housing.

In order to fulfill this obligation, the QAP should explicitly assess residential racial and ethnic segregation as a site condition and apply a preference to awarding housing tax credits to reduce rather than to reinforce residential segregation.

We agree with the QAP defining community revitalization areas and permitting the award of some low income housing tax credits within those areas. Because the HTC program creates housing units, the amount of credits awarded in community revitalization areas should be significantly less than those awarded in high opportunity, racially and ethnically integrated neighborhoods. The QAP must ensure that a predominant emphasis of the housing tax credit program is placed on developing housing available to African-American, Hispanic, Asian and other "minority" tenants in the form of open housing outside of segregated minority neighborhoods. A review of the TDHCA Housing Sponsor Report shows clearly that the predominant race or ethnicity of the neighborhood in which a housing development funded by TDHCA is located is highly correlated with the race/ethnicity of the tenants residing in that development. To produce open housing TDHCA must both award a significant portion of housing tax credits outside of minority segregated neighborhoods and compel developers and owners to engage in affirmative marking plans that actually produce project level integration that is clearly not currently being achieved.

As one illustration of how to pursue community revitalization while achieving fair housing we point to the City of Houston DR program. We have negotiated a fair housing agreement with

the City of Houston. As part of selecting community revitalization areas the city considered and documented through experts the rates of neighborhood change economically and racially across the city and then selected areas as community revitalization areas. The designation of these areas required that the neighborhood could reasonably be expected, through private market forces and concentrated public investment in infrastructure and public services, to transition from high poverty, minority segregated neighborhoods into economically, racially and ethnically integrated neighborhoods. The city made a massive short term as well as a long term funding commitment to support this explicit integration outcome. The city has also chosen to invest CDBG-DR funds in multifamily development within these neighborhoods through a conscious effort to create mixed income housing at the development level.

We urge TDHCA to incorporate a similar approach in the QAP to define eligible community revitalization areas. A city or county designating a neighborhood as a community revitalization area must be required to do at least what the city of Houston did: produce a competent market analysis demonstrating that market forces can reasonably be expected, in combination with a major public investment in improved infrastructure and public services, to result in economic, racial, and ethnic integration. The jurisdiction must offer a long-term commitment of local improvements of public services and infrastructure.

An analysis of the ethnic and racial composition of government subsidized developments of all types in and around the proposed community revitalization area should be produced. The jurisdiction should be required to provide an acceptable strategy achieving the integration of government subsidized housing within the community revitalization area and explicitly address how the introduction of new housing tax credits will overcome existing patterns of racial, ethnic, and economic segregation in the area.

The commitment to achieve integration must also be explicit on the part of the jurisdiction. Community revitalization must go beyond building more and better government subsidized housing in the neighborhood because government subsidized housing alone will not result in racial and economic integration and may actually work against such integration. TDHCA must require the jurisdiction to acknowledge its commitment to comply with fair housing and affirmatively further fair housing. The jurisdiction must explicitly state that the community revitalization plan it proffers to obtain tax credits is part of the jurisdiction's deliberate plan to affirmatively further fair housing and that it consistent with the local Analysis of Impediments to Fair Housing. Without such a showing and commitment we suggest that the community revitalization plan is not an adequate commitment for the State to base an award of housing tax credits.

We also urge TDHCA's follow up monitoring of the outcomes of accepted community revitalization plans. At periods of time after construction of the tax credit developments in community revitalization areas, 2 years, 5 years and 10 years, an assessment of the ethnic/racial composition of the tenants in LIHTC developments in community revitalization areas and the populations in the surrounding neighborhoods should be undertaken to determine if the

criteria used to designate community revitalization areas and the public revitalization commitments produced the required outcomes. The eligibility criteria for community revitalization areas in future QAPs should be modified as appropriate based on these assessments.

§11.9. (d)(7)(B)(ii): We suggest the following edits to §11.9. (d)(7)(B)(ii):

> *(I) define specific target areas for redevelopment of housing that do not encompass the entire jurisdiction;*
>
> *(II) ~~affirmatively address Fair Housing demonstrated through~~ be subject to administration in a manner consistent with an approved Fair Housing Activity Statement-Texas (FHAST) if a FHAST Form is in place within the jurisdiction;*
>
> *(III) be subject to administration in a manner consistent with the findings of an Analysis of Impediments approved or accepted by HUD within the last three (3) calendar years ~~or an approved Fair Housing Activity Statement-Texas (FHAST), approved by the Texas General Land Office~~;*
>
> *(IV) certify that the plan and the Application are consistent with the adopting municipality or county's plan to affirmatively further fair housing under the Fair Housing Act (42 USC 3608(d)) and Executive Order 12892; and*
>
> *(~~IV~~ V) be in place prior to the Pre-Application Final Delivery Date.*

Sincerely,

John Henneberger, co director
Texas Low Income Housing Information Service

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October 17, 2013

Cameron Dorsey
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221 East 11th Street
Austin, Texas 78701-2410

RE: 2014 Qualified Allocation Plan – Public Comment

Comments on 2014 QAP New Items and Changes

1. **§11.2 Calendar.** The due date for the market analysis, site design and development feasibility report, all resolutions for housing de-concentration factors, and Local Government Support resolutions should be April 1, 2014. We understand these items are key to underwriting, but having more time to work with the local jurisdictions will be beneficial to the Applicant and the local jurisdiction. This should not delay underwriting for the simple fact that the legislator support letter is also not due until April 1, 2014, which is the primary determinant on whether an application will be competitive. In addition, it is helpful for the Applicant to have as much time as possible to analyze the Pre-Application and Application scoring logs to determine whether or not to proceed; when Applicants exercise discretion after analyzing the scoring logs, better applications are submitted and both time and money resources are not wasted by the TDHCA or the Applicant in pursuing these sites or by reviewing applications that will not be competitive.

Recommended Language:

Deadline	***Document Required***
02/28/2014	*Full Application Delivery Date (including Quantifiable Community Participation documentation, Environmental Site Assessments (ESAs), Property Condition Assessments (PCAs), and Appraisals~~; Market Analysis Summary; Site Design and Development Feasibility Report; and all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors).~~*
04/01/2014	*Final Input from Elected Officials Delivery Date (including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5) (after opportunity to review materially complete Applications)).* *Market Analysis Summary; Site Design and Development Feasibility Report; and all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors.*

	Market Analysis Delivery Date pursuant to §10.205 of this title.

2. **§11.2 Calendar and §11.10 (1) Challenges of Competitive HTC Applications.** The QAP states that the Department must receive a challenge no later than seven days after the Application Challenges Deadline, which is May 15, 2014. That date plus seven days results in the effectual due date for challenges being May 22, 2014 for all intents and purposes. This is confusing and the Department should just change the deadline to the actual due date of May 22, 2014, if that is indeed the latest possible date to submit challenges.

   Recommended Language:

Deadline	***Document Required***
05/~~15~~22/2014	*Applications Challenges Deadline*

3. **§11.3(e) Developments in Certain Regions and Counties.** We oppose applying this limiting factor to senior communities and recommend the Department removing this scoring item. This is one of the fastest growing age groups in our state; in 2010, 10.3% of the Texas population was sixty-five and over, and by 2012 that figure had risen to 10.9%. The youngest of the baby boom generation will turn sixty by 2024. We suggest letting the market analysis determine whether or not there is a need for senior communities. If a limiting factor is applied, we request the Department take into consideration the number of single-family households in the area. Often times, seniors will relocate to be next to their children or grandchildren, so by limiting the number of senior communities based on the current senior population in the area, this criterion is going to actually create a shortage of senior housing options. Finally, the existing QAP already favors general population over senior communities, so this additional scoring criterion is not needed.

   Recommended Language:
   Delete this scoring criterion.

4. **§11.9 Selection Criteria.** The Department should not, as one developer suggested and others on the 2014 QAP Forum agreed, give points or promote senior communities for locating near hospitals, pharmacies, senior care centers, clinics, or nearby public transportation beyond what is in §10.101(a)(2) Mandatory Community Assets. Seniors aged fifty-five years young and over living in our apartment home communities who enjoy the abundant, dynamic amenities for which to maintain a vigorous lifestyle are not the same residents as those that would choose to live in an assisted living facility or nursing home and desire the services mentioned by our colleague. The current mandatory community assets; such as outdoor public recreation, religious institutions, post offices, and city hall, would better serve our energetic senior residents. This suggestion was not in the QAP, but we would like to be known that we strongly oppose this idea.

   Recommended Language:
   Keep this scoring criterion as is.

5. **§11.9(b)(2) Sponsor Characteristics.** In addition to a HUB or non-profit, three years of developing HTC communities in Texas will give you these points. Evidence in the form of a Commitment, 8609 or Carryover Agreement will be acceptable.

   Recommended Language:
   (2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) (1 point). An Application may qualify to receive one (1) point provided the ownership structure contains a HUB, as certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date, ~~or~~ Qualified Nonprofit Organization, provided the Application is under the Nonprofit Set-Aside, has some combination of ownership interest in the General Partner of the Applicant, cash flow from operations, and developer fee which taken together equal at least 80 percent and no less than 5 percent for any category, or a person with at least fifty percent ownership interest in the General Partner also owns at least fifty percent interest in the General Partners of at least three existing tax credit developments in Texas, none of which are in Material Noncompliance. The IRS Form(s) 8609 must have been issued for each of the properties used for points under this paragraph and each must have a Uniform Physical Condition Standard (UPCS) score of at least eighty-five based on their most recent inspection…

6. **§11.9(c)(4)(a) Opportunity Index.** The Department should restore the five points for any population in top quartile in the attendance zone of a qualifying elementary school. General population communities already have a two-point scoring advantage when in the first quartile. In addition, the Remedial Plan requires five points under the opportunity Index for any population served with less than fifteen percent poverty in a top quartile census tract and a qualifying elementary school.

   Recommended Language:
   (4) Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials.
   (A) For Developments located in an Urban Area, if the proposed Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (or 35 percent for Developments in Regions 11 and 13), an Application may qualify to receive up to seven (7) points upon meeting the additional requirements in clauses (i) – ~~(iv)~~(v) of this subparagraph. The Department will base poverty rate on data from the five (5) year American Community Survey…
   (iii) any Development, regardless of population served, if the Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (5 points);…

7. **§11.9(c)(4)(c) Opportunity Index and §11.9(c)(5) Educational Excellence.** In Districts that have open enrollment, the Department should judge developments by the schools that are closest to the site by linear distance, rather than using the lowest ranked school in

the entire district, since most students will attend the closest school. Open enrollment and limited open enrollment are becoming increasingly popular in Texas and this item unfairly penalizes developments in these school districts including, but not limited to, Argyle ISD, Birdville ISD, Cleburne ISD, Coppell ISD, Deer Park ISD, Forney ISD, Garland ISD, Lake Dallas ISD, McAllen ISD, Rockwall ISD, Texas City ISD. This is not an extensive list and the Texas Education Agency (TEA) itself does not even keep a list of open enrollment districts. Additionally, Texas Education Code §25.031 Assignment and Transfers in Discretion of Governing Board says "In conformity with this subchapter, the board of trustees of a school district or the board of county school trustees or a school employee designated by the board may assign and transfer any student from one school facility or classroom to another within its jurisdiction." The TEA estimates that during the 2007-08 school year, approximately ninety-four thousand Texas students transferred to a non-charter school in the public school system. According to the Coalition for Public Schools, of the 1,031 Texas school districts, 1,028 districts have adopted inter-district transfers that provide students with the opportunity to transfer from their home district to a public school within another district. Also, Students attending a "low-performing" school are eligible to attend a higher performing school in the same district or in another district under the Public Education Grant (PEG) program. Texas Education Code §29.202 establishes criteria allowing a student to transfer under PEG. Of the three hundred and fifty thousand students statewide estimated to be eligible to transfer from 613 identified campuses during the 2007-08 school year, five hundred students exercised their right to transfer to a different public school with a PEG transfer. Judging developments in open enrollment districts by the nearest school achieves the purpose of the Opportunity Index and Educational Excellence scoring criteria by rewarding developments in close proximity to good schools and creating opportunities for children living in these apartment communities to receive a quality education.

Recommended Language:
(5) Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools that have achieved a 77 or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency, provided that the schools also have a Met Standard rating. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the ~~lowest~~ rating of the closest (as measured by linear distance) non-charter ~~of all~~ elementary, middle, or high school~~s~~, respectively…

8. **§11.9(c)(5) Educational Excellence.** The Department should allocate points to developments in the attendance zones of schools that meet the criteria of this item per each school. Developments in the attendance zone for all schools meeting the criteria should receive three points. If only two schools – regardless of whether they are elementary, middle, or high schools – meet the criteria, the development should receive two points. Finally, if only one school – regardless of whether it is elementary, middle, or high school – meets the criteria, the development should receive one point. For this item

all schools that comprise elementary grades of early education to fifth grade would count as one school, all schools that comprise middle school grades of sixth grade to eighth grade would count as one school, and all schools that comprise high school grades ninth to twelfth grade would count as one school.

Recommended Language:
(A) The Development Site is within the attendance zone of an elementary school, a middle school, and a high school with the appropriate rating (3 points); ~~*or*~~
(B) The Development Site is within the attendance zone of any two schools ~~*an elementary school and either a middle school or high school*~~ *with the appropriate rating. Possible combinations are: elementary and middle school, elementary and high school, or middle school and high school (*~~*1*~~ *2 points); or*
(C) The Development Site is within the attendance zone of any one school: an elementary school, a middle school, or a high school with the appropriate rating (1 point).

9. **§11.9(c)(6)(C) Underserved Area.** The Department should allow points under this scoring item if there is not an active tax credit development that serves the same target population. Different target populations serve different needs and if there is only one type of population served, the place is underserved in regards to the other type of population.

Recommended Language:
(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive two (2) points for general population or Supportive Housing Developments if the Development Site is located in one of the areas described in subparagraphs (A) – (D) of this paragraph.

(A) A Colonia;
(B) An Economically Distressed Area;
(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population; or
(D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population.

10. **§11.9(c)(8) Location Outside of "Food Deserts".** The Department should remove this scoring item. While we applaud the intent behind the addition of this new scoring item, the Food Access Research Atlas on the United States Department of Agriculture (USDA) website is unreliable and dependency on this tool is objectionable since it is a new and largely untested tool. Additionally, the USDA website and therefore the instrument to find food deserts are currently unavailable due to the government shutdown stating, "due to the lapse in federal government funding, this website is not available. After funding has been restored, please allow some time for this website to become available again." Without a dependable and simple way to determine whether a development is inside a food desert, the Department should not continue to include this as a scoring item.

Recommended Language:
Delete this scoring criterion.

11. **§11.9(d)(2) Commitment of Development Funding by Local Political Subdivision.** The Department should move the resolution due date for bonus points for this scoring item to April 1, 2014. When developers have more time to work with the local jurisdictions it will be beneficial to the Applicant and the local jurisdictions.

Recommended Language:
(2)…The Applicant must provide evidence ~~in the Application~~ by April 1, 2014 that an application or request for the development funds has been submitted in the form of an acknowledgement from the applicable city or county. The acknowledgement must also state that a final decision with regard to the awards of such funding is expected to occur no later than September 1. A firm commitment of funds is required by Commitment or points will be lost (except for Applicants electing the point under subparagraph (C) of this paragraph). While the specific source can change, the funding secured must have been eligible at the time the Application was submitted. …

> *(C) Two (2) points may be added to the points in subparagraph (B) (i) – (v) of this paragraph and subparagraph (D) of this paragraph if the Applicant provides a firm commitment for funds in the form of a resolution by April 1, 2014 from the Local Political Subdivision and provides a commitment for the same source(s) at Commitment. The resolution must reflect terms that are consistent with the requirements of this paragraph. …*

12. **§11.9(d)(2) Commitment of Development Funding by Local Political Subdivision.** Since State HOME funds do not apply to this scoring item, then no HOME funds should apply. This rule, as currently written, gives larger metropolitan areas a distinct advantage, which could be in violation of Fair Housing. We recommend allowing all HOME funds count for this scoring item or none at all.

Most Preferred Recommended Language:
(2)… HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas ~~cannot~~ can be utilized for points under this scoring item ~~except where the city, county, or instrumentality is an actual applicant for and sub-recipient of such funds for use in providing financial support to the proposed Development~~.

Second Preferred Recommended Language:
HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas cannot be utilized for points under this scoring item ~~except where the city, county, or instrumentality is an actual applicant for and sub-recipient of such funds for use in providing financial support to the proposed Development~~.

13. **§11.9(d)(2)(C) Commitment of Development Funding by Local Political Subdivision.** The Department should keep the one bonus point for the financing terms of the commitment of development funding by local political subdivision as it appears in the current draft QAP. One developer suggested eliminating this point, but we agree with the TDHCA.

    Recommended Language:
    Keep this scoring criterion as is.

14. **§11.9(d)(4)(A)(iii) and (iv) Quantifiable Community Participation.** The Department should remove and replace line items (iii) and (iv). Neighborhood Organizations have the right to form and govern their organizations as they see fit. As long as support or opposition is given in accordance with the HOA or POA meeting rules, nothing further should be needed for the Department.

    Recommended Language:
    (A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph.

    (i) the Neighborhood Organization's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing address) of at least two individual members with authority to sign on behalf of the organization;
    (ii) certification that the boundaries of the Neighborhood Organization contain the Development Site and that the Neighborhood Organization meets the definition pursuant to Texas Government Code, §2306.004(23-a) and includes at least two separate residential households;
    (iii) certification that ~~no person required to be listed in accordance with Texas Government Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, including any votes taken~> support, opposition, or neutrality was given at a public meeting in accordance with the organization's governing documents;
    ~~(iv) certification that at least 80 percent of the current membership of the Neighborhood Organization consists of persons residing or owning real property within the boundaries of the Neighborhood Organization; and~~
    ~~(v)~~ (iv) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization is encouraged to be prepared to provide additional information with regard to opposition.

15. **§11.9(d)(4)(C) Quantifiable Community Participation.** The Department should change the amount of points allowed for neutrality to four points (and five points for neutrality from group that opposed a previous application). If this change is made and the Department allows Input from Community Organizations points for neutral Neighborhood Organizations (see Item 15 below), then these items will have equal

scores, with one bonus point going to applications for development sites that are within the boundaries of a Neighborhood Organization that opposed an application in the previous three years.

Recommended Language:
(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in clauses (i) – (vi) of this subparagraph. Points will not be cumulative. Where more than one written statement is received for an Application, the average of all statements received in accordance with this subparagraph will be assessed and awarded.

(i) nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;
(ii) eight (8) points for explicitly stated support from a Neighborhood Organization;
(iii) ~~six (6)~~ five (5) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;
(iv) ~~five (5)~~ four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;
(v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; or
(vi) zero (0) points for statements of opposition meeting the requirements of this subsection.

16. **§11.9(d)(6) Input from Community Organizations.** The Department should allow Input from Community Organization to score up to the maximum four points if a qualifying Neighborhood Organization takes a neutral stance. If this change is made and the Department changes the point values for neutrality from Quantifiable Community Participation (see Item 14 above), then these items will have equal scores, with one bonus point going to applications for development sites that are within the boundaries of a Neighborhood Organization that opposed an application in the previous three years.

Recommended Language:
(6) Input from Community Organizations. Where the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization or the Neighborhood Organization remained neutral (if an Application receives points under paragraph (4)(C)(iii), (iv), or (v) of this subsection), then, in order to ascertain if there is community

support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances…

17. **§11.9(d)(6) Input from Community Organizations.** The Department should remove the deductive points for opposition. This creates opportunities for foul play. If there are additional community organizations not included in the application by the developer that wish to provide input, they can contact their local government officials at any time or the Department during the public comment period.

    Recommended Language:
    Delete this scoring criterion

18. **§11.9(d)(6)(A) Input from Community Organizations.** The Department should change back to two points per letter. The difference in getting four letters as opposed to two letters is just time; it doubles the time for the developer to secure additional letters and doubles the time for the Department to read the letters when reviewing applications. This scoring change will not differentiate Applications and we recommend each letter counting as two points.

    Recommended Language:
    (A) An Application may receive ~~one (1)~~ two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located.

19. **§11.9(d)(7)(A)(i)(II) Community Revitalization Plan.** The Department should consider only four of the seven factors. This would still require the CRP to meet more than half of the factors and free up the Applicant to ensure that the factors that are included are meaningful.

    Recommended Language:
    (II) The adopting municipality or county must have performed, in a process providing for public input, an assessment of the factors in need of being addressed as a part of such community revitalization plan. Factors assessed must include at least ~~five (5)~~ four (4) of the following seven (7) factors:

20. **§11.9(d)(7)(A)(i)(IV) Community Revitalization.** The Department should allow the Community Revitalization Plan to be in place by the Full Application Delivery Date instead of Pre-Application. It benefits everyone when communities are given adequate time to comply with clear direction. This time benefits the local jurisdictions as well as the Applicant.

    Recommended Language:
    (VI) To be eligible for points under this item, the community revitalization plan must already be in place as of the ~~Pre-Application~~ Full Application Final Delivery Date

pursuant to §11.2 of this chapter evidenced by a letter from the appropriate local official stating that…

21. **§11.9(e)(4) Leveraging of Private, State, and Federal Resources**. The Department should keep this scoring criterion and not limit the number of market rate units, as one developer suggested. The inclusion of market rate units benefits the Department because those units do not require HTC funding and the Department can leverage more credits.

    Recommended Language:
    Keep this scoring criterion as is.

Sincerely,

Stuart B. Shaw, CEO

(41) State Representative's
Debbie Riddle
Jodie Laubenberg
Trent Ashby
Dwayne Bohac
Travis Clardy
Brandon Creighton
Drew Darby
Pat Fallon
Allen Fletcher
Lance Gooden
Patricia Harless
Jeff Leach
Rick Miller
Tan Parker
Ron Simmons
Van Taylor
Scott Turner
Sylvester Turner

P.O. BOX 2910
AUSTIN, TX 78768-2910
debbie.riddle@house.state.tx.us

DEBBIE RIDDLE
STATE REPRESENTATIVE
DISTRICT 150

3648 FM1960 W., SUITE 106
HOUSTON, TX 77068
(281) 537-5252

October 10, 2013

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

RE: Housing Tax Credit Qualified Allocation Plan, §11.3 Housing De-concentration

Dear Mr. Irvine,

We are writing in regard to the 2014 Housing Tax Credit Qualified Allocation Plan (QAP) proposed rules. Specifically, our concern is focused on §11.3 Housing De-concentration, which will make any senior housing development within the tax credit program ineligible in 61 counties for all of 2014 and perhaps longer.

We strongly object to this proposed rule on multiple levels. TDHCA has overstepped its bounds by taking the authority retained by the Texas Legislature and turning it over to an unelected bureaucracy. The ability to make such a sweeping change to the tax credit program is a legislative matter and should not be done in the rulemaking process by staff in a state agency. This is a major policy change and should be debated before the appropriate committees, vetted through the legislative process, and ultimately voted on by both the Texas House and Senate.

Additionally, this proposed rule is open-ended for an indefinite period of time. The draft rule summary states, *"Imposing limits on developments exclusively serving qualified elderly households is expected to result in additional units serving the general population in these areas. All general population developments serve households regardless of age."* Based on the rule wording, the decision to allow for senior housing projects would be determined again by unelected staff. Seniors will be denied appropriate housing opportunities in a large geographic area of Texas. If an application for a senior development goes through the tax credit process and receives the necessary points, then it ought to be granted the tax credits. One program ought not to be pitted against another. This rule penalizes local governments who know their local needs and forces them to defer to a state agency located in Austin. This is capricious, arbitrary, and wrong. The application process is the appropriate place for competing developments to show their merit. The rulemaking process is not the place to decide winners and losers.

This letter is our stated opposition to proposed rule §11.3 of the 2014 Housing Tax Credit Qualified Allocation Plan. This rule proposal should be rescinded completely.

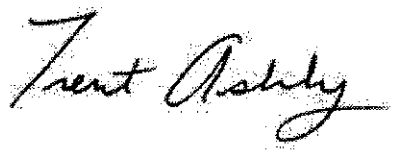
Sincerely,

Debbie Riddle

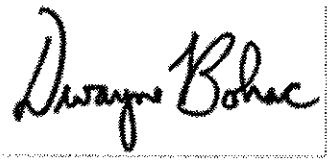
Jodie Laubenberg

State Representative Debbie Riddle

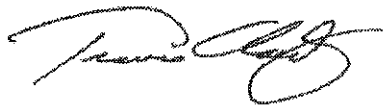
State Representative Jodie Laubenberg



State Representative Trent Ashby

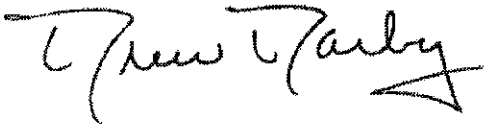


State Representative Dwayne Bohac



State Representative Travis Clardy

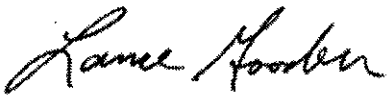
State Representative Brandon Creighton



State Representative Drew Darby

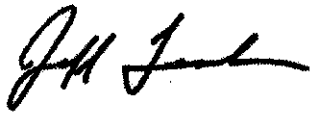
State Representative Pat Fallon

State Representative Allen Fletcher



State Representative Lance Gooden

State Representative Patricia Harless



State Representative Jeff Leach

State Representative Rick Miller

State Representative Tan Parker

State Representative Ron Simmons

State Representative Van Taylor

State Representative Scott Turner

State Representative Sylvester Turner

CC: Teresa Morales, TDHCA
Cameron Dorsey, TDHCA
Elena Peinado, TDHCA

(42) Claire Palmer

Claire
Palmer
Comments
9/23/2013

TDHCA Board Approved *Draft* of the Qualified Allocation Plan

Chapter 11 of the Texas Administrative Code

Disclaimer

Attached is a draft of Chapter 11 – Qualified Allocation Plan that was approved by the TDHCA Governing Board on September 12, 2013. This draft incorporates changes made by the Board as a result of public comment at the meeting.

The rules are scheduled to be published in the September 27 edition of the *Texas Register* and will constitute the official version for purposes of public comment. The version herein should not be relied upon as the basis for public comment. The public comment period shall be September 27 – October 21.

DRAFT 2014 State of Texas

Qualified Allocation Plan

§11.1. General.

(a) Authority. The rules in this chapter apply to the awarding and allocation by the Texas Department of Housing and Community Affairs (the "Department") of Housing Tax Credits. The federal laws providing for the awarding and allocation of Housing Tax Credits require states to adopt a qualified allocation plan. Pursuant to Texas Government Code, Chapter 2306, Subchapter DD, the Department is assigned responsibility for this activity. As required by Internal Revenue Code (the "Code"), §42(m)(1), the Department has developed this Qualified Allocation Plan (QAP) and it has been duly approved to establish the procedures and requirements relating to an award and allocation of Housing Tax Credits. All requirements herein and all those applicable to a Housing Tax Credit Development or an Application under Chapter 10 of this title (relating to Uniform Multifamily Rules), or otherwise incorporated by reference herein collectively constitute the QAP required by Texas Government Code, §2306.67022.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP or be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and/or the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application. These rules may need to be applied to facts and circumstances not contemplated at the time of their creation and adoption. When and if such situations arise the Board will use a reasonableness standard in evaluating and addressing Applications for Housing Tax Credits.

(c) Competitive Nature of Program. Applying for competitive housing tax credits is a technical process that must be followed completely. As a result of the highly competitive nature of applying for tax credits, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants should further ensure that all required documents are included, legible, properly organized, and tabbed, and that materials in required formats involving digital media are complete and fully readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Staff, when accepting Applications, may conduct limited reviews at the time of intake as a courtesy only. If staff misses an issue in such a limited review, the fact that the Application was accepted by staff or that the issue was not identified does not operate to waive the requirement or validate the completeness, readability, or any other aspect of the Application.

(d) Definitions. The capitalized terms or phrases used herein are defined in §10.3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Any capitalized terms that are defined in Texas Government Code, Chapter 2306, §42 of the Code, or other Department rules have, when capitalized, the meanings ascribed to them therein. Defined terms when not capitalized, are to be read in context and construed according to common usage.

(e) Census Data. Where this chapter requires the use of census or American Community Survey data, the Department shall use the most current data available as of October 1, 2013, unless specifically otherwise provided in federal or state law or in the rules. The availability of more current data shall generally be disregarded.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted on or before 5:00 PM Central Standard Time on the day of the deadline.

§11.2. Program Calendar for Competitive Housing Tax Credits.

Non-statutory deadlines specifically listed in the Program Calendar may be extended for good cause by the Executive Director for a period of not more than five (5) business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline. Extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party.

I didn't find a definition for this.

Deadline	Documentation Required
12/16/2013	Application Acceptance Period Begins.
01/16/2014	Pre-Application Final Delivery Date (including pre-clearance and waiver requests). Is there a deadline by which staff must respond?
02/28/2014	Full Application Delivery Date (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Property Condition Assessments (PCAs); Appraisals; Market Analysis Summary; Site Design and Development Feasibility Report; and all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors).
04/01/2014	Final Input from Elected Officials Delivery Date (including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5) (after opportunity to review materially complete Applications)). Market Analysis Delivery Date pursuant to §10.205 of this title.
05/01/2014	Challenges to Neighborhood Organization Opposition Delivery Date.
05/15/2014	Application Challenges Deadline.
Mid-May	Final Scoring Notices Issued for Majority of Applications Considered "Competitive."
06/13/2014	Deadline for public comment to be included in a summary to the Board at a posted meeting.

Still difficult to include all w/ app.

Deadline	Documentation Required
June	Release of Eligible Applications for Consideration for Award in July.
July	Final Awards.
Mid-August	Commitments are Issued.
11/03/2014	Carryover Documentation Delivery Date.
07/01/2015	10 Percent Test Documentation Delivery Date.
12/31/2016	Placement in Service.
Five (5) business days after the date on the Deficiency Notice (without incurring point loss)	Administrative Deficiency Response Deadline (unless an extension has been granted).

§11.3. Housing De-Concentration Factors.

(a) Two Mile Same Year Rule (Competitive HTC Only). As required by Texas Government Code, §2306.6711(f), staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application within said county that is awarded in the same calendar year.

(b) Twice the State Average Per Capita. As provided for in Texas Government Code, §2306.6703(a)(4), if a proposed Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins (or for Tax-Exempt Bond Developments at the time the Certificate of Reservation is issued by the Texas Bond Review Board), the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must include a resolution adopted by the Governing Body of the municipality or county, as applicable, setting forth a written statement of support, specifically citing Texas Government Code, §2306.6703(a)(4) in the text of the actual adopted resolution, and authorizing an allocation of Housing Tax Credits for the Development. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) or Resolutions Delivery Date in §10.4 of this title (relating to Program Dates), as applicable.

(c) One Mile Three Year Rule. (§2306.6703(a)(3))

(1) An Application that proposes the New Construction or Adaptive Reuse of a Development that is located one linear mile or less (measured between closest boundaries by a straight line on a map) from another development that meets all of the criteria in subparagraphs (A) – (C) of this paragraph shall be considered ineligible.

(A) The development serves the same type of household as the proposed Development, regardless of whether the Development serves families, elderly individuals, or another type of household; and

(B) The development has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and

(C) The development has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a Development:

(A) that is using federal HOPE VI (or successor program) funds received through HUD;

(B) that is using locally approved funds received from a public improvement district or a tax increment financing district;

(C) that is using funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.);

(D) that is using funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.);

(E) that is located in a county with a population of less than one million;

(F) that is located outside of a metropolitan statistical area; or

(G) that the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(3) Where a specific source of funding is referenced in paragraph (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application or prior to the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

(d) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 20 percent Housing Tax Credit Units per total households as established by the 5-year American Community Survey shall be considered ineligible unless:

(1) the Development is in a Place that has a population is less than 100,000; or

(2) the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and submits to the Department a resolution referencing this rule. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

* (e) Developments in Certain Sub-Regions and Counties. In the 2014 Application Round the following Counties are ineligible for Qualified Elderly Developments: Wichita; Collin; Denton; Ellis; Johnson; Henderson; Hays; Lamar; Gillespie; Guadalupe; Kendall; and Starr, unless the Application is made in a Rural Area. In the 2014 Application Round Regions five (5); six (6); and eight (8) are ineligible for Qualified Elderly Developments, unless the Application is made in a Rural Area. These limitations will be reassessed prior to the 2015 Application Round and are based on the fact that data evaluated by the Department has shown that in the ineligible areas identified above, the percentage of qualified elderly households residing in rent restricted tax

Given that you cannot even apply to do elderly in certain areas, elderly should be able to score equal to supportive housing - see notes further in.

credit assisted units exceeds the percentage of the total Qualified Elderly-eligible low income population for that area.

(f) Additional Phase. Applications proposing an additional phase of an existing tax credit Development serving the same Target Population, or Applications proposing Developments that are adjacent to an existing tax credit Development serving the same Target Population, or Applications that are proposing a Development serving the same Target Population on a contiguous site to another Application awarded in the same program year, shall be considered ineligible unless the other Developments or phase(s) of the Development have been completed and have maintained occupancy of at least 90 percent for a minimum six (6) month period as reflected in the submitted rent roll.

§11.4. Tax Credit Request and Award Limits.

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater than $3 million in a single Application Round. All entities that are under common Control are Affiliates. For purposes of determining the $3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate or Guarantor solely because it:

(1) raises or provides equity;

(2) provides "qualified commercial financing;"

(3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or

(4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments) to be paid or $150,000, whichever is greater.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the sub-region based on estimates released by the Department on December 1, or $1,500,000, whichever is less, or $2,000,000 for Applications under the At-Risk Set-Aside. The Department will consider the amount in the Funding Request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than $2 million in a single Application Round. (§2306.6711(b))

Is there a potential to change this if 4% is not locked?

(c) Increase in Eligible Basis (30 percent Boost). Applications will be evaluated for an increase of up to but not to exceed 30 percent in Eligible Basis provided they meet the criteria identified in paragraph (1) or (2) of this subsection. Staff will recommend no increase or a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. The criteria in paragraph (2) of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20 percent Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. For any Development located in a census tract with 20 percent or greater Housing Tax Credit Units per total households, the Development is eligible for the boost if a resolution is submitted. The Governing Body of the appropriate municipality or county containing the

* Because the 4% rate has slipped so much is it possible to apply ALL categories to bond/4% deals?

Development has by vote specifically allowed the construction of the new Development and submits to the Department a resolution referencing this rule. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable. Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT.

(2) The Development meets one of the criteria described in subparagraphs (A) - (D) of this paragraph pursuant to §42(d)(5) of the Code:

(A) the Development is located in a Rural Area;

(B) the Development is proposing entirely Supportive Housing and is expected to be debt free or have no foreclosable or non-cash flow debt;

(C) the Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria);

(D) the Applicant elects to restrict an additional 10 percent of the proposed low income Units for households at or below 30 percent of AMGI. These Units must be in addition to Units required under any other provision of this chapter.

see request p. 4.

(E) the Development is ~~a non-Qualified Elderly Development~~ not located in a QCT that is in an area covered by a community revitalization plan. A Development will be considered to be in an area covered by a community revitalization plan if it is eligible for points under §11.9(d)(7) of the chapter.

§11.5. Competitive HTC Set-Asides (§2306.111(d)) This section identifies the statutorily-mandated set-asides which the Department is required to administer. An Applicant may elect to compete in each of the set-asides for which the proposed Development qualifies.

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)) At least 10 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of §42(h)(5) of the Code and Texas Government Code, §2306.6729 and §2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this set-aside (*e.g.*, greater than 50 percent ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, for Qualified Nonprofit Development in the Nonprofit Set-Aside the nonprofit entity or its nonprofit Affiliate or subsidiary must be the Developer or a co-Developer as evidenced in the development agreement. An Applicant that meets the requirements to be in the Qualified Nonprofit Set-Aside is deemed to be applying under that set-aside unless their Application specifically includes an affirmative election to not be treated under that set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department reserves the right to request a change in this election and/or not recommend credits for those unwilling to change elections if insufficient Applications in the Nonprofit Set-Aside are received. Applicants may not use different organizations to satisfy the state and federal requirements of the set-aside.

(2) USDA Set-Aside. (§2306.111(d-2)) At least 5 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this set-aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-Aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region and will compete within the applicable sub-region. Commitments of Competitive Housing Tax Credits issued by the Board in the current program year will be applied to each set-aside, Rural Regional Allocation, Urban Regional Allocation and/or USDA Set-Aside for the current Application Round as appropriate. Applications must also meet all requirements of Texas Government Code, §2306.111(d-2).

(3) At-Risk Set-Aside. (§2306.6714; §2306.6702)

(A) At least 15 percent of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-Aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6 of this chapter (relating to Competitive HTC Allocation Process). Through this set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to 5 percent of the State Housing Credit Ceiling associated with this set-aside may be given priority to Rehabilitation Developments under the USDA Set-Aside.

(B) An At-Risk Development must meet all the requirements of Texas Government Code, §2306.6702(a)(5). For purposes of this subparagraph, any stipulation to maintain affordability in the contract granting the subsidy, or any federally insured mortgage will be considered to be nearing expiration or nearing the end of its term if expiration will occur or the term will end within two (2) years of July 31 of the year the Application is submitted. Developments with HUD-insured mortgages qualifying as At-Risk under §2306.6702(a)(5) may be eligible if the HUD-insured mortgage is eligible for prepayment without penalty. To the extent that an Application is eligible under §2306.6705(a)(5)(B)(ii)(b) and the units being reconstructed were demolished prior to the beginning of the Application Acceptance Period, the Application will be categorized as New Construction.

(C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Texas Government Code, §2306.6702(a)(5) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. Alternatively, an Applicant may propose relocation of the existing units in an otherwise qualifying At-Risk Development if:

(i) the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred to the Development Site (*i.e.* the site proposed in the tax credit Application) prior to February 28, 2013;

(ii) the Applicant seeking tax credits must propose the same number of restricted units (*e.g.* the Applicant may add market rate units); and

(iii) the new Development Site must qualify for points on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria).

(D) Developments must be at risk of losing affordability from the financial benefits available to the Development and must retain or renew the existing financial benefits and affordability unless regulatory barriers necessitate elimination of a portion of that benefit for the Development. For Developments qualifying under §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25 percent of the proposed Units must be ~~public housing units supported~~ by public housing operating subsidy. (§2306.6714(a-1))

(E) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under §42 of the Code. Evidence must be provided in the form of a copy of the recorded LURA, the first years' IRS Forms 8609 for all buildings showing Part II of the form completed and, if applicable, documentation from the original application regarding the right of first refusal.

(F) An amendment to any aspect of the existing tax credit property sought to enable the Development to qualify as an At-Risk Development, that is submitted to the Department after the Application has been filed and is under review will not be accepted.

§11.6. Competitive HTC Allocation Process. This section identifies the general allocation process and the methodology by which awards are made.

reserved for public housing eligible tenants supported by

The statute does not say "must be public housing units," it says "a portion of the public housing operating subsidy received from the department is retained on the development."

Does not have to stay "public housing" or any particular type housing so long as subsidy is retained.

(1) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region ("sub-region") Housing Tax Credits in an amount consistent with the Regional Allocation Formula developed in compliance with Texas Government Code, §2306.1115. The process of awarding the funds made available within each sub-region shall follow the process described in this section. Where a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate a recommendation for the Board's consideration based on the objectives of regional allocation together with other policies and purposes set out in Texas Government Code, Chapter 2306 and the Department shall provide Applicants the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the priority of Applications within a particular sub-region or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the $3 million credit limit per Applicant, the Department will make its recommendation by selecting the Development(s) that most effectively satisfy the Department's goals in meeting set-aside and regional allocation goals. Where sufficient credit becomes available to award an application on the waiting list late in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline to ensure to the fullest extent feasible that available resources are allocated by December 31.

(2) Credits Returned and National Pool Allocated After January 1. For any credits returned after January 1 and eligible for reallocation, the Department shall first return the credits to the sub-region or set-aside from which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may ultimately flow from the sub-region and be awarded in the collapse process to an Application in another region, sub-region or set-aside. For any credit received from the "national pool" after the initial approval of awards in late July, the credits will be added to and awarded to the next Application on the waiting list for the state collapse.

(3) Award Recommendation Methodology. (§2306.6710(a) - (f); §2306.111) The Department will assign, as described herein, Developments for review by the program and underwriting divisions. In general, Applications will be prioritized for assignment, with highest priority given to those identified as most competitive based upon the Applicant self-score and an initial program review. The procedure identified in subparagraphs (A) - (F) of this paragraph will also be used in making recommendations to the Board.

(A) USDA Set-Aside Application Selection (Step 1). The first level of priority review will be those Applications with the highest scores in the USDA Set-Aside until the minimum requirements stated in §11.5(2) of this chapter (relating to Competitive HTC Set-Asides. (§2306.111(d))) are attained. The minimum requirement may be exceeded in order to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement;

(B) At-Risk Set-Aside Application Selection (Step 2). The second level of priority review will be those Applications with the highest scores in the At-Risk Set-Aside statewide until the minimum requirements stated in §11.5(3) of this chapter are attained. This may require the minimum requirement to be exceeded to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement. This step may leave less than originally anticipated in the 26 sub-regions to award under the remaining steps, but these funds would generally come from the statewide collapse;

(C) Initial Application Selection in Each Sub-Region (Step 3). The highest scoring Applications within each of the 26 sub-regions will then be selected provided there are sufficient funds within the sub-region to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the sub-regions;

(D) Rural Collapse (Step 4). If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region ("Rural sub-region") that remain after award under subparagraph (C) of this paragraph, those tax credits shall be combined into one "pool" and then be made available in any other Rural Area in the state to the Application in the most underserved Rural sub-region as compared to the sub-region's allocation. This rural redistribution will continue until all of the tax credits in the "pool" are allocated to Rural Applications and at least 20 percent of the funds

At this point, I would like to see no award from Waiting List, until Commitments are back because of the Sept. 1 deadline for funding.

* named "most significant project" in competition with other projects under the same Local jurisdiction;

available to the State are allocated to Applications in Rural Areas. (§2306.111(d)(3)) In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) – (ii) of this subparagraph will be used to select the next most underserved sub-region:

(i) the sub-region with no recommended At-Risk Applications from the same Application Round; and

(ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any sub-region in the State, will be combined into one "pool." The funds will be used to award the highest scoring Application (not selected in a prior step) in the most underserved sub-region in the State compared to the amount originally made available in each sub-region. This process will continue until the funds remaining are insufficient to award the next highest scoring Application in the next most underserved sub-region. In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved sub-region:

(i) the sub-region with no recommended At-Risk Applications from the same Application Round; and

(ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(F) Contingent Qualified Nonprofit Set-Aside Step (Step 6). If an insufficient number of Applications participating in the Nonprofit Set-Aside are selected after implementing the criteria described in subparagraphs (A) – (E) of this paragraph to meet the requirements of the 10 percent Nonprofit Set-Aside, action must be taken to modify the criteria described in subparagraphs (A) – (E) of this paragraph to ensure the set-aside requirements are met. Therefore, the criteria described in subparagraphs (C) – (E) of this paragraph will be repeated after selection of the highest scoring Application(s) under the Nonprofit Set-Aside statewide are selected to meet the minimum requirements of the Nonprofit Set-Aside. This step may cause some lower scoring Applications in a sub-region to be selected instead of a higher scoring Application not participating in the Nonprofit Set-Aside.

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. Applications on the waiting list are selected for an award when the remaining balance of tax credits is sufficient to award the next Application on the waiting list. The waiting list is not static. The allocation process will be used in determining the Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or sub-region from which they were originally awarded. This means that the first Application on the waiting list is in part contingent on the nature of the credits that became available for award. (§2306.6710(a) - (f); §2306.111)

§11.7. Tie Breaker Factors. In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or statewide collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. The tie breaker factors are not intended to specifically address a tie between equally underserved sub-regions in the rural or statewide collapse.

(1) Applications scoring higher on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

(2) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. The linear measurement will be performed from closest boundary to closest boundary.

§11.8. Pre-Application Requirements (Competitive HTC Only).

(a) General Submission Requirements. The pre-application process allows Applicants interested in pursuing an Application to assess potential competition across the thirteen (13) state service regions, sub-regions and set-asides. Based on an understanding of the potential competition they can make a more informed decision whether they wish to proceed to prepare and submit an Application. A complete pre-application is a pre-application that meets all of the Department's criteria, as outlined in subsections (a) and (b) of this section, with all required information and exhibits provided pursuant to the Multifamily Programs Procedures Manual.

(1) The pre-application must be submitted, along with the required pre-application fee as described in §10.901 of this title (relating to Fee Schedule), no later than the Pre-application Final Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). If such pre-application and corresponding fee are not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

(2) The pre-application shall consist of one (1) CD-R containing a PDF copy and Excel copy submitted to the Department in the form of single files as required in the Multifamily Programs Procedures Manual.

(3) Only one pre-application may be submitted by an Applicant for each Development Site.

(4) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the pre-application is more limited in scope than an Application, pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as a full Application, and pre-applications will thus be subject to the same consequences for violation, including but not limited to loss of points and termination of the pre-application.

(b) Pre-Application Threshold Criteria. Pursuant to Texas Government Code, §2306.6704(c) pre-applications will be terminated unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection:

(1) Submission of the competitive HTC pre-application in the form prescribed by the Department which identifies at a minimum:

(A) Site Control meeting the requirements of §10.204(9) of this title (relating to Required Documentation for Application Submission);

(B) Funding request;

(C) Target Population;

(D) Requested set-asides (At-Risk, USDA, Nonprofit, and/or Rural);

(E) Total Number of Units proposed;

(F) Census tract number in which the Development Site is located; and

(G) Expected score for each of the scoring items identified in the pre-application materials;

(2) Evidence in the form of a certification provided in the pre-application, that all of the notifications required under this paragraph have been made. (§2306.6704)

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the local elected officials, or that the Applicant has knowledge of as of the date of pre-application submission. It is the responsibility of the Applicant to identify all such Neighborhood Organizations.

(B) Notification Recipients. No later than the date the pre-application is submitted, notification must be sent to all of the persons or entities prescribed in clauses (i) – (viii) of this subparagraph. Developments located in an ETJ of a city are required to notify both city and county officials. The

What about situation where "correct person" is a replacement for someone who died or resigned and the Local Gov't has not posted the info?

notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format required in the Pre-application Notification Template provided in the pre-application. The Applicant is encouraged to retain proof of delivery in the event the Department requires proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of delivery for fax and e-mail. Officials to be notified are those officials in office at the time the pre-application is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

(i) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site;

(ii) Superintendent of the school district in which the Development Site is located;

(iii) Presiding officer of the board of trustees of the school district in which the Development Site is located;

(iv) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(v) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(vi) Presiding officer of the Governing Body of the county in which the Development Site is located;

(vii) All elected members of the Governing Body of the county in which the Development Site is located; and

(viii) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(C) Contents of Notification.

(i) The notification must include, at a minimum, all of the information described in subclauses (I) – (VI) of this clause.

(I) the Applicant's name, address, an individual contact name and phone number;

(II) the Development name, address, city and county;

(III) a statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(IV) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;

(V) the physical type of Development being proposed (*e.g.* single family homes, duplex, apartments, townhomes, high-rise etc.); and

(VI) the approximate total number of Units and approximate total number of low-income Units.

(ii) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve the elderly unless 100 percent of the Units will be for Qualified Elderly and it may not indicate that it will target or prefer any subpopulation unless such targeting or preference is in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

(c) Pre-application Results. Only pre-applications which have satisfied all of the pre-application requirements, including those in §11.9(e)(3) of this chapter, will be eligible for pre-application points. The order and scores of those Developments released on the Pre-application Submission Log do not represent a

tax credit

Commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the Pre-application Submission Log. Inclusion of a pre-application on the Pre-application Submission Log does not ensure that an Applicant will receive points for a pre-application.

§11.9. Competitive HTC Selection Criteria.

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsections (b) - (e) of this section include those items required under Texas Government Code, Chapter 2306, §42 of the Code, and other criteria established in a manner consistent with Chapter 2306 and §42 of the Code. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. Due to the highly competitive nature of the program, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency. However, Department staff may provide the Applicant an opportunity to explain how they believe the Application, as submitted, meets the requirements for points or otherwise satisfies the requirements.

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)) An Application may qualify for up to fifteen (15) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (8 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form.

(i) five-hundred fifty (550) square feet for an Efficiency Unit;

(ii) six-hundred fifty (650) square feet for a one Bedroom Unit;

(iii) eight-hundred fifty (850) square feet for a two Bedroom Unit;

(iv) one-thousand fifty (1,050) square feet for a three Bedroom Unit; and

(v) one-thousand two-hundred fifty (1,250) square feet for a four Bedroom Unit.

(B) Unit and Development Features (7 points). Applicants that elect in an Application to provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) (1 point). An Application may qualify to receive one (1) point provided the ownership structure contains a HUB, as certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date, or Qualified Nonprofit Organization, provided the Application is under the Nonprofit Set-Aside, has some combination of ownership interest in the General Partner of the Applicant, cash flow from operations, and developer fee which taken together equal at least 80 percent and no less than 5 percent for any category. For example, a HUB or Qualified Nonprofit Organization may have 20 percent ownership interest, 30 percent of the developer fee, and 30 percent of cash flow from operations. The HUB or Qualified Nonprofit Organization must also materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. The Principals of the HUB or Qualified

Could you explain in FAQ

Nonprofit Organization cannot be a Related Party to any other Principals of the Applicant or Developer (excluding Principals of said HUB or Qualified Nonprofit Organization).

(c) Criteria to serve and support Texans most in need.

(1) Income Levels of Tenants. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(I)) An Application may qualify for up to sixteen (16) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A) or (B) of this paragraph.

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs:

(i) At least 40 percent of all low-income Units at 50 percent or less of AMGI (16 points);

(ii) At least 30 percent of all low income Units at 50 percent or less of AMGI (14 points); or

(iii) At least 20 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph:

(i) At least 20 percent of all low-income Units at 50 percent or less of AMGI (16 points);

(ii) At least 15 percent of all low-income Units at 50 percent or less of AMGI (14 points); or

(iii) At least 10 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(G)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. These levels are in addition to those committed under paragraph (1) of this subsection.

(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments qualifying under the Nonprofit Set-Aside only (13 points);

(B) At least 10 percent of all low-income Units at 30 percent or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low-income Units at 30 percent or less of AMGI (11 points); or

(C) At least 5 percent of all low-income Units at 30 percent or less of AMGI (7 points).

(3) Tenant Services. (§2306.6710(b)(1)(I) and §2306.6725(a)(1)) A Supportive Housing Development qualifying under the Nonprofit Set-Aside may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points. By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application will remain the minimum. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

(4) Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials.

(A) For Developments located in an Urban Area, if the proposed Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (or 35 percent for Developments in Regions 11 and 13), an Application may qualify to receive up to seven (7) points upon meeting the additional requirements in clauses (i) – (iv) of this subparagraph. The Department will base poverty rate on data from the five (5) year American Community Survey.

(i) the Development targets the general population or Supportive Housing, the Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an

elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (7 points);

(ii) the Development targets the general population or Supportive Housing, the Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (5 points);

(iii) any Development, regardless of population served, if the Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable ~~(3 points)~~; or 5 pts (see earlier Elderly comments)

(iv) any Development, regardless of population served, if the Development Site is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (1 point).

(B) For Developments located in a Rural Area, an Application may qualify to receive up to seven (7) cumulative points based on median income of the area and/or proximity to the essential community assets as reflected in clauses (i) – (v) of this subparagraph.

change all to 2 miles in most rural areas there is one elem. school, etc.

(i) The Development Site is located within the attendance zone and within one linear mile of an elementary school with a Met Standard rating (3 points);

(ii) The Development Site is within one linear mile of a school-age before or after-school program that meets the minimum standards established by the Department of Family and Protective Services for such programs (2 points);

(iii) The Development Site is located within one linear mile of a full service grocery store (2 points);

(iv) The Development Site is located within one linear mile of a child-care center that is licensed by the Department of Family and Protective Services and provides day care for children ages 6 months through 5 years, at a minimum (2 points);

(v) The Development Site is located in a census tract with income in the top or second quartile of median household income for the county or MSA as applicable (3 points);

(vi) The Development is a Qualified Elderly Development and the Development Site is located within one linear mile of a senior center (2 points); and/or

(vii) Development is a Qualified Elderly Development and the Development Site is located within one linear mile of a health related facility (2 points).

(C) An elementary school attendance zone for the Development Site does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary schools. The applicable school rating will be the 2013 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions.

(5) Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools that have achieved a 77 or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency, provided that the schools also have a Met Standard rating. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph. An attendance zone does not include schools with district-

wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary, middle, or high schools, respectively. The applicable school rating will be the 2013 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings.

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with the appropriate rating (3 points); or

(B) The Development Site is within the attendance zone of an elementary school and either a middle school or high school with the appropriate rating (1 point) (2 points)

(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive two (2) points for general population or Supportive Housing Developments if the Development Site is located in one of the areas described in subparagraphs (A) – (D) of this paragraph.

1 pt for one school

(A) A Colonia;

(B) An Economically Distressed Area;

serving same target population

(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development; or

(D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population.

(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive two (2) points to meet the Special Housing Needs of the State if the Applicant agrees to participate in the Department's Section 811 Project Rental Assistance Demonstration Program (Section 811 Program) and the Development Site meets the requirements in subparagraph (A) of this paragraph. Development Sites not meeting the requirements in subparagraph (A) of this paragraph may qualify under subparagraph (C) of this paragraph.

(A) Applications meeting the following requirements are eligible to receive two (2) points if they agree to commit at least 10 units (or the maximum allowed) for participation in the Section 811 Program as described in subparagraph (B) of this paragraph. The maximum number of units allowed will be restricted by the Department's Integrated Housing Rule, §1.15 of this title, and the Section 811 Program integration requirements, (the total number of units set-aside for persons with disabilities, including Section 811 units, cannot exceed 18 percent of Units for Developments of 50 Units or more or exceed 25 percent for Developments with less than 50 Units).

(i) The Development must target the general population or be Supportive Housing;

(ii) The units committed to the Section 811 Program in the Development must not have any other sources of project-based rental or operating assistance; and

(iii) The Development Site must be located in one of the following areas: Austin-Round Rock MSA; Brownsville-Harlingen MSA; Dallas-Fort Worth-Arlington MSA; El Paso MSA; Houston-The

Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA.

(B) Applicants seeking points under subparagraph (A) and this paragraph are required to satisfy the requirements of the Section 811 Program as outlined in the Section 811 Program guidance and contracts unless a specific requirement of the Section 811 Program is otherwise waived by the Board. The Section 811 Program provides project-based rental assistance to Developments to serve extremely low income persons with disabilities (who meet target population requirements and are age 18 and over, but less than 62 years of age) who are referred to each participating Development by the Department. Participation in the Section 811 Program requires execution of a Rental Assistance Contract by the later of Carryover Allocation deadline or upon preparation of a Rental Assistance Contract by the Department. Because HUD has not yet released Section 811 Program guidance or agreements between the Department and HUD, the Board may make adjustments or accommodations for participation of each Applicant in this Program, however, once elected, Applicants may not withdraw their commitment to participate in the Section 811 Program unless so authorized by the Board or as a result of program eligibility issues. Should an Applicant receive a Housing Tax Credit award, the Department may allow Applicants to identify an alternate existing Development in the Applicant's or an Affiliate's portfolio, consistent with Department Section 811 Program criteria, to participate in the Section 811 Program.

(C) Only if the Applicant that is making application for a Development Site does not meet the requirements in subparagraph (A) of this paragraph may an Application qualify for points under this subparagraph. An Application will receive two points for Developments for which at least 5 percent of the Units are set aside for Persons with Special Needs. For purposes of this scoring item, Persons with Special Needs is defined as households where one individual has with alcohol and/or drug addictions, Colonia resident, Persons with Disabilities, Violence Against Woman Act Protections (domestic violence, dating violence, sexual assault, and stalking), persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and migrant farm workers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for households with special needs, but will be required to continue to affirmatively market Units to households with special needs.

does this mean any D/FW project must apply to get the 2 points?

(8) Location Outside of "Food Deserts". An Application with a Development Site that is located outside of a "food desert" qualifies for one (1) point. A food desert is a census tract identified as low income and low access at one (1) mile for urban areas and ten (10) miles for rural areas (also known as the Original Food Desert measure) based on the U. S. Department of Agriculture's Food Access Research Atlas. Applicants must submit a map using the Food Access Research Atlas indicating that the Development Site is not located in a food desert. Applicants can access said map at http://www.ers.usda.gov/data-products/food-access-research-atlas/. If the location of the map or data changes, the Department will provide updated information concerning accessing the map or data on the Department's website.

delete

(d) Criteria promoting community support and engagement.

(1) Local Government Support. An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) - (C) of this paragraph, as applicable. The resolution(s) must be dated prior to April 1, 2014 and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

(A) Within a municipality, the Application will receive:

(i) seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or
(ii) fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(B) Within the extraterritorial jurisdiction of a municipality, the Application may receive points under clauses (i) or (ii) of this subparagraph and under clauses (iii) or (iv) of this subparagraph:
(i) eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or
(ii) seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; and
(iii) eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or
(iv) seven (7) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:
(i) seventeen (17) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or
(ii) fourteen (14) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6710(b)(1)(E)) An Application may receive up to fourteen (14) points for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located. Development funding from instrumentalities of a city or county will not qualify for points under this scoring item unless such instrumentalities first award the funds to the city or county for their administration, at least 60 percent of the governing board of the instrumentality consists of city council members from the city in which the Development Site is located (if located in a city) or county commissioners from the county in which the Development Site is located, or 100 percent of the governing board of the instrumentality is appointed by the elected officials of the city in which the Development Site is located (if located within a city) or county in which the Development Site is located. The government instrumentality providing Development funding under this scoring item may not be a Related Party to the Applicant. Development funding must be provided in the form of a construction and/or permanent loan with an interest rate no higher than 3 percent per annum and term of at least 5 years, a grant, an in-kind contribution, a contribution which will support the Development, such as vouchers, or combination thereof. Funds cannot have been provided to the Local Political Subdivision by the Applicant or a Related Party. Should the Local Political Subdivision borrow funds in order to commit funding to the Development, the Applicant or a Related Party to the Applicant can provide collateral or guarantees for the loan only to the Local Political Subdivision. HOME Investment Partnership Program or Community Development Block Grant funds administered by the State of Texas cannot be utilized for points under this scoring item except where the city, county, or instrumentality is an actual applicant for and subrecipient of such funds for use in providing financial support to the proposed Development. The Applicant must provide evidence in the Application that an application or request for the development funds has been submitted in the form of an acknowledgement from the applicable city or county. The acknowledgement must also state that a final decision with regard to the awards of such funding ~~is expected to~~ occur no later than September 1. A firm commitment of funds is required by Commitment or points will be lost (except for Applicants electing the point under subparagraph (C) of this paragraph). While the specific source can change, the funding secured must have been eligible at the time the Application was submitted.

Still would like to see the PHA language I proposed earlier

shall

Can amount change dramatically?

(A) Option for Development Sites located in the ETJ of a municipality. For an Application with a Development Site located in the ETJ of a municipality, whether located in an unincorporated Place or not, the Applicant may seek Development funding from the municipality or a qualifying instrumentality of the municipality, provided the Applicant uses the population of said municipality as the basis for determining the Application's eligible points under subparagraph (B) of this paragraph. Applicants are encouraged to contact Department staff where an Applicant is uncertain of how to determine the correct Development funding amounts or qualifying Local Political Subdivisions.

(B) Applications will qualify for points based on the amount of funds at the levels described in clauses (i) - (v) of this subparagraph. For the purpose of this calculation, the Department will use the population of the Place from which the Development Site's Rural or Urban Area designation is derived.

(i) eleven (11) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.15 in funding per Low Income Unit or $15,000 in funding per Low Income Unit;

(ii) ten (10) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.10 in funding per Low Income Unit or $10,000 in funding per Low Income Unit;

(iii) nine (9) points for a commitment by a Local Political Subdivision of the lesser of population of the Place multiplied by a factor of 0.05 in funding per Low Income Unit or $5,000 in funding per Low Income Unit;

(iv) eight (8) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.025 in funding per Low Income Unit or $1,000 in funding per Low Income Unit; or

(v) seven (7) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.01 in funding per Low Income Unit or $500 in funding per Low Income Unit.

(C) Two (2) points may be added to the points in subparagraph (B) (i) - (v) of this paragraph and subparagraph (D) of this paragraph if the Applicant provides a firm commitment for funds in the form of a resolution from the Local Political Subdivision and provides a commitment for the same source(s) at Commitment. The resolution must reflect terms that are consistent with the requirements of this paragraph.

(D) One (1) point may be added to the points in subparagraph (B)(i) - (v) of this paragraph and subparagraph (C) of this paragraph if the financing to be provided is in the form of a grant or in-kind contribution meeting the requirements of this paragraph or a permanent loan with a minimum term of fifteen (15) years, minimum amortization period of thirty (30) years, and interest rate no higher than 3 percent per annum. An Applicant must certify that they intend to maintain the Development funding for the full term of the funding, barring unanticipated events. For Applicants electing this additional point that have not yet received an award or commitment, the structure of the funds will be reviewed at Commitment for compliance with this provision.

everyone gets

(3) Declared Disaster Area. (§2306.6710(b)(1)) An Application may receive ten (10) points if at the time of Application submission or at any time within the two-year period preceding the date of submission, the Development Site is located in an area declared to be a disaster area under the Texas Government Code, §418.014.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(B); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in existence prior to the Pre-Application Final Delivery Date, and its boundaries must contain the Development Site. In addition, the Neighborhood Organization must be on record with the state (includes the Department) or county in which the Development Site is located. Neighborhood Organizations may request to be on

record with the Department for the current Application Round with the Department by submitting documentation (such as evidence of board meetings, bylaws, etc.) by the Full Application Delivery Date. The written statement must meet the requirements in subparagraph (A) of this paragraph.

(A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph.

(i) the Neighborhood Organization's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing address) of at least two individual members with authority to sign on behalf of the organization;

(ii) certification that the boundaries of the Neighborhood Organization contain the Development Site and that the Neighborhood Organization meets the definition pursuant to Texas Government Code, §2306.004(23-a) and includes at least two separate residential households;

(iii) certification that no person required to be listed in accordance with Texas Government Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, including any votes taken;

(iv) certification that at least 80 percent of the current membership of the Neighborhood Organization consists of persons residing or owning real property within the boundaries of the Neighborhood Organization; and

(v) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization is encouraged to be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this section, if and only if there is no Neighborhood Organization already in existence or on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of and/or placing on record of a Neighborhood Organization. Technical assistance is limited to:

(i) the use of a facsimile, copy machine/copying, email and accommodations at public meetings;

(ii) assistance in completing the QCP Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process; and

(iii) presentation of information and response to questions at duly held meetings where such matter is considered.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in clauses (i) – (vi) of this subparagraph. Points will not be cumulative. Where more than one written statement is received for an Application, the average of all statements received in accordance with this subparagraph will be assessed and awarded.

(i) nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(ii) eight (8) points for explicitly stated support from a Neighborhood Organization;

(iii) six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(iv) five (5) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides

no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;

(v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; or

(vi) zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such statement is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §11.2 of this chapter. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

(5) Community Support from State Representative. (§2306.6710(b)(1)(F); §2306.6725(a)(2)) Applications may receive up to eight (8) points or have deducted up to eight (8) points for this scoring item. To qualify under this paragraph letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and clearly state support for or opposition to the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. Neutral letters or letters that do not specifically refer to the Development or specifically express support or opposition will receive zero (0) points. A letter that does not directly express support but expresses it indirectly by inference (*e.g.* "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral letter.

(6) Input from Community Organizations. Where the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters must be submitted within the Application. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item.

need 4 letters to get max points

(A) An Application may receive one (1) point for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose of the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide some documentation of its tax exempt status

and its existence and participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), or taxing entities.

(B) An Application may receive one (1) point for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application may receive one (1) point for a letter of support from a Special Management District whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(7) Community Revitalization Plan. An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(A) For Developments located in an Urban Area of Region 3.

If the plan was approved last year and has not changed, must it be resubmitted?

(i) An Application may qualify to receive up to six (6) points if the Development Site is located in an area targeted for revitalization in a community revitalization plan that meets the criteria described in subclauses (I) – (VI) of this clause:

(I) The community revitalization plan must have been adopted by the municipality or county in which the Development Site is located.

(II) The adopting municipality or county must have performed, in a process providing for public input, an assessment of the factors in need of being addressed as a part of such community revitalization plan. Factors assessed must include at least five (5) of the following seven (7) factors:

(-a-) adverse environmental conditions, natural or manmade, that are material in nature and are inconsistent with the general quality of life in typical average income neighborhoods. By way of example, such conditions might include significant and recurring flooding, presence of hazardous waste sites or ongoing localized emissions not under appropriate remediation, nearby heavy industrial uses, or uses presenting significant safety or noise concerns such as major thoroughfares, nearby active railways (other than commuter trains), or landing strips; significant and widespread (*e.g.* not localized to a small number of businesses or other buildings) rodent or vermin infestation acknowledged to present health risks requiring a concerted effort; or fire hazards;

(-b-) presence of blight, which may include excessive vacancy, obsolete land use, significant decline in property value, or other similar conditions that impede growth;

(-c-) presence of inadequate transportation or infrastructure;

(-d-) lack of accessibility to and/or presence of inadequate health care facilities, law enforcement and fire fighting facilities, social and recreational facilities, and other public facilities comparable to those typically found in neighborhoods containing comparable but unassisted housing;

(-e-) the presence of significant crime;

(-f-) the lack of or poor condition and/or performance of public education; or

(-g-) the lack of local business providing employment opportunities.

(III) The target area must be larger than the assisted housing footprint and should be limited in size along the lines of specific neighborhoods rather than encompassing large areas of a city or county. Staff will review the target areas for presence of the factors identified in subclause (II) of this clause.

(IV) The adopted plan, taken as a whole, must be a plan that can reasonably be expected to revitalize the neighborhood and address in a substantive and meaningful way the material factors identified in subclause (II) of this clause. Generally, because revitalization must identify specific matters needing to be addressed by revitalization and provide a plan and budget specifically directed to those identified issues, revitalization will be considered distinct and separate from broader economic development efforts.

(V) The adopted plan must describe the planned budget and uses of funds to accomplish its purposes within the applicable target area. To the extent that expenditures, incurred within four (4) years prior to the beginning of the Application Acceptance Period, have already occurred in the applicable target area, a statement from a city or county official concerning the amount of the expenditure and purpose of the expenditure may be submitted.

(VI) To be eligible for points under this item, the community revitalization plan must already be in place as of the Pre-Application Final Delivery Date pursuant to §11.2 of this chapter evidenced by a letter from the appropriate local official stating that:

(-a-) the plan was duly adopted with the required public input processes followed;

(-b-) the funding and activity under the plan has already commenced; and

(-c-) the adopting municipality or county has no reason to believe that the overall funding for the full and timely implementation of the plan will be unavailable.

(ii) Points will be awarded based on:

(I) Applications will receive four (4) points if the applicable target area of the community revitalization plan has a total budget or projected economic value of $6,000,000 or greater; or

(II) Applications will receive two (2) points if the applicable target area of the community revitalization plan has a total budget or projected economic value of at least $4,000,000; and

(III) Applications may receive (2) points in addition to those under subclauses (I) or (II) of this clause if the Development is explicitly identified by the city or county as contributing most significantly to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. A resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application (this resolution is not required at pre-application). If multiple Applications submit resolutions under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application as contributing most significantly to concerted revitalization efforts.

(B) For Developments located in Urban Areas outside of Region 3.

(i) An Application may qualify for up to six (6) points for meeting the criteria under subparagraph (A) of this paragraph (with the exception of being located in Region 3); or

(ii) An Application will qualify for four (4) points if the city or county has an existing plan for Community Development Block Grant - Disaster Relief Program (CDBG-DR) funds that meets the requirements of subclauses (I) - (IV) of this clause. To qualify for points, the Development Site

must be located in the target area defined by the plan, and the Application must have a commitment of CDBG-DR funds. The plan (in its entirety) and a letter from a local government official with specific knowledge and oversight of implementing the plan are included in the Application and must:

(I) define specific target areas for redevelopment of housing that do not encompass the entire jurisdiction;

(II) affirmatively address Fair Housing demonstrated through an approved Fair Housing Activity Statement-Texas (FHAST);

(III) be subject to administration in a manner consistent with the findings of an Analysis of Impediments approved or accepted by HUD within the last three (3) calendar years or an approved Fair Housing Activity Statement-Texas (FHAST), approved by the Texas General Land Office; and

(IV) be in place prior to the Pre-Application Final Delivery Date.

(C) For Developments located in a Rural Area.

(i) The requirements for community revitalization in a Rural Area are distinct and separate from the requirements related to community revitalization in an Urban Area in that the requirements in a Rural Area relate primarily to growth and expansion indicators. An Application may qualify for up to four (4) points if the city, county, state, or federal government has approved expansion of basic infrastructure or projects, as described in this paragraph. Approval cannot be conditioned upon the award of tax credits or on any other event (zoning, permitting, construction start of another development, etc.) not directly associated with the particular infrastructure expansion. The Applicant, Related Party, or seller of the Development Site cannot contribute funds for or finance the project or infrastructure, except through the normal and customary payment of property taxes, franchise taxes, sales taxes, impact fees and/or any other taxes or fees traditionally used to pay for or finance such infrastructure by cities, counties, state or federal governments or their related subsidiaries. The project or expansion must have been completed no more than twelve (12) months prior to the beginning of the Application Acceptance Period or be approved and projected to be completed within twelve (12) months from the beginning of the Application Acceptance Period. An Application is eligible for two (2) points for one of the items described in subclauses (I) – (V) of this clause or four (4) points for at least two (2) of the items described in subclauses (I) – (V) of this clause:

(I) New paved roadway (may include paving an existing non-paved road but excludes overlays or other limited improvements) or expansion of existing paved roadways by at least one lane (excluding very limited improvements such as new turn lanes or restriping), in which a portion of the new road or expansion is within one quarter (1/4) mile of the Development Site;

(II) New water service line (or new extension) of at least 500 feet, in which a portion of the new line is within one quarter (1/4) mile of the Development Site;

(III) New wastewater service line (or new extension) of at least 500 feet, in which a portion of the new line is within one quarter (1/4) mile of the Development Site;

(IV) Construction of a new law enforcement or emergency services station within one (1) mile of the Development Site that has a service area that includes the Development Site; and

(V) Construction of a new hospital or expansion of an existing hospital's capacity by at least 25 percent within a five (5) mile radius of the Development Site and ambulance service to and from the hospital is available at the Development Site. Capacity is defined as total number of beds, total number of rooms or total square footage of the hospital.

(ii) The Applicant must provide a letter from a government official with specific knowledge of the project which must include:

should be 2 years on either side of application - these take a long time to get approved and built

(I) the nature and scope of the project;

(II) the date completed or projected completion;

(III) source of funding for the project;

(IV) proximity to the Development Site; and

(V) the date of any applicable city, county, state, or federal approvals, if not already completed.

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) An Application may qualify to receive a maximum of eighteen (18) points for this item. To qualify for points, a 15-year pro forma itemizing all projected income including Unit rental rate assumptions, operating expenses and debt service, and specifying the underlying growth assumptions and reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party construction or permanent lender. An acceptable form of lender approval letter is found in the application. If the letter evidences review of the Development alone it will receive sixteen (16) points. If the letter evidences review of the Development and the Principals, it will receive eighteen (18) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on either the Building Cost or the Hard Costs per square foot of the proposed Development, as originally submitted in the Application. For purposes of this paragraph, Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule.

(A) A high cost development is a Development that meets one of the following conditions:

(i) the Development is elevator served, meaning it is either a Qualified Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;

(ii) the Development is more at least 75 percent single family design;

(iii) the Development is Supportive Housing; or

(iv) the Development Site qualifies for five (5) or seven (7) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area.

(B) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

(i) The Building Cost per square foot is less than $60 per square foot;

(ii) The Building Cost per square foot is less than $65 per square foot, and the Development is a meets the definition of a high cost development;

(iii) The Hard Cost per square foot is less than $80 per square foot; or

(iv) The Hard Cost per square foot is less than $90 per square foot, and the Development meets the definition of high cost development.

Do these make sense?

(C) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:

(i) The Building Cost per square foot is less than $65 per square foot;

(ii) The Building Cost per square foot is less than $70 per square foot, and the Development meets the definition of a high cost development;

(iii) The Hard Cost per square foot is less than $85 per square foot; or

(iv) The Hard Cost per square foot is less than $95 per square foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for nine (9) points if one of the following conditions is met:

(i) The Building Cost is less than $80 per square foot; or

(ii) The Hard Cost is less than $100 per square foot.

(E) Applications proposing Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $100 per square foot;

(ii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $130 per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $130 per square foot.

(F) Applications proposing New Construction or Reconstruction will be eligible for one (1) point, in addition to those under subparagraph (B) or (C) of this paragraph, if the Hard Cost per square foot is within 5 percent of the mean cost per square foot. The mean will be calculated separately for high cost developments.

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted during the Pre-Application Acceptance Period. Applications that meet the requirements described in subparagraphs (A) - (G) of this paragraph will qualify for four (4) points:

(A) The total number of Units does not change by more than ten (10) percent from pre-application to Application;

(B) The designation of the proposed Development as Rural or Urban remains the same;

(C) The proposed Development serves the same Target Population;

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than six (6) points from what was reflected in the pre-application self score;

(F) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application; and

(G) The pre-application met all applicable requirements.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least five (5) percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph:

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 8 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii) If the Housing Tax Credit funding request is less than 7 percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than 8 percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than 9 percent of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(5) Extended Affordability or Historic Preservation. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) An Application may qualify to receive (2 points) for this scoring item.

(A) In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Development Owners that agree to extend the affordability period for a Development to thirty-five (35) years total may receive two (2) points; or

(B) An Application proposing the use of historic (rehabilitation) tax credits and providing documentation that an existing building that will be part of the Development will reasonably be able to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609 may qualify to receive two (2) points.

(6) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Texas Government Code, §2306.6726 and the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).

(7) Development Size. An Application may qualify to receive one (1) point if the Development is proposed to be fifty (50) total HTC Units or less and the Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission, of $500,000 or less.

(f) Point Adjustments.

Staff will recommend to the Board and the Board may make a deduction of up to five (5) points for any of the items listed in paragraph (1) of this subsection, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of deduction by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions. (§2306.6710(b)(2))

(1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10 percent Test deadline(s) or has requested an extension of the Carryover submission deadline, the 10 percent Test deadline (relating to either submission or expenditure).

(2) If the Developer or Principal of the Applicant violates the Adherence to Obligations.

(3) Any deductions assessed by the Board for paragraph (1) or (2) of this subsection based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

§11.10. Challenges of Competitive HTC Applications.

The Department will address challenges received from unrelated entities to a specific active Application. The Department will utilize a preponderance of the evidence standard and determinations made by the Department concerning challenges cannot be appealed by a party unrelated to the Applicant that is the subject of the challenge. The challenge process is reflected in paragraphs (1) - (13) of this section. A matter, even if raised as a challenge, that staff determines should be treated as an Administrative Deficiency will be treated and handled as an Administrative Deficiency, not as a challenge.

(1) The challenge must be received by the Department no later than seven (7) days after the Application Challenges Deadline as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) and must be accompanied by the corresponding non-refundable challenge processing fee as described in §10.901 of this title (relating to Fee Schedule). Unless the required fee is received with the challenge, no challenge will be deemed to have been submitted, and the challenge fee must be paid for each Application challenged by a challenger.

(2) A challenge must be clearly identified as such, using that word in all capital letters at the top of the page, and it must state the specific identity of and contact information for the person making the challenge and, if they are acting on behalf of anyone else, on whose behalf they are acting.

(3) Challengers must provide, at the time of filing the challenge, ally briefings, documentation, and other information that the challenger offers in support of the challenge. Challengers must provide sufficient credible evidence that, if confirmed, would substantiate the challenge. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered.

(4) Challenges to the financial feasibility of the proposed Development are premature unless final underwriting reports on the challenged Application have been posted to the Department's website..

(5) Challenges relating to undesirable area features as described in §10.101(a)(4) of this title (relating to Site and Development Requirements and Restrictions) will not be accepted unless they relate to a failure to disclose substantive issues not already disclosed or a material misrepresentation about a disclosed item.

(6) Challengers are encouraged to be prudent in identifying issues to challenge, realizing that most issues will be identified and addressed through the routine review and Administrative Deficiency process;

(7) Once a challenge on an Application has been submitted, subsequent challenges on the same Application from the same challenger will not be accepted;

(8) The Department shall promptly post all items received and purporting to be challenges and any pertinent information to its website;

(9) The Department shall notify the Applicant that a challenge was received within seven (7) days of the challenge deadline;

(10) Where, upon review by staff, an issue is not clearly resolved, staff may send an Applicant an Administrative Deficiency notice to provide the Applicant with a specific issue in need of clarification and time to address the matter in need of clarification as allowed by the rules related to Administrative Deficiencies;

(11) The Applicant must provide a response regarding the challenge within fourteen (14) days of their receipt of the challenge;

(12) The Department shall promptly post its determinations of all matters submitted as challenges. Because of statutory requirements regarding the posting of materials to be considered by the Board, staff

may be required to provide information on late received items relating to challenges as handouts at a Board meeting; and

(13) Staff determinations regarding all challenges will be reported to the Board.

(43) Main Street
Texarkana Board of Directors

October 21, 2013

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Development
221 East 11th Street
Austin, TX 78701

RE: 2014 Draft Qualified Allocation Plan
§11.9 Competitive HTC Selection Criteria

Dear Mr. Irvine:

On behalf of Main Street Texarkana, we are submitting comments to the proposed rule changes to the Housing Tax Credit Program as administered by the Texas Department of Housing and Community Affairs. These proposed changes are specifically contained within Chapter 11, TDHCA §11.1 -11.10. We object to the current point system because it discriminates against historic downtowns in Texas cities. If a developer wanted to take advantage of the Housing Tax Credit Program going forward, the developer would not be able to submit a competitive application for a tax credit if that developer were to construct an affordable housing development in a Texas downtown or an historic part of a Texas city.

As you know, our Texas downtowns are full of grand old historic buildings in desperate need of revitalization. Many cities all across the United States have taken advantage of these programs to restore, preserve and maintain the historic sections of their cities. I believe Savannah, Georgia, serves as one of the best examples of historic preservation through tax credits for affordable housing.

We do not believe it is the intent with the passage of these rules to eliminate our fabled Texas downtowns from consideration for historic housing.

The solution to resolve this issue and continue the efforts to keep our Texas downtowns alive and thriving while at the same time encourage the development of affordable housing can be accomplished simultaneously. It is a simple fix. I will not belabor by getting into the specific details in this letter. As I am certain you are receiving a number of comments that get into the specifics of how to do that.

Thank you for your consideration
Main Street Texarkana Board of Directors

P.O. Box 631 • Texarkana, USA • 75504-0631 | (903) 792-7191 Fax (903) 793-4304
www.mainstreettexarkana.org

(44) Kim Youngquist
Hamilton Valley Management

From:	Jean Latsha
To:	Teresa Morales
Subject:	FW: question on Opportunity Index
Date:	Tuesday, October 22, 2013 9:45:21 AM

Kinda public comment…

From: Kim Youngquist [mailto:KYoungquist@hamiltonvalley.com]
Sent: Wednesday, October 09, 2013 3:49 PM
To: jean.latsha@tdhca.state.tx.us
Cc: Nan Boyles
Subject: question on Opportunity Index

Jean, Maybe they should give a point for each item up to 4.

Example:
There has to be a Department of Family and Protective Services Licensed Center and then if they take infants (1 pt.), toddlers (1pt.), if the offer preschool (1 pt.) and if they take after school children (1 pt.). Just a suggestion for what it is worth.

Kim Youngquist

From: Jean Latsha [mailto:jean.latsha@tdhca.state.tx.us]
Sent: Wednesday, October 09, 2013 2:55 PM
To: Nan Boyles
Subject: RE: question on Opportunity Index

My guess is that staff will recommend some language that further clarifies this point item. The way it reads now I think a very large number of facilities are just like the one you describe and would qualify for 4 points, but I don't know if that will be the case in the final version. If you have any suggestions on clarifying language we certainly appreciate the comment. Thanks,
Jean

From: Nan Boyles [mailto:NBoyles@hamiltonvalley.com]
Sent: Wednesday, October 09, 2013 2:50 PM
To: Jean.Latsha@tdhca.state.tx.us
Subject: question on Opportunity Index
Importance: High

Page 14 (B) ii and iv are similar can you get 2 pts for each for having one Department of Family and Protective Services Licensed Center that takes infants, toddle, pre-K and school. I have been pointing out giving on 2 points and Dennis thinks I might should be giving 4?
Thank you.

Nan S. Boyles
Development Coordinator
Hamilton Valley Management, Inc.
512-756-6809 ext. 207 phone
512-756-9885 fax

nboyles@hamiltonvalley.com

(45) Ron Kowal
Austin Affordable Housing Corporation

Austin Affordable Housing Corporation

A Subsidiary of the Housing Authority of the City of Austin

Cameron Dorsey
Texas Department of Housing and Community Affairs
221 East 11st Street
Austin, TX 78701

October 21, 2013

Dear Cameron Dorsey,

On behalf of the Housing Authority of the City of Austin and its subsidiary, Austin Affordable Housing Corporation, we are writing in support and recommendation to the 2014 Multifamily Qualified Allocation Plan pertaining to **11.4.C.1 Tax Credit Request and Award Limits**. We recommend no change to the following section:

(1)The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20 percent Housing Tax Credit Units per Households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20 percent Housing Tax Credits Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the development site pursuant to 42(d)(5) of the code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply 30 percent boost in its underwriting evaluation. For any development located in a census tract with 20 percent or greater Housing Tax Credit Units per total households, the development is eligible for the boost if a resolution is submitted. The Governing Body of the appropriate municipality or county containing the Development has by vote specially allowed the construction of the new Development and submits to the Department a resolution referencing this rule....."

Thank you for the support,

Ron Kowal
Vice-President, Asset Management/Housing Development
Austin Affordable Housing Corporation
A subsidiary of The Housing Authority City of Austin
1124 S IH 35, Austin, TX 78704
Office: 512-477-4488 Ext. 2113
Direct Dial: optional
Mobile: 512-731-5889
Fax: 512-476-4639
Email: ronk@hacanet.org

(46) Barry Kahn
Hettig-Kahn

(47) Granger MacDonald
MacDonald Companies

(48) Jim Serran
Serran Company Landmark Group

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF TRUSTEES MEETING

Capitol Extension Auditorium
1500 North Congress Avenue
Austin, Texas

Thursday,
October 10, 2013
9:00 a.m.

BOARD MEMBERS:

J. PAUL OXER, Chair
JUAN SANCHEZ MUÑOZ, Vice Chair
LESLIE BINGHAM ESCAREÑO, Member
TOM H. GANN, Member
ROBERT D. THOMAS, Member
J. MARK McWATTERS, Member

TIMOTHY K. IRVINE, Executive Director

Okay. We seem to be at the end of the stated agenda and now we're at the point in our agenda where we have the opportunity for public comment on matters other than items for which there were posted agenda components. Do we have any public comment?

MR. KAHN: Barry Kahn, developer from Houston.

MR. OXER: Three minutes.

MR. KAHN: There was a packet given out. I've got three things and I think other people gave me time based on this.

There was a packet that was handed out to the Board that looks like this which the first page shows what the rents have been the past ten years in Houston. Basically we've had 1 percent rent increase. The second page is taking a typical tax credit application and the way it's underwritten on a 1.2 to 1 debt service coverage, and you can see it gets past ten years. The third page is if you go back to an income growth assumption of 1 percent instead of 2 percent, which is the underwriting standard -- and I'm not suggesting going back to 2 percent, I'm going somewhere with this on compliance -- you will see with only a 1 percent increase you don't even get to year ten.

So at the last Board meeting I brought up a request to exclude housekeeping issues. The fourth and

fifth pages in this is a list of housekeeping issues that the industry has come up with, and you know, basically it's all housekeeping type issues. There is one issue on the second page talking about overgrown vegetation where it occurs by a neighbor. In other words, if a neighbor has growth next to a fence, like a chainlink fence next to your property and his trees grow over and vines go through, it gets to be questionable whether we have the right to go in and cut the neighbor's property, particularly if it doesn't affect any of our common elements.

Some of these things that we get gigged on, we're not sure we have the right to even correct. Like if there is a cable connected to a computer across the floor of a room, do we even really have a right to remove the tenant's cable. Do we have a right to remove a tenant's furniture.

The next four pages are pictures from the HUD website and the HUD website is referred to on these two pages previously. The first shows a picture of a hole. We're asking that a hole two inches or smaller not be included and be housekeeping and not something rising to a Level 1 under the Department's inspection standards. As you will see, this s a huge hole which HUD, from its website, is using as an example of a hole.

The next page shows mildew covering more than four square feet, and what we're trying to get out of is cleaning a tenant's mildew on their window sills and in their bathtubs, but we get gigged for that now and we have to clean it and it goes on one's permanent record now.

The third page from the HUD website shows blocked egress. We aren't talking about a movable piece of furniture, we're talking about boards being nailed on a wall on the exterior of the unit. And again, this is a HUD standard that they're putting out as an example.

And then the fourth page where they talk about overgrown vegetation, it has to do with a common area of the property, and trees, as you can see, they're up against the building -- or maybe this picture isn't as good -- but it's not an adjoining property's overgrowth, it's the property's overgrowth which is something an owner does have control over.

But again, I'm trying to expand the issue of what should a developer be responsible for and what shouldn't a developer be responsible for.

Then after the first three pages -- and the reason for the first three pages is just to show we're being pressed financially, we don't need any other financial pressures, in particular with older properties. But there's a suggestion in Section 1.5(c)(2) of the

previous participation rules be modified where if you can't correct an issue, like there's a fair housing form and it's not filled out and somebody moves out, you can't make that prior tenant sign the form. The way the rules are written right now it permanently stays on your record, it continues to go up to EARAC, and so what we're suggesting if something can't be corrected but the procedure has been corrected, that it's not an issue that goes to EARAC.

And the other thing that I'm suggesting is that there be some sort of way for somebody who has many properties to be not unfairly penalized because they have a lot of properties compared to somebody who has one property. For instance, if somebody has 20 properties and they have eight items, let's say, that float their way up to EARAC, it's not the same as somebody having one property and having two or three items by way of percentage. So I'm suggesting when EARAC does review stuff that they take into consideration maybe divide by the number of properties somebody has to factor how they determine whether or not somebody passes or doesn't pass the EARAC standard.

My second group of comments is a personal one, and thirdly, I've got some TAAHP comments with the QAP. But on revitalization zones, the definition was changed

this year, and last year revitalization area had been vetted or had been approved by everyone in the City of Houston. That standard has been made tougher this year. Houston cannot meet the standard.

So what I am suggesting is that there be an alternative -- and I know the city is going to say let's focus it a little tighter -- that for regions other than Region 3 -- and I realize the rule was tightened for Region 3 to meet certain court standards, and I'm not objecting to what's being obligated for Region 3 -- but the Department is trying to protect themselves by applying the general theory statewide, but that for other regions that one can use the revitalization plan terms that were agreed upon last year.

Secondly, for DR zones that they don't have to have a commitment by application for DR funds, and this is what the City of Houston is going to go along with, is that anything that's in a DR determined area, that that qualify as revitalization.

So I'm asking that both the DR zones as well as the broader revitalization zones that have been previously approved by the Department qualify as an alternative on the Region 3 revitalization zones as far as what qualifies for revitalization.

Next there's a handout that was given to you

that was put together by TAAHP. Normally we wait till the last meeting to present this, however, we like to get it in front of the Board for their consideration so they can be thinking about it. When you get the information at the final meeting, everything gets rushed, as we see today, things can take a long period of time, and then fair consideration is not able to be given to the matter, so we are trying to get the issues out in front of the Board.

A couple of things I'd like to point out is one has to do with seniors. Seniors are being excluded from certain regions and certain sub-regions. The suggestion is that not more than 65 percent of the tax credits can be allocated in that region. And I'm going to use Region 6 which I know very well, and this ties to the revitalization reason. If you exclude seniors, in the west half of Houston you aren't going to get neighborhood support for families, it's just not going to happen. I mean, I've been caught in lynch groups and a lot of other people can testify to the same.

You've seen all sorts of objections in the past, for those who have been on the Board, as far as stuff in Fort Bend, as far as stuff in Katy, as far as stuff in northwest Houston. So then you're left to the east side of town and those aren't necessarily high opportunity areas, so if they aren't revitalization areas,

you can't get the boost. Well, things have to be feasible, we're going to lose the 9 percent flat rate, more than likely, which means every development is going to lose about 17 percent in credits.

The City of Houston is going to focus all their soft money to homeless, so if you aren't doing a homeless component, it probably doesn't work for a tax credit deal. Unless it's all homeless and you have the service function, there's going to be no soft money. I mean, deals are going to have to be feasible, otherwise, we're going to have a region like Region 6 that may not even be able to fulfill its $9- or $10 million allotment, and the region is desperate for housing.

So I'm asking personally for the revitalization, but two, TAAHP is asking that 65 percent of the credits in a sub-region can go to senior developments, and where there's only one tax credit allocation in a sub-region, that that can be seniors because there's some sub-regions that are totally excluded from seniors where there's only going to be one deal.

MR. OXER: You need to wrap it up, Barry. We're running late.

MR. KAHN: Yes. Then as far as underserved areas, the request from membership is that there be one point for a qualified elderly development.

On the 811 issue, it's pretty much mandated, like for Region 6 and certain regions to qualify have to follow 811. You've heard before these rules are unclear. We'd just like it to be drafted in a way that people have the option to go with 811, they don't have to. Because if you don't know what the rules are, it's pretty hard to follow it and we all know how difficult it is working in this program when you're following the rules, much less when you don't even know what the rules are.

And the last thing, again, it ties to making deals feasible from a financial standpoint, recommendation number 18, with the leveraging of private, state and federal resources, that the numbers be moved from 7, 8 and 9 percent to 8, 9 and 10 percent, again, to make deals feasible.

And I believe Audrey Martin is going to finish up on a couple of other TAAHP comments, and others have some other comments. Thank you.

MR. OXER: Good. Thanks.

MS. MARTIN: Good afternoon, Board members. I'm Audrey Martin and I am here today on behalf of TAAHP.

I'm going to point out three other items from the TAAHP letter that you all have in front of you. There are 22 recommendations on that letter. We want to just highlight seven today. Barry has covered four, I'm going

to cover three more. And all of these comments were achieved through a TAAHP QAP and Multifamily rule meeting and they were developed as consensus items, so individual members will also present their own comments that weren't a consensus of the membership. So what you see before you are just those comments that the group was able to reach consensus on.

First, recommendation number 11 is related to the commitment of development funding by local political subdivisions. This section of the QAP provides scoring incentives for developers to seek funding from cities, counties and governmental instrumentalities for their developments, and it outlines different scoring levels based on different levels of funding. These levels are based on the population of a place where a development is located, as well as incorporating a per-unit funding level cap as well.

So TAAHP membership has observed that there are decreasing pots of funds available to these local jurisdictions and based on that observation, TAAHP membership is recommending a reduction to the amount of funds required to achieve the different scoring levels under the local political subdivision funding QAP item.

Additionally, in 2013 the QAP allowed for a lesser level of points for those applications located in

jurisdictions where the local jurisdiction provided a support resolution and basically said we would provide funding to your development but we don't have funding available. And so the 2014 QAP draft does not have that provision, and TAAHP is recommending that that provision be incorporated back into the 2014 QAP as it was in the 2013 QAP.

The next recommendation I want to talk about is recommendation number 14 which is related to community revitalization plan scoring item for rural areas specifically. The 2014 draft QAP, like the 2013, offers options for developers in rural areas to achieve points under the CRP scoring item by being located in areas that show growth and expansion indicators which the QAP measures as close proximity to new or planned infrastructure improvements, meaning road improvements, water improvements, and sewer improvements.

The radius for measurement that's in the QAP is a quarter mile. This was the same radius that was used in 2013. The experience of TAAHP membership in 2013 was that the quarter mile radius was very limiting in allowing us to be able to find good real estate based on visibility, access, different things. There could be a site just outside of a quarter mile that was more favorable than the site within a quarter mile.

So anyway, TAAHP members are recommending that the radius be increased from a quarter mile to one mile. TAAHP feels that this change would allow more latitude to choose quality real estate, while still locating in areas where growth and expansion indicators are present.

Finally, I want to comment quickly on cost of the development per square foot. That's recommendation number 16. This scoring item within the QAP provides incentives for developers to keep their construction costs below certain ceilings, essentially based on the type of the development, as well as location. TAAHP supports this methodology. We just feel that kind of based on what we're seeing in construction pricing that the dollar figures outlined in the QAP are just a little bit too low. What we're seeing is that dollar figures approximately $10 per square foot higher pretty much for every scoring level are more in line with what we're seeing in construction pricing. So TAAHP is recommending a $10 per square foot increase for each level outlined.

And also on the cost per foot scoring item, there is one point provided for applications that present a cost per square foot figure that is within 5 percent of the mean cost per square foot for all like applications in the current scoring round. So TAAHP is recommending a deletion of that provision because it rewards luck rather

than merit.

So that concludes my comments. Thank you so much.

MR. OXER: Thanks, Audrey.

Cynthia.

MS. BAST: Good afternoon. Cynthia Bast of Locke Lord. Thank you very much, Board, for your perseverance.

I am here today representing Granger MacDonald and his companies. He is out of state today and he asked me to provide you with just a couple of comments with regard to the draft rule that are out for public comment and that will be adopted at the upcoming Board meeting.

First, with regard to the compliance rules, he asked me to say ditto Barry Kahn. That's probably enough, but let me just say what's important to him is that the committee consider the size of a developer's portfolio. He has been in this business for a very long time and owns numerous properties, and so that perspective needs to be maintained.

He, like many of the developers out there, is also very concerned about the housekeeping issues. I think what you heard from Mr. Kahn is that there seems to be some difference between maybe what HUD puts out there as here's an interior unit issue and perhaps what the

actual owners are finding in their inspections. But what I think Mr. Kahn did not say is that these particular issues are very, very costly and time-consuming for the property owners. I've had multiple property owners tell me that preparing for an inspection because of these housekeeping concerns can take hundreds of man hours that cost them a whole lot of money. Moreover, the tenants themselves do have rights. So I think everyone seeks to find some sort of solution on that issue.

The second issue relates to the QAP. Again, touched on by Mr. Kahn but I'll provide a little bit more detail, and that has to do with certain counties not being eligible for qualified elderly developments. This is new this year and it is a huge concern. For instance, one of the counties is Kendall County and Mr. MacDonald asserts that he owns the 298 units of elderly housing in Kendall County and he has a multi-year waiting list. So why would Kendall County be cut off when he has a multi-year waiting list, why would they be cut off from additional elderly development.

I don't think that there has been an adequate vetting of the data that has been utilized to analyze this and determine which counties should be excluded here. Moreover, besides what the developers think, what do the cities and counties think about that kind of

ineligibility. It's a very significant change, and if this is something that TDHCA believes is important because there's an overabundance of elderly developments or a glut, that's fine, but I think this is the kind of thing where it needs more time to be presented and vetted with regard to the numbers and what are we including, what are we excluding for perhaps the 2015 QAP.

So those are the conclusion of the comments and I do appreciate your time. Thank you.

MR. OXER: Thanks, Cynthia.

MS. CHAPA-JONES: Hi. I'm Veronica Chapa-Jones. I'm the deputy director for grants management and compliance with the City of Houston Housing and Community Development Department.

Everyone looks really tired, so I'm just going to crystallize the mission-critical issues for the City of Houston regarding this year's Qualified Allocation Plan and we'll provide additional detail in the written comments we provide to staff.

So most importantly, we want to echo the comments that have been made about qualified elderly developments. It's a concern for us, the data and methodology wasn't published, because we simply don't understand why we would want to restrict elderly housing, what the numbers and the figures were to make that

restriction, and so we would advocate for a more graduated approach with a clear understanding of the data so that we can partner in that decision-making if we really need to decrease the amount of elderly development in the City of Houston.

The second issue that I want to talk about is the idea of supportive housing which was peppered throughout the QAP with different scoring mechanisms. One of the things where I have failed to communicate to you is a permanent supportive housing initiative that we have with the City of Houston that would dovetail very nicely with some of the supportive housing initiatives that TDHCA is doing today.

Some details about that particular program. The initiative is projected to end chronic homelessness by 2016. We actually quantified how many units would be necessary to end chronic homelessness, the services that would need to be provided. We've put $20 million dollars of housing and homeless bond funds to a vote. We have authorization to use $12 million as additional gap financing over the next two years. We have a homeless czarina out of the mayor's office that is bringing all the departments together, including the Houston Housing Authority to give vouchers which I think will be really critical when we're talking about doing permanent

supportive housing that is meaningful for the residents and that provides the services that we know they need for permanent transition.

So interestingly, when you're going through the QAP, what we'll be arguing for is to allow for parity for scoring where a location jurisdiction that has done tremendous planning like the City of Houston -- I'm not doing it justice, lots of work has gone into that -- it would make us stand out as partners very, very well, so we're going to make recommendations where we can make ourselves shine together in that particular area in the scoring mechanism.

And the third issue that I want to talk specifically about is the idea of the revitalization plan. I don't know of John Henneberger is still here -- he is, and Mattie. We collaborated on the disaster recovery areas in the City of Houston on putting together a really comprehensive planning process. It took a year, it included Texas Low Income Housing Information Service, Appleseed, the Texas Organizing Project, hundreds of folks in public meetings, with Shirretts, a national planning firm helping us develop a 900-page document, a lot of tremendous work. HUD headquarters has asked us to write this up as a concept for a national model.

Interestingly, I do not believe personally that

we could meet the criteria established in the QAP for a revitalization plan because they're so prescriptive and they have a very particular mission. So the idea that what we're doing in the disaster areas isn't revitalization, clearly, if you've been part of the process, you can see that is what we're committed to doing, in addition to infrastructure, housing dollars and other local resources.

So what we'll be asking for is the consideration to look at that and partner in looking with Tim and Cameron, and of course, Barbara, on how we can meet the goals of the revitalization plans that the state wants to have as a part of its scoring mechanism and meet it with this disaster recovery activity that has been tremendous, another national case study, and an opportunity for us to shine together.

So you'll get more details in writing and I'm happy to answer questions next time.

MS. McGUIRE: Good afternoon, Chairman and members of the Board. My name is Ginger McGuire and I'm speaking on behalf of the Rural Rental Housing Association. I also have notes from Dennis Hoover who had to leave. He was also speaking on behalf of the Rural Rental Housing Association. I will do my best to say twice as much in half the time and follow it up with

written comments.

Rural Rental Housing is an association made up of members, 715 project members, who have projects built with 515 financing. I'm happy to explain what the 515 financing is to you all whenever you want to know more about that, but it's housing that was financed by USDA, much of it built 35 to 50 years ago. The average income of our residents is $10,800 overall, and these projects are all rural and they're very much in need of rehabilitation. They rely almost exclusively, at this point, on low income housing tax credits to accomplish that goal.

Our first recommendation -- and I have three things in this category -- has to do with the opportunity index. First of all, thank you very much for your addition last Board meeting of the two elderly amenity additions. We think that's very important. Fifty-six percent of the residents in these 515 apartments are elderly and we think this recognizes their need for services, and we appreciate your addition of that and support it.

Secondly, items 1 through 4 and items 6 through 7 deal with the mileage that was mentioned earlier by TAAHP. The rural areas are not built on a density, they're very spread out. A community of 3,000 residents

can go for miles in all directions, so a quarter of a mile is really not applicable in a rural area. These communities have very little money for infrastructure and rehabilitation and anything else that goes on, so a mile in this category is, we feel, too short, two miles is better. If there's anything in that community that serves the needs of those residents, then it serves the whole community.

And the third thing I want to say about this particular category is item number 5 which talks about the quartiles, first and second quartiles, it's the same issue. Excuse me, I'm going to go to Dennis's notes here. The smaller the town, the more likely it is to be covered by only one census tract, so either all of the town is in the tract or all of the town is out of the tract, and so what we're doing is selecting towns. It really does not fulfill TDHCA's efforts with the conciliation agreement because we're selecting one town or the other since there's one census tract within the whole community. We'd like to see that disappear, the first and second quartile in the rural areas.

Next recommendation, we would like to see at-risk exempted from the opportunity index altogether. We feel that these developments are desperately in need of rehab. Our owners are going halfway, three-fourths of the

way down sometimes their list of properties that desperately need rehab and they are picking them on what scores well as opposed to which developments really need the rehabilitation. That's happening over and over again, and we feel like this is contributing to the further decline of these older properties in particular.

I'll try and speed this up. Recommendation number three, the distances again from the community in the community revitalization projects where it mentions a quarter mile, and TAAHP spoke to that. Again, we'd like to say we think two miles is more appropriate in rural communities.

Recommendation number 4 is the construction cost per square foot, and we did some data analysis on that. These costs are not really -- they can't be pinpointed on one basis, they're regional in nature. Larger developments have a cost benefit to the larger development. Smaller developments are less cost-effective to build, their costs are higher many times. In the Panhandle right now, it is very hard to find labor, they're all going to the oilfields, same with West Texas, same with South Texas. Labor is all over the place.

We did an analysis of five different properties getting a geographical dispersed representation, and the site work plus the bricks and sticks, just the basic cost

of construction, ranged from $87.62 to $113.24. Average cost of, again, site work, bricks and sticks, was $86.78. If you add the 6 percent general requirements to that and 2 percent of the overhead, you come up with a $93.72 per square foot cost. We would like to see and respectfully request that those costs be raised at least $15.

I'll put the rest of it in writing. Thank you very much.

MR. OXER: Good. Thank you.

MR. DIETRICH: Good evening, Mr. Chairman, ladies and gentlemen. I'm Steve Dietrich, downtown development director for the City of Corsicana.

I came before you last month and gave some comments on the proposed QAP, and you may recall at the time I spoke rather generally about the need to level the playing field for adaptive reuse projects which tend to be in central business districts or other areas that are lower income and which puts them at a competitive disadvantage to the project in high opportunity areas.

Further, I believe I commented that doing such a rules change would not only help to achieve affordable housing objectives but it will also bolster historic preservation efforts and economic revitalization in rural areas, such as Corsicana.

Since the last meeting, our team has been in

contact with TDHCA staff and we are prepared at this point to present some specific language that we would respectfully request that you consider adding as an augmentation to the QAP, and if you don't mind, I'll just read these. This has to do with Chapter 11.9, Section 5 of the QAP, Extended Affordability or Historic Preservation.

Paragraph (a): In accordance with the Code, each development is required to maintain its affordability for a 15-year compliance period, and subject to certain exceptions, and additional 15-year extended use period. Development owners that agree to extend the affordability period for a development of 35 years total may receive one point.

Or paragraph (b): An application proposing the use of historic rehabilitation tax credits for at least 80 percent of the development project, calculated as the lesser of the square footage or the unit count, and providing a letter from the Texas Historical Commission determining preliminary eligibility for said credits may qualify to receive eight points.

The addition of these points will counteract the unintended bias, we believe, of the opportunity index, further development of affordable housing for Texans, spread the availability of low income housing tax credits,

help communities achieve their community development and historic preservation needs, and provide for the highest possible reuse of existing municipal infrastructure and other resources.

Thank you for your consideration of this request.

MR. OXER: Thank you, Mr. Dietrich.

MR. SERRAN: Jim Serran, developer, Serran Company Landmark Group.

Just to reiterate, that's the point I'm on, I'm working with about eight towns in Texas, Corsicana, Texarkana, I think you've heard from several of them, and the biggest point, House Bill 500 just passed the state tax credit worth 25 percent in the state, and I work in about twelve states, and that's unheard of that a non income tax state has a state historic tax credit. And what they're saying is, I think, to me, we want to save some old properties, and I've got a lot of communities that I'm working with that want to do exactly that.

And I think that the nut of it is we can do the things that he's talking out, putting the vacant buildings back on the tax rolls, reusing existing infrastructure, blah-blah-blah, all that smart growth, and I can do it for about a third less. And when I use the federal historic and a state historic, I've got 40 percent equity not

coming from you.

So my major point is I don't think you've had time as a staff, they just passed that law, they're still writing how they're going to distribute that law, the House bill for state credit, but there are buyers, the banks, the insurance companies for that credit, it's worth 85 to 88 cents is what I'm hearing. And if you would allow that to be included as a layering stack in your pile, we can do a lot more with less and it does five things instead of one thing. Even if there's a cap on it in a waterfall system, you're still going to get more bang for your buck, a third more. My guess is instead of using $10,000 a unit low income credit, I'll use $7,000 because I've got other layers.

So we're going to put all this in writing. I think you're getting some letters from Texas Downtown Association, Texas Historical, there's a lot of people behind it and you're going to be hearing about it, but just wanted to follow up. It's numbers to me and they make sense to you guys.

Thank you.

MR. OXER: Great. Thanks, Jim.

Bobby.

MR. BOLLING: Bobby Bolling, developer from El Paso, for the record.

Welcome, Mr. Thomas, to the Board.

MR. THOMAS: Thank you.

MR. BOLLING: I didn't want to speak but last Board meeting that you met I left early and I read the transcript and watched the video and you had several public housing authorities come talk to you about the same issue regarding points given to themselves with their own funds that you heard hours of testimony on last year. You did the right thing last year at the end, you voted unanimously to make a level playing field between private developers and PHAs. I assume that they're going to now, since they came at the last meeting, at the November meeting come and use everything they have to try to make you change your mind and go back on what you did last year.

I want to tell you that nothing has changed, there's no new information that would make their case more plausible or better than it was last year. One thing did change, though, is the state attorney of the State of Texas reaffirmed what you did last year was legal, even with a request from a legislator who was favorable to the PHA side of that issue.

I don't want to get into the details of it at this point, I know you're not considering voting on the QAP. I think there's probably some letters you're getting

from some legislators, but I do want to advise you on that, that a lot of those legislators are just getting one side of the story. We just had a session that ended, there was no bill that addressed this that told you what you were doing was wrong and that you should do it a different way. If they thought that this was that strong of an issue, 31 of them in the Senate and 149 of them in the House could have authored a bill, none of them did.

I would submit to you that if they hear the other side of the story from the private developers instead of just what they're getting from the PHAs and valued it and weighed it carefully, like you did last year, they would probably arrive at the same conclusion you arrived at last year.

So I'll come with more information. I guess we're going to have this knock-down drag-out fight again this year. There are no new issues.

Mr. Thomas, I'd love to spend some time with you and maybe talk to you about what the issue is in further detail. I know you guys are tired at this point. We went through this for hours last year at the podium, and again, I applaud what you did last year, you made a level playing field, and I just want to encourage you to keep the playing field level. There shouldn't be a preference for the type of developer that applies for a

tax credit. And that's the crux of the issue, Mr. Thomas, is the public housing authorities, the PHAs, want to have a point item whereby because they're a local political subdivision, their own funds count for points when they are the applicant.

MR. THOMAS: I understood the distinction. Thank you.

MR. BOLLING: Okay. Thank you. And so no new issue, just want to reiterate that this is still Texas and private developers still should have the same rights when they compete with their government. So thank you.

MR. OXER: Okay. Is there any other public comment?

(No response.)

MR. OXER: Any comment from staff? We're going to step this down, everybody gets a chance to speak. Any comment from staff? Any comment from staff on the dais?

MR. IRVINE: No.

MR. OXER: Any comment from any of the Board members?

(No response.)

MR. OXER: Okay. I get the last word as chairman. Thank you everybody for your persistence.

(Timer beeped; general laughter.)

MR. OXER: All right. With that, I'll

entertain a motion to adjourn.

MR. GANN: So moved.

MR. THOMAS: Second.

MR. OXER: Motion by Mr. Gann, seconded by Mr. Thomas. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. We'll see you on November 7.

(Whereupon, at 5:30 p.m., the meeting was concluded.)

C E R T I F I C A T E

MEETING OF: TDHCA Board of Trustees

LOCATION: Austin, Texas

DATE: October 10, 2013

I do hereby certify that the foregoing pages, numbers 1 through 293, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing and Community Affairs.

10/17/2013
(Transcriber) (Date)

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Re: *ICP v. TDHCA*, 3:08-CV-0546-D, TDHCA proposed 2014 Qualified Allocation Plan and Multifamily Rules

These comments on the TDHCA proposed 2014 Qualified Allocation Plan and Multifamily Rules are submitted on behalf of the Inclusive Communities Project, Inc. (ICP). The comments are directed to the draft rules published on September 27, 2013, 38 Tex. Reg, 6358.

ICP supports the proposal to make applications for Qualified Elderly Projects in Collin, Denton, and Ellis counties ineligible under the 9% program. Proposed § 11.3(e).

ICP supports the use of the "Met Standard" accountability standard combined with the 77 or higher score on the student performance index 1 as an element of the Opportunity Index and as the standard for the Educational Excellence points under the 9% program point scoring system. Proposed § 11.9(c)(4)(A); Proposed §11.9(c)(5).

ICP does not object to the proposed changes in the Community Revitalization Plan 9% program point scoring system. Proposed § 11.9(d)(7).

ICP objects to the proposed changes in the Opportunity Index 9% program point scoring system for Rural projects in Region 3. Proposed § 11.9(c)(4)(B). The provision of Opportunity

Index points for basic services such as after school programs, any type of health facility, a grocery store, or a day care center changes the concept of the Opportunity Index from one focusing on higher opportunities to one that merely requires basic services. For example, the proposed changes would make locations in the 47% poverty, 4th quartile income, predominantly minority census tract 510 in Kaufman eligible for Opportunity Index points.

The Local Government Support 9% program element has potential discriminatory impacts.

The 2013 Legislative session added the Local Government Support element to the 9% program point scoring system. Proposed § 11.9(d)(1). This element and the points assigned to the element were not part of the *ICP v. TDHCA* liability or remedial proceedings. The 17, 14, or 0 points that can be awarded under this element have the potential for perpetuating racial segregation in the Dallas area. These 17 new points for municipal or county support can be an insurmountable barrier for projects that do not receive either approval or a resolution of non-objection. Granting credits in non-Caucasian areas because of these local government approval points can perpetuate racial segregation as much as denying credits in Caucasian areas because of objections or failures to act. For example, the City of Dallas could make several projects in non-Caucasian areas eligible for the 17 local government support points. These points would place those projects ahead of Caucasian area projects in suburbs with the local government opposing or not supporting those projects.

The potential for segregative effects is shown by hypothetically applying the 17 points to the 2013 Region 3 applicants. The addition of the 17 points for municipal approval to the 2013 application round would have made a significant difference. Without municipal approval, neither Summit Place nor the Millennium - McKinney would have received an allocation. Patriot's Crossing, a low-income minority area in Oak Cliff would have been given an allocation with the municipal approval points.

These local government approval points, when given, are likely to be combined with the other points for local political support. These points include the local political subdivision funding points, the legislative support points, and the points for neighborhood QCP. Similarly, when the local government refuses to approve an application for an Opportunity area, the other factors for points for local support are likely to be absent. The local government approval points have the potential for multiplying the effect of local political opposition on the point totals for remedial 9% program applications in Region 3.

If the application of the proposed local government support element makes dwellings unavailable because of race by perpetuating racial segregation in the Dallas area, the statute and its application violate the Fair Housing Act.

> . . . but any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing

practice under this subchapter shall to that extent be invalid. 42 U.S.C. § 3615.

The Texas Attorney General has pointed out that TDHCA has the discretion to give determinative effect to the legislative support statutory 9% program point scoring element. Tex. Atty. Gen. Op. GA-0455, page 3. There is nothing in the Attorney General opinion nor in the authorities cited in that opinion to suggest that TDHCA does not have the same discretion whether or not to give determinative effect to the municipal approval points. *ICP v. TDHCA*, 2012 WL 3201401, *8 (N.D. Tex. 2012); 42 U.S.C. § 3613(c)(1); Proposed §10.206. ICP will seek judicial relief if the application of this element makes dwellings unavailable because of race by perpetuating racial segregation in the Dallas area.

The Local Government Support 4% program element has potential discriminatory impacts.

As with the 9% program local government support approval element, the discriminatory impact potential is high for this new statutory element. Proposed § 10.204(4). The potential discriminatory impacts include the deterrent effect on developers considering whether to submit applications in Opportunity Index areas. TDHCA can mitigate the likelihood of discriminatory effects by providing 9% program selection points for any development eligible for Opportunity Index points that was denied the opportunity to apply for the 4% credits because of the statute and rule. TDHCA did just this to mitigate neighborhood opposition points. *ICP v. TDHCA*, 2012 WL 3201401, *12 (N.D. Tex. 2012). ICP will seek judicial relief if the application of this element makes dwellings unavailable because of race by perpetuating racial segregation in the Dallas area.

ICP opposes the new standard for determining whether high crime rates are a disqualification under the undesirable area threshold criteria because the standard will make areas with high crime rates eligible.

The crime disqualification factor in the current approved remedial plan and the 2013 QAP is simple and can prevent the location of housing tax credit projects in high crime areas.

> (D) Locally known presence of gang activity, prostitution, drug trafficking, or other significant criminal activity that rises to the level of frequent police reports . . . .

The standard for this determination and the other undesirable area elements is also objective and can usually be documented.

> The standard to be applied in making a determination under this paragraph is whether the undesirable area feature is of a nature that would not be typical in a neighborhood that would qualify under the Opportunity Index pursuant to §11.9(c)(4) of this title (relating to Competitive HTC selection Criteria).

The proposed substitute in the 2014 Multifamily Rules is complex, subjective, and will be difficult to document. Its use will condone the location of housing tax credit projects in high crime areas. This will perpetuate racial segregation.

> D) Locally known presence of gang activity, prostitution, drug trafficking, or other significant criminal activity that rises to the level of being locally known and regarded within the community as a high crime area and reported as such in the press, substantiated by a significant and regular need for a higher than normal level of police activity and/or emergency response in the area. §10.101(a)(4).

ICP will object to an attempt to substitute the proposed 2014 standard for the provision in the current remedial plan.

Sincerely,

s/Michael M. Daniel

s/Laura B. Beshara

cc: Elizabeth K. Julian
Demetria McCain
Ann Lott

3d

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION
NOVEMBER 7, 2013

Presentation, Discussion, and Possible Action on orders adopting the repeals of 10 TAC Chapter 10 Subchapter A, concerning General Information and Definitions, Subchapter B, concerning Site and Development Requirements and Restrictions, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules, and Subchapter G, concerning Fee Schedule, Appeals, and Other Provisions, and orders adopting the new Subchapter A, concerning General Information and Definitions, Subchapter B, concerning Site and Development Requirements and Restrictions, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules or Pre-clearance for Applications, and Subchapter G, concerning Fee Schedule, Appeals, and Other Provisions and directing their publication in the *Texas Register.*

RECOMMENDED ACTION

WHEREAS, the Uniform Multifamily Rules contain eligibility, threshold and procedural requirements relating to applications requesting multifamily funding;

WHEREAS, changes have been proposed that improve the efficiency of the funding sources involved and demonstrate compliance with recent statutory and federal requirements that govern such funding sources; and

WHEREAS, the proposed repeal and proposed new Chapter 10 were published in the September 27, 2013 issue of the *Texas Register* for public comment;

NOW, therefore, it is hereby

RESOLVED, that the final order adopting the repeal of 10 TAC Chapter 10 Subchapter A General Information and Definitions, Subchapter B, Site and Development Requirements and Restrictions, Subchapter C Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules, and Subchapter G Fee Schedule, Appeals and Other Provisions and proposed new 10 TAC Chapter 10, Subchapters A, B, C and G concerning Uniform Multifamily Rules, together with the preambles presented to this meeting, are approved for publication in the *Texas Register*; and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the repeal and new Uniform Multifamily Rules, together with the preambles in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The Board approved the proposed repeal and proposed new Chapter 10 regarding the Uniform Multifamily Rules at the September 12, 2013, Board meeting to be published in the *Texas Register* for public comment. In keeping with the requirements of the Administrative Procedures Act, staff has reviewed all comments received and provided a reasoned response to each comment. Staff has listed the areas below that received the most comment.

1. §10.3(a) – Subchapter A – Economically Distressed Area
2. §10.101(b)(5) – Subchapter B – Common Amenities
3. §10.101(b)(6) – Subchapter B – Unit Amenities

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Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter A, §§10.1 – 10.4 concerning General Information and Definitions. Section 10.2 and 10.3 are adopted with changes to the text as published in the September 27, 2013 issue of the *Texas Register* (38 TexReg 6358). Sections 10.1 and 10.4 are adopted without changes and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the sections will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the proposed Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 21, 2013, with comments received from (19) Bobby Bowling, Tropicana Building Corporation, (22) Sarah Anderson, S. Anderson Consulting, (28) Alyssa Carpenter, S. Anderson Consulting, (29) Neal Rackleff, City of Houston Housing and Community Development Department, (37) Toni Jackson, Coats Rose, (38) Belinda Carleton, Texas Council for Developmental Disabilities, and (49) Daniel Beshara, P.C.

1. §10 – General Comments – (19), (37)
COMMENT SUMMARY: Commenter (19) indicated that neighborhood organization is not a defined term in the rule and given the use of the term throughout the rules it needs to be clarified. Commenter (19) suggested the following definition be added:

> "Neighborhood Organization – An organization, on record with the state or county in which the Development Site is located, which is current with all required filings, and in good standing with either the Comptroller of the State of Texas or the Secretary of State of Texas or both, as applicable. The organization's boundaries must contain the Development Site that organization seeks to provide comment on and the boundaries must contain a specific neighborhood. The boundary shall not constitute an entire area of a city, county or place such as "the east side." Further, the boundary cannot encompass more than 1 square mile, as anything larger would not constitute a "neighborhood" as intended in statute."

Commenter (37) requested that housing authorities be added to the definition of Unit of General Local Government which would be consistent with §392.006 of the Local Government Code which defines housing authorities as a unit of government.

STAFF RESPONSE: In response to Commenter (19), neighborhood organization is defined in Texas Government Code §2306.6704(23-a). Staff understands Commenter's concerns, but the QAP has been drafted to comply with state statutory requirements related to neighborhood

organizations. Those provisions provide certain rights to organizations meeting the requisite definition and it is an applicant's responsibility to perform the necessary due diligence to comply.

In response to commenter (37), unit of general local government is not currently a defined term in §10.3 and was not part of the published proposal; therefore, a modification such as the one requested is not within the scope of this rulemaking.

While staff is not recommending change based on this comment, in order to maintain consistency and address comments made in other portions of the Rules, staff recommends the following addition to §10.2:

> **(f) Responsibilities of Municipalities and Counties**. In providing resolutions regarding housing de-concentration issues, threshold requirements, or scoring criteria, municipalities and counties should consult their own staff and legal counsel to as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any FHAST form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, HOME or CDBG funds.

2. §10.3 – Subchapter A – Definitions – Economically Distressed Area (19), (22), (28)
COMMENT SUMMARY: Commenter (19) expressed concern that the attempt to broaden this definition made it too limiting and may lead to the type of discrimination in communities that the recent court remedy sought to address. Commenter (19) stated the current language addresses a very relative level of poverty within an MSA rather than a more general level of poverty that they assert was the intent of the statutory requirement. Commenter (19) suggested the phrase "*…in a census tract that is in the fourth quartile of median household income for the MSA, if located in an MSA, or county, if not located in an MSA…*" be removed and replaced with language that measures general poverty in a census tract, such as "the 200% of poverty level or a measure of 80% of the statewide median family income for the state"

Commenters (22), (28) recommended the requirement that the area be in a census tract that is in the fourth quartile be removed indicating the Texas Water Development Board (TWDB) requires an income that is 75% or less of the statewide median income for the EDA program and makes no reference to the quartile of an area. As a result, some areas that have been assisted through the EDA program at 75% or less than the median could be considered third quartile according to the Department's data. Commenters (22), (28) recommended the income of the census tract only require that it is 75% or less of the statewide median household income with no regard to the Department's quartile in order to mirror the TWDB's requirements and not inadvertently exclude any areas that would be EDAs under the TWDB program.

STAFF RESPONSE: Staff agrees with the Commenters regarding using absolute income levels instead of those which are relative only to an MSA or county. However, staff does not believe it is necessary to revise the measure in the current language to a different threshold because the rule already includes a similar threshold that is consistent with the Texas Water Development Board's threshold. Staff has also become aware that funds are not always awarded to only cities

and counties and offers clarifying language to account for other types of political subdivisions. Staff recommends the following changes and clarifications:

> "(43) Economically Distressed Area--An area that is in a census tract that has a median household income that is 75 percent or less of the statewide median household income~~, in a census tract that is in the fourth quartile of median household income for the MSA, if located in an MSA, or county, if not located in an MSA,~~ and in a municipality or, if not within a municipality, in a county that has been awarded funds under the Economically Distressed Areas Program administered by the Texas Water Development Board within the five (5) years ending at the beginning of the Application Acceptance Period. Notwithstanding all other requirements, for funds awarded to another type of political subdivision (*e.g.* a water district), the Development Site must be within the jurisdiction of the political subdivision. "

3. §10.3(a) – Subchapter A – Definitions – Supportive Housing (29)

COMMENT SUMMARY: Commenter (29) recommended the following changes in order to be consistent with proposed changes to the QAP:

> "Supportive Housing--Residential rental developments intended for occupancy by individuals or households in need of specialized and specific medical or non-medical services in order to maintain independent living. Supportive housing developments generally require established funding sources outside of project cash flow and are proposed and expected to be debt free or have no foreclosable or noncash flow debt unless the development is a Tax Exempt Bond Development with a project based rental assistance contract that assures a contract rent for a majority of the Units, in which case the Development is treated as Supportive Housing under all subchapters of this chapter, except Subchapter D of this chapter (relating to Underwriting and Loan Policy). The services offered generally address special attributes of such populations requiring Permanent Supportive Housing and/or ~~as~~ Transitional Housing for persons who are homeless and/or at risk of homelessness, persons who have experienced domestic violence or single parents or guardians with minor children."

STAFF RESPONSE: In response to commenter (29), without more specific examples of the type of medical services involved, staff is hesitant to recommend the change since IRS Revenue Ruling 98-47 specifically states that a development that provides continual or frequent nursing, medical or psychiatric services would render such development ineligible for housing tax credits. At a minimum, the change could result in confusion with regard to what is and is not allowable. Moreover, staff is hesitant to identify any one particular local program over any other in the state, especially considering the differences in definitions and preliminary nature of the City's program. However, staff does not recommend any changes that would specifically preclude certain medical services or more permanent supportive housing solutions, provided they are not inconsistent with the language as written.

Staff recommends no change.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are adopted pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

Uniform Multifamily Rules

Subchapter A – General Information and Definitions

§10.1. Purpose.

This chapter applies to an award of multifamily development funding or other assistance including the award of Housing Tax Credits by the Texas Department of Housing and Community Affairs (the "Department") and establishes the general requirements associated in making such awards. Applicants pursuing such assistance from the Department are required to certify, among other things, that they have familiarized themselves with the rules that govern that specific program, including but not limited to, Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules) and other Department rules. This chapter does not apply to any project-based rental or operating assistance programs or funds unless incorporated by reference in whole or in part in a Notice of Funding Availability (NOFA) or rules for such a program except to the extent that Developments receiving such assistance and otherwise subject to this chapter remain subject to this chapter.

§10.2. General.

(a) This chapter may not contemplate unforeseen situations that may arise, and in that regard the Department staff is to apply a reasonableness standard in the evaluation of Applications for multifamily development funding. Additionally, Direct Loan funds and other non-Housing Tax Credit or tax exempt bond resources may be made available through a NOFA or other similar governing document that includes the basic Application and funding requirements:

(1) deadlines for filing Applications and other documents;

(2) any additional submission requirements that may not be explicitly provided for in this chapter;

(3) any applicable Application set-asides and requirements related thereto;

(4) award limits per Application or Applicant;

(5) any federal or state laws or regulations that may supersede the requirements of this chapter; and

(6) other reasonable parameters or requirements necessary to implement a program or administer funding effectively.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, rent and income limits, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the multifamily rules or be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the multifamily rules to each specific situation as it is presented in the submitted Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to independently perform the necessary due diligence to research, confirm, and verify any data, opinions, interpretations or other information upon which Applicant bases an Application.

(c) Board Standards for Review. Some issues may require or benefit from board review. The Board is not constrained to a particular standard, and while its actions on one matter are not binding as to how it will address another matter, the Board does seek to promote consistency with its policies, including the policies set forth in this chapter.

(d) Census Data. Where this chapter requires the use of census or American Community Survey data, the Department shall use the most current data available as of October 1, 2013, unless specifically otherwise provided in federal or state law or in the rules. The availability of more current data shall generally be disregarded. For Rural Area and Urban Area designations, the Department shall use in establishing the designations, the U.S. Census Bureau's Topographically Integrated Geographic Encoding and Referencing ("TIGER") shape files applicable for the population dataset used in making such designations.

(e) Public Information Requests. Pursuant to Texas Government Code, §2306.6717, any pre-application and any full Application, including all supporting documents and exhibits, must be made available to the public, in their entirety, on the Department's website. The filing of a pre-application or Application with the Department shall be deemed as consent to the release of any and all information contained therein, including supporting documents and exhibits, and as a waiver of any of the applicable provisions of Texas Government Code, Chapter 552, with the exception of any such provisions that are considered by law as not subject to a waiver.

(f) Responsibilities of Municipalities and Counties. In providing resolutions regarding housing de-concentration issues, threshold requirements, or scoring criteria, municipalities and counties should consult their own staff and legal counsel to as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any FHAST form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, HOME or CDBG funds.

§10.3. Definitions.

(a) Terms defined in this chapter apply to the Housing Tax Credit Program, Multifamily Housing Revenue Bond Program, HOME Program and any other programs for the development of affordable rental property administered by Department and as may be defined in this title. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning as defined in Texas Government Code, Chapter 2306, Internal Revenue Code (the "Code"), §42, the HOME Final Rule, and other Department rules as applicable.

(1) Adaptive Reuse--The change-in-use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes (e.g., school, warehouse, office, hospital, hotel, etc.), into a building which will be used, in whole or in part, for residential purposes. Adaptive reuse requires that the exterior walls of the existing building remain in place. All units must be contained within the original exterior walls of the existing building. Porches and patios may protrude beyond the exterior walls. Ancillary non-residential buildings, such as a clubhouse, leasing office and/or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site.

(2) Administrative Deficiencies--Information requested by Department staff that is required to clarify or correct one or more inconsistencies or to provide non-material missing information in the original Application or to assist staff in evaluating the Application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application. Administrative

Deficiencies may be issued at any time while the Application or Contract is under consideration by the Department, including at any time while reviewing performance under a Contract, processing documentation for a Commitment of Funds, closing of a loan, processing of a disbursement request, close-out of a Contract, or resolution of any issues related to compliance.

(3) Affiliate--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, has Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.

(4) Affordability Period--The Affordability Period commences as specified in the Land Use Restriction Agreement (LURA) or federal regulation, or commences on the first day of the Compliance Period as defined by the Code, §42(i)(1) and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period shall be imposed by the LURA or other deed restriction and may be terminated upon foreclosure or deed in lieu of foreclosure. The Department reserves the right to extend the Affordability Period for HOME or NSP Developments that fail to meet program requirements. During the Affordability Period the Department shall monitor to ensure compliance with programmatic rules as applicable, regulations, and Application representations.

(5) Applicable Percentage--The percentage used to determine the amount of the Housing Tax Credit for any Development, as defined more fully in the Code, §42(b).

(A) For purposes of the Application, the Applicable Percentage will be projected at:

(i) nine percent if such timing is deemed appropriate by the Department or if the ability to claim the full 9 percent credit is extended by the U.S. Congress prior to February 28, 2014;

(ii) forty basis points over the current applicable percentage for 70 percent present value credits, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department; or

(iii) fifteen basis points over the current applicable percentage for 30 percent present value credits, unless fixed by Congress, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department.

(B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based in order of priority on:

(i) the percentage indicated in the Agreement and Election Statement, if executed; or

(ii) the actual applicable percentage as determined by the Code, §42(b), if all or part of the Development has been placed in service and for any buildings not placed in service the percentage will be the actual percentage as determined by the Code, §42(b) for the most current month; or

(iii) the percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

(6) Application Acceptance Period--That period of time during which Applications may be submitted to the Department.

(7) Bank Trustee--A federally insured bank with the ability to exercise trust powers in the State of Texas.

(8) Bedroom--A portion of a Unit which is no less than 100 square feet; has no width or length less than 8 feet; is self contained with a door (or the Unit contains a second level sleeping area of 100 square feet or more); has at least one window that provides exterior access; and has at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to accommodate 5 feet of hanging space. A den, study or other similar space that could reasonably function as a bedroom and meets this definition is considered a bedroom.

(9) Breakeven Occupancy--The occupancy level at which rental income plus secondary income is equal to all operating expenses, including replacement reserves and taxes, and mandatory debt service requirements for a Development.

(10) Building Costs--Cost of the materials and labor for the vertical construction or rehabilitation of buildings and amenity structures.

(11) Carryover Allocation--An allocation of current year tax credit authority by the Department pursuant to the provisions of §42(h)(1)(C) of the Code and U.S. Treasury Regulations, §1.42-6.

(12) Carryover Allocation Agreement--A document issued by the Department, and executed by the Development Owner, pursuant to §10.402(f) of this chapter (relating to Housing Tax Credit and Tax Exempt Bond Developments).

(13) Cash Flow--The funds available from operations after all expenses and debt service required to be paid have been considered.

(14) Certificate of Reservation--The notice given by the Texas Bond Review Board (TBRB) to an issuer reserving a specific amount of the state ceiling for a specific issue of bonds.

(15) Code--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the U.S. Department of the Treasury or the Internal Revenue Service (IRS).

(16) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(17) Colonia--A geographic area that is located in a county some part of which is within one-hundred fifty (150) miles of the international border of this state, that consists of eleven (11) or more dwellings that are located in proximity to each other in an area that may be described as a community or neighborhood, and that:

(A) has a majority population composed of individuals and families of low-income and very low-income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under Texas Water Code, §17.921; or

(B) has the physical and economic characteristics of a colonia, as determined by the Department.

(18) Commitment (also referred to as Contract)--A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants or other sources of funds or financial assistance from the Department will be made available.

(19) Commitment of Funds--Occurs when the Development is approved by the Department and a Commitment is executed between the Department and a Development Owner or Applicant. For Direct Loan Programs, this process is distinct from Federal Commitment, which may occur when the activity is set up in the disbursement and information system established by HUD; known as the Integrated Disbursement and Information System (IDIS). The Department's commitment of funds may not align with commitments made by other financing parties.

(20) Committee--See *Executive Award and Review Advisory Committee.*

(21) Comparable Unit--A Unit, when compared to the subject Unit, is similar in net rentable square footage, number of bedrooms, number of bathrooms, overall condition, location (with respect to the subject Property based on proximity to employment centers, amenities, services and travel patterns), age, unit amenities, utility structure, and common amenities.

(22) Competitive Housing Tax Credits (HTC)--Tax credits available from the State Housing Credit Ceiling.

(23) Compliance Period--With respect to a building financed by Housing Tax Credits, the period of fifteen (15) taxable years, beginning with the first taxable year of the credit period pursuant to §42(i)(1) of the Code.

(24) Continuously Occupied--The same household has resided in the Unit for at least twelve (12) months.

(25) Contract--See *Commitment*.

(26) Contractor--See *General Contractor.*

(27) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. Controlling entities of a partnership include the general partners, special limited partners when applicable, but not investor limited partners who do not possess other factors or attributes that give them Control. Controlling entities of a limited liability company include but are not limited to the managers, managing members, any members with 10 percent or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership, but not investor members who do not possess other factors or attributes that give them Control. Multiple Persons may be deemed to have Control simultaneously.

(28) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.

(29) Credit Underwriting Analysis Report--Sometimes referred to as the "Report." A decision making tool used by the Department and Board containing a synopsis and reconciliation of the Application information submitted by the Applicant.

(30) Debt Coverage Ratio (DCR)--Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." Calculated as Net Operating Income for any period divided by scheduled debt service required to be paid during the same period.

(31) Deferred Developer Fee--The portion of the Developer Fee used as a source of funds to finance the development and construction of the Property.

(32) Deobligated Funds--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and a Development Owner or Applicant.

(33) Determination Notice--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which specifies the Department's determination as to the amount of tax credits that the Development may be eligible to claim pursuant to §42(m)(1)(D) of the Code.

(34) Developer--Any Person entering into a contractual relationship with the Owner to provide Developer Services with respect to the Development and receiving a fee for such services and any other Person receiving any portion of a developer fee, whether by subcontract or otherwise,

except if the Person is acting as a consultant with no Control and receiving less than 10 percent of the total Developer fee. The Developer may or may not be a Related Party or Principal of the Owner.

(35) Developer Fee--Compensation in amounts defined in §10.302(e)(7) of this chapter (relating to Underwriting Rules and Guidelines) paid by the Owner to the Developer for Developer Services inclusive of compensation to a Development Consultant(s), Development Team member or any subcontractor that performs Developer Services or provides guaranties on behalf of the Owner will be characterized as Developer Fee.

(36) Developer Services--A scope of work relating to the duties, activities and responsibilities for pre-development, development, design coordination and construction over site of the Property generally including but not limited to:

(A) site selection and purchase or lease contract negotiation;
(B) identifying and negotiating sources of construction and permanent financing, including financing provided by the Department;
(C) coordination and administration of activities including the filing of applications to secure such financing;
(D) coordination and administration of governmental permits and approvals required for construction and operation;
(E) selection and coordination of development consultants including architect(s), engineer(s), third-party report providers, attorneys, and other design or feasibility consultants;
(F) selection and coordination of the General Contractor and construction contract(s);
(G) construction over site;
(H) other consultative serves to and for the Owner;
(I) guaranties, financial or credit support if a Related Party; and
(J) any other customary and similar activities determined by the Department to be Developer Services.

(37) Development Site--The area, or if scattered site, areas on which the Development is proposed and to be encumbered by a LURA.

(38) Development--A residential rental housing project that consists of one or more buildings under common ownership and financed under a common plan which has applied for Department funds. This includes a project consisting of multiple buildings that are located on scattered sites and contain only rent restricted units. (§2306.6702)

(39) Development Consultant or Consultant--Any Person (with or without ownership interest in the Development) who provides professional or consulting services relating to the filing of an Application, or post award documents as required by the program.

(40) Development Owner (also referred to as "Owner")--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department and is responsible for performing under the allocation and/or Commitment with the Department. (§2306.6702)

(41) Development Team--All Persons and Affiliates thereof that play a role in the Development, construction, rehabilitation, management and/or continuing operation of the subject Development, including any Development Consultant and Guarantor.

(42) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program, or Housing Trust Fund or other program available through the Department for multifamily development. Direct Loans may also include deferred forgivable loans or other similar direct funding by the Department, regardless if it is required to be repaid. The tax-exempt bond program is specifically excluded.

(43) Economically Distressed Area--An area that is in a census tract that has a median household income that is 75 percent or less of the statewide median household income~~, in a census tract that is in the fourth quartile of median household income for the MSA, if located in an MSA, or county, if not located in an MSA,~~ and in a municipality or, if not within a municipality, in a county that has been awarded funds under the Economically Distressed Areas Program administered by the Texas Water Development Board within the five (5) years ending at the beginning of the Application Acceptance Period. Notwithstanding all other requirements, for funds awarded to another type of political subdivision (*e.g.* a water district), the Development Site must be within the jurisdiction of the political subdivision.

(44) Effective Gross Income (EGI)--The sum total of all sources of anticipated or actual income for a rental Development less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

(45) Efficiency Unit--A Unit without a separately enclosed Bedroom designed principally for use by a single person.

(46) Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.

(47) Environmental Site Assessment (ESA)--An environmental report that conforms to the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.

(48) Executive Award and Review Advisory Committee (also referred to as the "Committee")--The Department committee created under Texas Government Code, §2306.1112.

(49) Existing Residential Development--Any Development Site which contains existing residential units at any time after the beginning of the Application Acceptance Period.

(50) Extended Use Period--With respect to an HTC building, the period beginning on the first day of the Compliance Period and ending the later of:

(A) the date specified in the Land Use Restriction Agreement; or

(B) the date which is fifteen (15) years after the close of the Compliance Period.

(51) Federal Commitment--A commitment of funding that meets all of the federal requirements for the specific federal funding source being committed. This commitment may be distinct and separate from a Commitment or Commitment of Funds.

(52) First Lien Lender--A lender whose lien has first priority as a matter of law or by operation of a subordination agreement or other intercreditor agreement.

(53) General Contractor (including "Contractor")--One who contracts for the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as

fees to the General Contractor, in the scenarios described in subparagraphs (A) and (B) of this paragraph:

(A) any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract will be deemed a prime subcontractor; or

(B) if more than 75 percent of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

(54) General Partner--Any person or entity identified as a general partner in articles of limited partnership for the partnership that is the Development Owner and that has general liability for the partnership or that has Control with respect to any such general partner. Where a limited liability corporation is the legal structure employed rather than a limited partnership, the manager of that limited liability corporation is deemed, for the purposes of these rules, to be the functional equivalent of a general partner.

(55) Governing Body--The elected or appointed body of public or tribal officials, responsible for the enactment, implementation and enforcement of local rules and the implementation and enforcement of applicable laws for its respective jurisdiction.

(56) Governmental Entity--Includes federal, state or local agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts, tribal governments and other similar entities.

(57) Gross Capture Rate--Calculated as the Relevant Supply divided by the Gross Demand.

(58) Gross Demand--The sum of Potential Demand from the Primary Market (PMA), demand from other sources, and Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25 percent of Gross Demand.

(59) Gross Program Rent--Maximum rent limits based upon the tables promulgated by the Department's division responsible for compliance which are developed by program and by county or Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) or national non-metro area.

(60) Guarantor--Any Person that provides, or is anticipated to provide, a guaranty for all or a portion of the equity or debt financing for the Development.

(61) HTC Development (also referred to as "HTC Property")--A Development subject to an active LURA for Housing Tax Credits allocated by the Department.

(62) HTC Property--See *HTC Development.*

(63) Hard Costs--The sum total of Building Costs, Site Work costs, Off-Site Construction costs and contingency.

(64) Historically Underutilized Businesses (HUB)--An entity that is certified as such under Texas Government Code, Chapter 2161 by the State of Texas.

(65) Housing Contract System (HCS)--The electronic information system established by the Department for tracking, funding, and reporting Department Contracts and Developments. The HCS is primarily used for Direct Loan Programs administered by the Department.

(66) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Development Owner for a specific Application in accordance with the provisions of this chapter and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).

(67) Housing Credit Allocation Amount--With respect to a Development or a building within a Development, the amount of Housing Tax Credits the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the Affordability Period and which the Board allocates to the Development.

(68) Housing Quality Standards (HQS)--The property condition standards described in 24 CFR §982.401.

(69) Initial Affordability Period--The Compliance Period or such longer period as shall have been elected by the Owner as the minimum period for which Units in the Development shall be retained for low-income tenants and rent restricted, as set forth in the LURA.

(70) Integrated Disbursement and Information System (IDIS)--The electronic grants management information system established by HUD to be used for tracking and reporting HOME funding and progress and which may be used for other sources of funds as established by HUD.

(71) Land Use Restriction Agreement (LURA)--An agreement, regardless of its title, between the Department and the Development Owner which is a binding covenant upon the Development Owner and successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds. (§2306.6702)

(72) Low-Income Unit--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department utilizing its published income limits.

(73) Managing General Partner--A general partner of a partnership (or, as provided for in paragraph (54) of this subsection, its functional equivalent) that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also be used for a Managing Member of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.

(74) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates conducted in accordance with §10.303 of this chapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(75) Market Analyst--A real estate appraiser or other professional familiar with the subject property's market area who prepares a Market Analysis.

(76) Market Rent--The achievable rent at the subject Property for a unit without rent and income restrictions determined by the Market Analyst or Underwriter after adjustments are made to actual rents on Comparable Units to account for differences in net rentable square footage, functionality, overall condition, location (with respect to the subject Property based on proximity to primary employment centers, amenities, services and travel patterns), age, unit amenities, utility structure and common area amenities. The achievable rent conclusion must also consider the proportion of market units to total units proposed in the subject Property.

(77) Market Study--See *Market Analysis.*

(78) Material Deficiency--Any deficiency in an Application or other documentation that exceeds the scope of an Administrative Deficiency. May include a group of Administrative Deficiencies that, taken together, create the need for a substantial re-assessment or reevaluation of the Application.

(79) Multifamily Programs Procedures Manual--The manual produced and amended from time to time by the Department which reiterates and implements the rules and provides guidance for the filing of multifamily related documents.

(80) Net Operating Income (NOI)--The income remaining after all operating expenses, including replacement reserves and taxes that have been paid.

(81) Net Program Rent--Calculated as Gross Program Rent less Utility Allowance.

(82) Net Rentable Area (NRA)--The unit space that is available exclusively to the tenant and is typically heated and cooled by a mechanical HVAC system. NRA is measured to the outside of the studs of a unit or to the middle of walls in common with other units. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas.

(83) Non-HTC Development--Sometimes referred to as Non-HTC Property. Any Development not utilizing Housing Tax Credits or Exchange funds.

(84) Notice of Funding Availability (NOFA)--A notice issued by the Department that announces funding availability, usually on a competitive basis, for multifamily rental programs requiring Application submission from potential Applicants.

(85) Off-Site Construction--Improvements up to the Development Site such as the cost of roads, water, sewer and other utilities to provide access to and service the Site.

(86) Office of Rural Affairs--An office established within the Texas Department of Agriculture; formerly the Texas Department of Rural Affairs.

(87) One Year Period (1YP)--The period commencing on the date on which the Department and the Owner agree to the Qualified Contract price in writing and continuing for twelve (12) calendar months.

(88) Owner--See *Development Owner.*

(89) Person--Without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization or entity of any nature whatsoever and shall include any group of Persons acting in concert toward a common goal, including the individual members of the group.

(90) Persons with Disabilities--With respect to an individual, means that such person has:

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) is regarded as having such an impairment, to include persons with severe mental illness and persons with substance abuse disorders.

(91) Physical Needs Assessment--See *Property Condition Assessment.*

(92) Place--An area defined as such by the United States Census Bureau, which, in general, includes an incorporated city, town, or village, as well as unincorporated areas know as census designated places. The Department may provide a list of Places for reference.

(93) Post Carryover Activities Manual--The manual produced and amended from time to time by the Department which explains the requirements and provides guidance for the filing of post-carryover activities, or for Tax Exempt Bond Developments, the requirements and guidance for post Determination Notice activities.

(94) Potential Demand--The number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placement in service date.

(95) Primary Market (PMA)--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §10.303 of this chapter from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(96) Primary Market Area--See *Primary Market.*

(97) Principal--Persons that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) partnerships, Principals include all General Partners, special limited partners, and Principals with ownership interest;

(B) corporations, Principals include any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation and any individual who has Control with respect to such stock holder; and

(C) limited liability companies, Principals include all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

(98) Pro Forma Rent--For a restricted Unit, the lesser of the Net Program Rent or the Market Rent. For an unrestricted unit, the Market Rent. Contract Rents, if applicable, will be used as the Pro Forma Rent.

(99) Property--The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built thereon in connection with the Application.

(100) Property Condition Assessment (PCA)--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or “Property Condition Report.” The PCA provides an evaluation of the physical condition of an existing Property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the Property. The PCA must be prepared in accordance with §10.306 of this chapter (relating to Property Condition Assessment Guidelines) as it relates to a specific Development.

(101) Qualified Contract (QC)--A bona fide contract to acquire the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the Applicable Fraction (specified in the LURA) of the calculation as defined within §42(h)(6)(F) of the Code.

(102) Qualified Contract Price (“QC Price”)--Calculated purchase price of the Development as defined within §42(h)(6)(F) of the Code and as further delineated in §10.408 of this chapter (relating to Qualified Contract Requirements).

(103) Qualified Contract Request (Request)--A request containing all information and items required by the Department relating to a Qualified Contract.

(104) Qualified Elderly Development--A Development which is operated with property-wide age restrictions for occupancy and which meets the requirements of “housing for older persons” under the federal Fair Housing Act. The age restrictions associated with or character of such a Development are sometimes referred to as “Qualified Elderly”.

(105) Qualified Nonprofit Organization--An organization that meets the requirements of §42(h)(5)(C) of the Code for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the property, meets the requirements of Texas Government Code §2306.6706 and §2306.6729, and §42(h)(5) of the Code.

(106) Qualified Nonprofit Development--A Development which meets the requirements of §42(h)(5) of the Code, includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.

(107) Qualified Purchaser--Proposed purchaser of the Development who meets all eligibility and qualification standards stated in the Qualified Allocation Plan of the year the Request is received, including attending, or assigning another individual to attend, the Department's Property Compliance Training.

(108) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the re-construction of an equal number of units or less on the Development Site. At least one unit must be reconstructed in order to qualify as Reconstruction.

(109) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the Reconstruction of a Development on the Development Site, but does not include Adaptive Reuse. (§2306.004(26-a)) More specifically, Rehabilitation is the repair, refurbishment and/or replacement of existing mechanical and structural components, fixtures and finishes. Rehabilitation will correct deferred maintenance, reduce functional obsolescence to the extent possible and may include the addition of: energy efficient components and appliances, life and safety systems; site and resident amenities; and other quality of life improvements typical of new residential Developments.

(110) Related Party-- As defined in Texas Government Code, §2306.6702.

(111) Relevant Supply--The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:

(A) the proposed subject Units;

(B) Comparable Units in another proposed development within the PMA with a priority Application over the subject, based on the Department's evaluation process described in §10.201(6) of this chapter (relating to Procedural Requirements for Application Submission) that may not yet have been presented to the Board for consideration of approval;

(C) Comparable Units in previously approved but Unstabilized Developments in the PMA; and

(D) Comparable Units in previously approved but Unstabilized Developments in the Secondary Market Area (SMA), in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.

(112) Report--See *Credit Underwriting Analysis Report.*

(113) Request--See *Qualified Contract Request.*

(114) Reserve Account--An individual account:

(A) created to fund any necessary repairs for a multifamily rental housing Development; and

(B) maintained by a First Lien Lender or Bank Trustee.

(115) Right of First Refusal--An Agreement to provide a right to purchase the Property to a nonprofit or tenant organization with priority to that of any other buyer at a price whose formula is prescribed in the LURA.

(116) Rural Area--

(A) A Place that is located:

(i) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area; or

(ii) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an urban area

(B) For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §10.204(5) of this chapter (relating to Required Documentation for Application Submission).

(117) Secondary Market (SMA)--Sometimes referred to as "Secondary Market Area." The area defined by the Qualified Market Analyst as described in §10.303 of this chapter.

(118) Secondary Market Area--See *Secondary Market.*

(119) Single Room Occupancy (SRO)--An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.

(120) Site Control--Ownership or a current contract or series of contracts, that meets the requirements of §10.204(10) of this chapter, that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the owner, to develop a Property and subject it to a LURA reflecting the requirements of any awards of assistance it may receive from the Department.

(121) Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, and underground utilities.

(122) State Housing Credit Ceiling--The aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with applicable federal law, including §42(h)(3)(C) of the Code and Treasury Regulation §1.42-14.

(123) Sub-Market--An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(124) Supportive Housing--Residential rental developments intended for occupancy by individuals or households in need of specialized and specific non-medical services in order to maintain independent living. Supportive housing developments generally require established funding sources outside of project cash flow and are proposed and expected to be debt free or have no foreclosable or noncash flow debt unless the development is a Tax Exempt Bond Development with a project based rental assistance contract that assures a contract rent for a majority of the Units, in which case the Development is treated as Supportive Housing under all subchapters of this chapter, except Subchapter D of this chapter (relating to Underwriting and Loan Policy). The services offered generally address special attributes of such populations as

Transitional Housing for homeless and at risk of homelessness, persons who have experienced domestic violence or single parents or guardians with minor children.

(125) Target Population--The designation of types of housing populations shall include those Developments that are entirely Qualified Elderly and those that are entirely Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations.

(126) Tax-Exempt Bond Development--A Development requesting or having been awarded Housing Tax Credits and which receives a portion of its financing from the proceeds of tax-exempt bonds which are subject to the state volume cap as described in §42(h)(4) of the Code, such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(127) Tax-Exempt Bond Process Manual--The manual produced and amended from time to time by the Department which explains the process and provides guidance for the filing of a Housing Tax Credit Application utilizing Tax-Exempt Bonds.

(128) TDHCA Operating Database--Sometimes referred to as "TDHCA Database." A consolidation of recent actual income and operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described in Subchapter F of this chapter (relating to Compliance Monitoring), and published on the Department's web site (www.tdhca.state.tx.us).

(129) Third Party--A Person who is not:

(A) an Applicant, General Partner, Developer, or General Contractor; or

(B) an Affiliate to the Applicant, General Partner, Developer or General Contractor; or

(C) anyone receiving any portion of the administration, contractor or Developer fees from the Development; or

(D) any individual that is an executive officer or member of the governing board or has greater than 10 percent ownership interest in any of the entities are identified in subparagraphs (A) – (C) of this paragraph.

(130) Total Housing Development Cost--The sum total of the acquisition cost, Hard Costs, soft costs, Developer fee and General Contractor fee incurred or to be incurred through lease-up by the Development Owner in the acquisition, construction, rehabilitation and financing of the Development.

(131) Transitional Housing--A Supportive Housing development that includes living Units with more limited individual kitchen facilities and is:

(A) used exclusively to facilitate the transition of homeless individuals and those at-risk of becoming homeless, to independent living within twenty-four (24) months; and

(B) is owned by a Development Owner that includes a governmental entity or a qualified non-profit which provides temporary housing and supportive services to assist such individuals in, among other things, locating and retaining permanent housing. The limited kitchen facilities in individual Units must be appropriately augmented by suitable, accessible shared or common kitchen facilities.

(132) Underwriter--The author(s) of the Credit Underwriting Analysis Report.

(133) Uniform Physical Condition Standards (UPCS)--As developed by the Real Estate Assessment Center of HUD.

(134) Unit--Any residential rental unit in a Development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation.

(135) Unit Type--Units will be considered different Unit Types if there is any variation in the number of bedroom, bathrooms or a square footage difference equal to or more than 120 square feet. For example: A two Bedroom/one bath Unit is considered a different Unit Type than a two Bedroom/two bath Unit. A three Bedroom/two bath Unit with 1,000 square feet is considered a different Unit Type than a three Bedroom/two bath Unit with 1,200 square feet. A one Bedroom/one bath Unit with 700 square feet will be considered an equivalent Unit Type to a one Bedroom/one bath Unit with 800 square feet.

(136) Unstabilized Development--A development with Comparable Units that has been approved for funding by the Department's Board of Directors or is currently under construction or has not maintained a 90 percent occupancy level for at least twelve (12) consecutive months following construction completion. A development may be deemed stabilized by the Underwriter based on factors relating to a development's lease-up velocity, Sub-Market rents, Sub-Market occupancy trends and other information available to the Underwriter. The Market Analyst may not consider such development stabilized in the Market Study.

(137) Urban Area--A Place that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than a Place described by paragraph (114)(A)(ii) of this subsection. For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §10.204(5) of this chapter.

(138) U.S. Department of Agriculture (USDA)--Texas Rural Development Office (TRDO) serving the State of Texas.

(139) U.S. Department of Housing and Urban Development (HUD)-regulated Building--A building for which the rents and utility allowances of the building are reviewed by HUD.

(140) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation §1.42-10 and §10.614 of this chapter (relating to Utility Allowances).

(141) Work Out Development--A financially distressed Development for which the Owner and/or a primary financing participant is seeking a change in the terms of Department funding or program restrictions.

(b) Request for Staff Determinations. Where the definitions of Development, Development Site, New Construction, Rehabilitation, Reconstruction, Adaptive Re-use and Target Population fail to account fully for the activities proposed in an Application, an Applicant may request and Department staff may provide a determination to an Applicant explaining how staff will review an Application in relation to these specific terms and their usage within the applicable rules. Such request must be received by the Department prior to submission of the pre-application (if applicable to the program) or Application (if no pre-application was submitted). Staff's determination may take into account the purpose of or policies addressed by a particular rule or requirement, materiality of elements, substantive elements of the development plan that relate to the term or definition, the common usage of the particular term, or other issues relevant to the rule or requirement. All such determinations will be conveyed in writing. If the determination is finalized after submission of the pre-application or Application, the Department may allow corrections to the pre-application or the Application that are directly related to the issues in the determination. It is an Applicant's sole responsibility to request a determination and an Applicant may not rely on any determination for another Application regardless of similarities in a particular fact pattern. For any Application that does not request and subsequently receive a

determination, the definitions and applicable rules will be applied as used and defined herein. Such a determination is intended to provide clarity with regard to Applications proposing activities such as: scattered site development or combinations of construction activities (e.g. Rehabilitation with some New Construction). An Applicant may appeal a determination for their Application if the determination provides for a treatment that relies on factors other than the explicit definition. A Board determination or a staff determination not timely appealed cannot be further appealed or challenged.

§10.4. Program Dates.

This section reflects key dates for all multifamily development programs except for the Competitive Housing Tax Credit Program. A program calendar for the Competitive Housing Tax Credit Program is provided in Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Non-statutory deadlines specifically listed in this section may be extended for good cause by the Executive Director for a period of not more than five (5) business days provided; however, that the Applicant requests an extension prior to the date of the original deadline. Extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party.

(1) Full Application Delivery Date. The deadline by which the Application must be submitted to the Department. For Direct Loan Applications, such deadline will generally be defined in the applicable NOFA and for Tax-Exempt Bond Developments, such deadlines are more fully explained in §10.201(2) of this chapter (relating to Procedural Requirements for Application Submission).

(2) Notice to Submit Lottery Application Delivery Date. No later than December 13, 2013, Applicants that receive an advance notice regarding a Certificate of Reservation must submit a notice to the Department, in the form prescribed by the Department.

(3) Applications Associated with Lottery Delivery Date. No later than December 27, 2013, Applicants that participated in the Texas Bond Review Board Lottery must submit the complete tax credit Application to the Department.

(4) Administrative Deficiency Response Deadline. Such deadline shall be five (5) business days after the date on the deficiency notice without incurring a penalty fee pursuant to §10.901 of this chapter (relating to Fee Schedule).

(5) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal (if applicable), Market Analysis and the Site Design and Development Feasibility Report. For Direct Loan Applications, the Third Party reports must be submitted with the Application in order for it to be considered a complete Application. For Tax-Exempt Bond Developments the Third Party Reports must be submitted no later than seventy-five (75) calendar days prior to the Board meeting at which the tax credits will be considered. The seventy-five (75) calendar day deadlines are available on the Department's website.

(6) Resolutions Delivery Date. Resolutions required for Tax-Exempt Bond Developments or Direct Loan Applications must be submitted no later than fourteen (14) calendar days before the Board meeting at which consideration of the award will occur.

(7) Challenges to Neighborhood Organization Opposition Delivery Date. No later than forty-five (45) calendar days prior to the Board meeting at which consideration of the award will occur.

(8) Unless specifically stated otherwise in the Department rules, if an item is due on a specific day or a period expires on a specific day, the applicable period ends at 5:00 p.m., local Austin time on such day.

Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC, Chapter 10 Uniform Multifamily Rules, Subchapter B, §10.101 concerning Site and Development Restrictions and Requirements, with changes to text as published in the September 27, 2013, issue of the *Texas Register* (38 TexReg 6367).

REASONED JUSTIFICATION. The Department finds that the adoption of the section will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 21, 2013, with comments received from (1) Texas Affiliation of Affordable Housing Providers (TAAHP), (28) Alyssa Carpenter, S. Anderson Consulting, (34) Donna Rickenbacker, Marque Real Estate Consultants, (37) Toni Jackson, Coats Rose, (38) Texas Council for Developmental Disabilities.

4. §10.101(a)(2) – Subchapter B – Mandatory Community Assets (28)

COMMENT SUMMARY: Commenter (28) indicated that instead of having designated bus stops along a route, passengers are instructed to find a convenient place along the route and wave to the bus driver to stop. Such routes, according to commenter (28) are mapped and schedule and have published times for intersections along the route. Commenter (28) recommended that such transportation be included under item (T) of this subparagraph as long as the development site is located within 1 mile of the route.

STAFF RESPONSE: Staff is concerned that there may be many such variations in public transportation systems throughout the state. Staff would be happy to review any specific examples the Commenter may have for compliance with the rule but would not recommend a change without a more clear understanding of variations that may exist and the impact of any particular change in the language.

Staff recommends no change.

5. §10.101(a)(3) – Subchapter B – Undesirable Site Features (34), (37)

COMMENT SUMMARY: Commenter (34) recommended that adaptive re-use developments be allowed to request an exemption from the Board if located within applicable distances from undesirable site features in the same manner as is currently allowed for rehabilitation developments.

Commenter (37) suggested that undesirable site features that have been mitigated through HUD and areas that have been designated as part of a city or county's revitalization area and have a

resolution or letter of support from the city or county should be exempt from these restrictions. Moreover, commenter (37) recommended that developments located adjacent to or within 300 feet of an active railroad track be removed as an undesirable site feature and indicated that all of the aforementioned features are often near existing properties that PHA's seek to reconstruct and redevelop.

STAFF RESPONSE: For any undesirable site feature that may be applicable to a site and therefore render the application ineligible, §10.207 (Waiver of Rules or Pre-clearance for Applications) of the Uniform Multifamily Rules provides for a waiver process should an applicant elect to pursue it. Therefore, staff does not recommend any changes based on these comments but does recommend the following clarifying language for internal consistency within this portion of the rule:

"…(A) Development Sites located adjacent to or within 300 feet of junkyards;

(B) Development Sites located adjacent to or within 300 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;

(C) Development Sites located adjacent to or within 300 feet of heavy industrial uses such as manufacturing plants, refinery blast zones, etc.;

(D) Development Sites located adjacent to or within 300 feet of a solid waste or sanitary landfills;

(E) Development Sites in which the buildings are located within the easement of any overhead high voltage transmission line, support structures for high voltage transmission lines, radio antennae, satellite towers, or other similar structures. This does not apply to local service electric lines and poles;

(F) Development Sites in which the buildings are located within the accident zones or clear zones for commercial or military airports;

(G) Development Sites located adjacent to or within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined as stated in Local Government Code, §243.002…"

6. §10.101(a)(4) – Subchapter B – Undesirable Area Features (49)

COMMENT SUMMARY: Commenter (49) expressed opposition to the amended language for the following undesirable area feature:*"Locally known presence of gang activity, prostitution, drug trafficking, or other significant criminal activity that rises to the level of being locally known and regarded within the community as a high crime area and reported as such in the press, substantiated by a significant and regular need for a higher than normal level of police activity and/or emergency response in the area."* Commenter (49) indicated the amended language is complex, subjective and will be difficult to document and further indicated that such standard will actually make areas with high crime eligible. Commenter (49) recommended the language revert to the 2013 language, as it was the provision in the remedial plan, it is simple and can prevent the location of housing tax credit developments in high crime areas.

STAFF RESPONSE: Staff agrees with the concerns expressed and recommends reinstatement of the 2013 language regarding this item:

"Locally known presence of gang activity, prostitution, drug trafficking, or other significant criminal activity that rises to the level of frequent police reports; ~~being locally known and regarded within the community as a high crime area and reported as such in the press, substantiated by a significant and regular need for a higher than normal level of police activity and/or emergency response in the area.~~"

7. §10.101(b)(1) – Subchapter B – Ineligible Developments (28)

COMMENT SUMMARY: Commenter (28) suggested that any development that has the characteristics of a senior development be categorized as a Qualified Elderly Development or the application be considered ineligible. Commenter (28) explained that an application that has 70% one-bedrooms and 30% two-bedrooms is unable to serve family households and certain amenity choices are typically associated with senior developments. Commenter (28) recommended language be added to this section that would prohibit developments that have a unit mix and site plan that looks like a senior development from being considered a general population development especially given the prohibition on elderly developments in certain regions and counties.

STAFF RESPONSE: Considering the amount of public comment related to the eligibility and/or scoring of Qualified Elderly developments, staff has responded repeatedly by stating that there is no requirement for an applicant to design and build the property in a manner that would not be conducive to the needs of seniors and families with children, and the Department continues to permit applicants to design and develop housing that is consistent with the demographics of the demand pool for such housing. That being said, this is not meant to invite for applicants to design and build housing that is clearly intended only to serve seniors. Efforts to market general population developments only to senior households could violate the Fair Housing Act. If, however, an applicant anticipates demand from the elderly population an applicant can, for example, include elevators in the development plan, a greater number of accessible units, or can provide services that would benefit households with older individuals. Staff has concerns similar to those expressed by Commenter (28) and, although not recommending any specific change to the rules, will be diligent in reviewing applications that appear to be inconsistent with the goals of the Department.

Staff recommends no change.

8. §10.101(b)(4) – Subchapter B – Mandatory Development Amenities (34)

COMMENT SUMMARY: Commenter (34) recommended that adaptive re-use developments be exempt from the same amenities as rehabilitation developments.

STAFF RESPONSE: Staff does not believe that adaptive reuse developments should qualify for an automatic exemption from the minimum required amenities. The Commenter draws comparison between rehabilitation and adaptive reuse developments. However, rehabilitation and adaptive reuse activities are very dissimilar with respect to the scope of construction work, particularly on building interiors, that is generally required. In unique cases where either of the two requirements in question (cable and laundry connections) are not feasible, staff would suggest that the applicant request a waiver of the rule.

Staff recommends no change.

9. §10.101(b)(5) – Subchapter B – Common Amenities (1), (34), (37)

COMMENT SUMMARY: Commenter (1) indicated that some of the limited green amenities listed will be difficult to verify at cost certification and during the compliance period without expensive third party reports by environmental experts. Commenter (1) suggested those items that are hard to measure be removed and replaced with simple requirements that can be verified and provided the following revisions:

> "(I) Limited Green Amenities….;
>
> (-a-) Rain water harvesting collection system provided for irrigation ~~at least 20 percent of the water needed annually for site irrigation is from a rain water harvesting/collection system and/or locally approved greywater collection system. This can include rainwater harvested from gutters and downspouts to a storage tank or cistern where it can be treated or filtered for potable uses; untreated rainwater may be used for non-potable uses~~;
>
> (-b-) Native landscaping that reduces irrigation requirements as certified by design team at cost certification~~native trees and plants installed that are appropriate to the Development Site's soil and microclimate to allow for shading in the summer and heat gain in the winter~~;
>
> (-c-) install water-conserving fixtures that meet the EPA's WaterSense Label. Such fixtures must include low-flow or high efficiency toilets, bathroom lavatory faucets, showerheads and kitchen faucets. Rehabilitation Developments may install compliant faucet aerators instead of replacing the entire faucets;
>
> (-d-) all of the HVAC condenser units are located so they are fully shaded 75 percent of the time during summer months (i.e. May through August) as certified by the design team at cost certification;
>
> (-e-) install Energy-Star qualified hot water heaters or install those that are part of an overall Energy-Star efficient system;
>
> (-f-) install individual or sub-metered utility meters. Rehabilitation Developments may claim sub-meter only if not already sub-metered at the time of Application;
>
> (-g-) healthy finish materials including the use of paints, stains, adhesives and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standard;
>
> (-h-) install daylight sensor, motion sensors or timers on all exterior lighting and install fixtures that include automatic switching on timers or photocell controls for all lighting not intended for 24-hour operation or required for security;
>
> (-i-) recycling service provided throughout the Compliance Period if the local trash provider offers recycling service."

Moreover, commenter (1) suggested that fewer Limited Green Amenities should be required for developments with 41 units or more or more items should be made available and therefore, requested adding the amenities noted below. Commenter (1) further questioned how

rehabilitation developments are expected to meet these requirements and suggested they be required to meet fewer items.

"(-j-) construction waste management system provided by contractor that meets LEEDs minimum standards;
(-k-) at least 25% by cost FSC certified salvaged wood products;
(-l-) Energy Star rated bath exhaust fans vented to the outside;
(-m-) Energy Star rated kitchen exhaust fans vented to the outside;
(-n-) clothes dryers vented to the outside;
(-o-) maintain a no-smoking policy within 20 feet of all buildings."

Commenter (34) recommended that developments with more than 80-units (instead of the required 41-units) be required to meet at least 2 of the threshold points under subparagraph (C)(xxxi) relating to Limited Green Amenities and that a development satisfies the threshold requirement if it meets at least 3 (instead of the required 6) items. Given the cost consequences to the proposed development, commenter (34) believes this threshold requirement should be limited to 3 green amenities and should only be applicable to developments in urban areas.

Commenter (37) suggested more common amenities be added, such as Wi-Fi in the lounge area and also recommended community rooms be a multi-purpose space not specifically labeled. Commenter (37) recommended the option for the number of washers/dryers be revised to one washer and dryer for every 40 or 50 units and further recommended that an exception be allowed if laundry hook-ups are provided.

STAFF RESPONSE: In response to the modifications to the Limited Green Amenities proposed by Commenter (1), staff appreciates the suggestions and proposes the language below. With respect to the rainwater system, staff agrees that the language can be broader and have the same positive effect. However, staff believes that certifying to native plants that not only require less irrigation but also provide appropriate shading and heat gain is attainable. Also, staff does not want to limit developers that may want to provide their own recycling service, and the current language allows for either local service or that provided by the owner. Staff is also providing options for smaller and rehabilitation developments. Staff believes that this section of the rules would benefit from continued review and discussion with architects, developer, general contractors, and the general public and will endeavor to facilitate discussions over the coming months.

In response to commenter (37) staff agrees with the proposed modification for the number of washers/dryers and recommends a community laundry room contain at least one washer and dryer for every 40 units. Staff notes that common area Wi-Fi is currently an option under the common amenities. Moreover, staff does not believe the option to provide a furnished community room, currently provided under the rules, limits the ability for it to serve as a multi-purpose space.

Staff recommends the following changes:

"…(v) Community laundry room with at least one washer and dryer for ~~each~~ every ~~25~~ 40 Units (3 points)…"

"(I) Limited Green Amenities (2 points). The items listed in subclauses (I) – (IV) of this clause constitute the minimum requirements for demonstrating green building of

multifamily Developments. Six (6) of the nine (9) items listed under items (-a-) - (-~~i~~l-) of this subclause must be met in order to qualify for the maximum number of two (2) points under this subclause;

(-a-) at ~~least 20 percent of the water needed annually for site irrigation is from a~~ rain water harvesting/collection system and/or locally approved greywater collection system~~. This can include rainwater harvested from gutters and downspouts to a storage tank or cistern where it can be treated or filtered for potable uses; untreated rainwater may be used for non-potable uses~~;

(-b-) native trees and plants installed that reduce irrigation requirements and are appropriate to the Development Site's soil and microclimate to allow for shading in the summer and heat gain in the winter;

(-c-) install water-conserving fixtures that meet the EPA's WaterSense Label. Such fixtures must include low-flow or high efficiency toilets, bathroom lavatory faucets, showerheads and kitchen faucets. Rehabilitation Developments may install compliant faucet aerators instead of replacing the entire faucets;

(-d-) all of the HVAC condenser units are located so they are fully shaded 75 percent of the time during summer months (i.e. May through August) as certified by the design team at cost certification;

(-e-) install Energy-Star qualified hot water heaters or install those that are part of an overall Energy-Star efficient system;

(-f-) install individual or sub-metered utility meters. Rehabilitation Developments may claim sub-meter only if not already sub-metered at the time of Application;

(-g-) healthy finish materials including the use of paints, stains, adhesives and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standard;

(-h-) install daylight sensor, motion sensors or timers on all exterior lighting and install fixtures that include automatic switching on timers or photocell controls for all lighting not intended for 24-hour operation or required for security;

(-i-) recycling service provided throughout the Compliance Period~~.~~;

(-j-) for Rehabilitation developments or developments with 41 units or less, construction waste management system provided by contractor that meets LEEDs minimum standards;

(-k-) for Rehabilitation developments or developments with 41 units or less, clothes dryers vented to the outside;

(-l-) for developments with 41 units or less, at least 25% by cost FSC certified salvaged wood products."

10. §10.101(b)(6) – Subchapter B – Unit Amenities (1), (34), (37)

COMMENT SUMMARY: Commenter (1) recommended the following revision:

"(xi) Greater than 30% percent masonry on all building exteriors (includes stone, cultured stone, stucco, and brick but excludes cementitious siding); the percentage calculation may exclude exterior glass entirely (2 points);"

Commenter (34) recommended adaptive re-use developments receive the same treatment under subparagraphs (A) and (B) regarding unit sizes and unit and development features.

Commenter (37) recommended USB connections be included as an option under this section.

STAFF RESPONSE: Staff agrees with Commenter (1) with respect to the inclusion of cultured stone and stucco and recommends the language below.

xi) Greater than 30% percent stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious siding) on all building exteriors ~~(includes stone and brick but excludes cementitious siding)~~; the percentage calculation may exclude exterior glass entirely (2 points);

In response to Commenter (34), staff believes, with respect to unit sizes amenities, that these should be achievable with adaptive reuse. When proposing Rehabilitation, it is generally not necessary for developers to tear down walls and/or reconfigure floor plans in order to substantially improve the condition of a property that is already designed for residential use. However, adaptive reuse will generally involve significant interior reconfiguration and improvement to accommodate and change in use from non-residential to residential.

In response to Commenter (37), staff does not believe that USB connections add significant value to the tenant and recommends no change.

11. §10.101(b)(8) – Subchapter B – Development Accessibility Requirements (38)

COMMENT SUMMARY: Commenter (38) expressed support for this section that reinforces the requirement that two-story or single family units normally exempt from Fair Housing accessibility requirements must provide a minimum of 20% of one-, two- and three-bedroom units with an accessible entry level on multi-level units and all common-use facilities in compliance with the Fair Housing Guidelines. Moreover, commenter (38) expressed support for the requirement that rehabilitation (including reconstruction) be treated as substantial alteration so that 5% of the units will be required to be set-aside to accommodate persons with mobility impairments and 2% set-aside for persons with visual impairments.

STAFF RESPONSE: Staff appreciates the support expressed by commenter (38).

Staff recommends no change.

STATUTORY AUTHORITY. The new section is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new section is adopted pursuant to §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

Subchapter B – Site and Development Requirements and Restrictions

§10.101. Site and Development Requirements and Restrictions.

(a) Site Requirements and Restrictions. The purpose of this section is to identify specific restrictions related to a Development Site seeking multifamily funding or assistance from the Department.

(1) Floodplain. New Construction or Reconstruction Developments located within a one-hundred (100) year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site in full compliance with the National Flood Protection Act and all applicable federal and state statutory and regulatory requirements. Even if not required by such provisions, the Site must be developed so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain. If there are more stringent local requirements they must also be met. If no FEMA Flood Insurance Rate Maps are available for the proposed Development Site, flood zone documentation must be provided from the local government with jurisdiction identifying the one-hundred (100) year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from the U.S. Department of Housing and Urban Development (HUD) or U.S. Department of Agriculture (USDA) are exempt from this requirement. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the one-hundred (100) year floodplain provided the state or local government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application or the existing structures meet the requirements that are applicable for New Construction or Reconstruction Developments.

(2) Mandatory Community Assets. Development Sites must be located within a one mile radius (two-mile radius for Developments located in a Rural Area) of at least six (6) community assets. Only one community asset of each type listed in subparagraphs (A) - (T) of this paragraph will count towards the number of assets required. A map must be included identifying the Development Site and the location of the community assets by name. All assets must exist or, if under construction, must be under active construction, post pad (*e.g.* framing the structure) by the date the Application is submitted:

(A) full service grocery store;

(B) pharmacy;

(C) convenience store/mini-market;

(D) department or retail merchandise store;

(E) bank/credit union;

(F) restaurant (including fast food but not including establishments that are primarily bars and serve food as an incidental item);

(G) indoor public recreation facilities, such as, community centers, and libraries accessible to the general public;

(H) outdoor public recreation facilities such as parks, golf courses, and swimming pools accessible to the general public;

(I) medical office (physician, dentistry, optometry) or hospital/medical clinic;

(J) public schools (only eligible for Developments that are not Qualified Elderly Developments);

(K) senior center accessible to the general public;

(L) religious institutions;

(M) community, civic or service organizations, such as Kiwanis or Rotary Club;

(N) child care center (must be licensed - only eligible for Developments that are not Qualified Elderly Developments);

(O) post office;

(P) city hall;

(Q) county courthouse;

(R) fire station;

(S) police station; or

(T) designated public transportation stop at which public transportation stops on a regular, scheduled basis; a site's eligibility for on demand transportation or transportation provided directly or indirectly by the Development Owner do not meet this requirement.

(3) Undesirable Site Features. Development Sites with the undesirable features identified in subparagraphs (A) - (H) of this paragraph will be considered ineligible. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD or USDA may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application. For purposes of this requirement, the term 'adjacent' means sharing a boundary with the Development Site. The distances are to be measured from the nearest boundary of the Development Site to the boundary of the undesirable feature. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (H) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A) Development Sites located adjacent to or within 300 feet of junkyards;

(B) Development Sites located adjacent to or within 300 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;

(C) Development Sites located adjacent to or within 300 feet of heavy industrial uses such as manufacturing plants, refinery blast zones, etc.;

(D) Development Sites located adjacent to or within 300 feet of a solid waste or sanitary landfills;

(E) Development Sites in which the buildings are located within the easement of any overhead high voltage transmission line, support structures for high voltage transmission lines, radio antennae, satellite towers, or other similar structures. This does not apply to local service electric lines and poles;

(F) Development Sites in which the buildings are located within the accident zones or clear zones for commercial or military airports;

(G) Development Sites located adjacent to or within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined as stated in Local Government Code, §243.002; or

(H) Any other Site deemed unacceptable, which would include, without limitation, those containing an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

(4) Undesirable Area Features. If the Development Site is located within 1,000 feet of any of the undesirable area features in subparagraphs (A) – (H) of this paragraph, the Applicant must disclose the presence of such feature to the Department. The standard to be applied in making a determination under this paragraph is whether a confluence of undesirable area features are of a nature that would not be typical in a neighborhood that would qualify under the Opportunity Index pursuant to §11.9(c)(4) of this title (relating to Competitive HTC Selection Criteria). The presence of such feature must be disclosed at the time the Application is submitted to the Department. An Applicant may choose to disclose the presence of such feature at the time the pre-application (if applicable) is submitted to the Department if requesting pre-clearance. Disclosure of such features affords the Applicant the opportunity to obtain pre-clearance of a particular Site from the Department in accordance with §10.207 of this chapter (relating to Waiver of Rules or Pre-clearance for Applications). Non-disclosure of such information may result in the Department's withholding or denial of pre-clearance. Denial or withholding of pre-clearance deems the Site ineligible and is grounds for termination of the Application. Should Department staff withhold or deny pre-clearance, Applicants may appeal the decision to the Board pursuant to §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). Should the Board uphold staff's decision or initially withhold or deny pre-clearance, the resulting determination of Site ineligibility and termination of the Application cannot be appealed.

(A) A history of significant or recurring flooding;

(B) Significant presence of blighted structures, blighted being the visible and physical decline of a property or properties due to a combination of economic downturns, residents and businesses leaving the area, and the cost of maintaining the quality of older structures;

(C) Fire hazards that could impact the fire insurance premiums for the proposed Development;

(D) Locally known presence of gang activity, prostitution, drug trafficking, or other significant criminal activity that rises to the level of frequent police reports~~being locally known and regarded within the community as a high crime area and reported as such in the press, substantiated by a significant and regular need for a higher than normal level of police activity and/or emergency response in the area~~;

(E) A hazardous waste site or a continuing source of localized hazardous emissions, whether corrected or not;

(F) Heavy industrial use;

(G) Active railways (other than commuter trains); or

(H) Landing strips or heliports.

(b) Development Requirements and Restrictions. The purpose of this section is to identify specific restrictions on a proposed Development submitted for multifamily funding by the Department.

(1) Ineligible Developments. A Development shall be ineligible if any of the criteria in subparagraphs (A) and (B) of this paragraph are deemed to apply.

(A) General Ineligibility Criteria.

(i) Developments comprised of hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities which are usually classified as transient housing (as provided in the §42(i)(3)(B)(iii) and (iv) of the Code);

(ii) Any Development with any building(s) with four or more stories that does not include an elevator;

(iii) A Housing Tax Credit Development that provides on-site continual or frequent nursing, medical, or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;

(iv) A Development that violates §1.15 of this title (relating to Integrated Housing Rule);

(v) A Development seeking Housing Tax Credits that will not meet the general public use requirement under Treasury Regulation §1.42-9 or a documented exception thereto;

(vi) A Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, §104(d) requirements and proposing Rehabilitation or Reconstruction, if the Applicant is not proposing the one-for-one replacement of the existing unit mix. Adding additional units would not violate this provision; or

(vii) An Application proposing Rehabilitation (including Reconstruction) is not eligible for HOME Direct Loan funds from the Department.

(B) Ineligibility of Qualified Elderly Developments.

(i) Any Qualified Elderly Development of two stories or more that does not include elevator service for any Units or living space above the first floor;

(ii) Any Qualified Elderly Development with any Units having more than two bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, and/or security officer. These employee Units must be specifically designated as such; or

(iii) Any Qualified Elderly Development (including Qualified Elderly in a Rural Area) proposing more than 70 percent two-bedroom Units.

(2) Development Size Limitations. The minimum Development size is 16 Units. New Construction or Adaptive Reuse Developments in Rural Areas are limited to a maximum of 80 Units. Other Developments do not have a limitation as to the maximum number of Units.

(3) Rehabilitation Costs. Developments involving Rehabilitation must establish a scope of work that will substantially improve the interiors of all units and exterior deferred maintenance. The following minimum Rehabilitation amounts must be maintained through the issuance of IRS Forms 8609 or at the time of the close-out documentation, as applicable:

(A) For Housing Tax Credit Developments under the USDA Set-Aside the minimum Rehabilitation will involve at least $19,000 per Unit in Building Costs and Site Work;

(B) For Tax-Exempt Bond Developments, less than twenty (20) years old, the minimum Rehabilitation will involve at least $15,000 per Unit in Building Costs and Site Work. If such Developments are greater than twenty (20) years old, the minimum Rehabilitation will involve at least $25,000 per Unit in Building Costs and Site Work; or

(C) For all other Developments, the minimum Rehabilitation will involve at least $25,000 per Unit in Building Costs and Site Work.

(4) Mandatory Development Amenities. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all of the amenities in subparagraphs (A) - (M) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (C) - (M) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), (I), or (M) of this paragraph; however, access must be provided to a comparable amenity in a common area. These amenities must be at no charge to the tenants. Tenants must be provided written notice of the elections made by the Development Owner.

(A) All Units must be wired with RG-6/U COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;

(B) Laundry Connections;

(C) Blinds or window coverings for all windows;

(D) Screens on all operable windows;

(E) Disposal and Energy-Star rated dishwasher (not required for USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);

(F) Energy-Star rated refrigerator;

(G) Oven/Range;

(H) Exhaust/vent fans (vented to the outside) in bathrooms;

(I) At least one Energy-Star rated ceiling fan per Unit;

(J) Energy-Star rated lighting in all Units which may include compact fluorescent or LED light bulbs;

(K) Plumbing fixtures (toilets and faucets) must meet design standards at 30 TAC §290.252 (relating to Design Standards);

(L) All Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units in Supportive Housing Developments only); and

(M) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half (1.5) spaces per Unit for non-Qualified Elderly Developments and one (1) space per Unit for Qualified Elderly Developments. The minimum number of required spaces must be available to the tenants at no cost.

(5) Common Amenities.

(A) All Developments must include sufficient common amenities as described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points required in accordance with clauses (i) – (vi) of this subparagraph. For Developments with 41 Units or more, at least two (2) of the required threshold points must come from subparagraph (C)(xxxi) of this paragraph.

(i)Developments with 16 to 40 Units must qualify for four (4) points;

(ii) Developments with 41 to 76 Units must qualify for seven (7) points;

(iii) Developments with 77 to 99 Units must qualify for ten (10) points;

(iv) Developments with 100 to 149 Units must qualify for fourteen (14) points;

(v) Developments with 150 to 199 Units must qualify for eighteen (18) points; or

(vi) Developments with 200 or more Units must qualify for twenty-two (22) points.

(B) These points are not associated with any selection criteria points. The amenities must be for the benefit of all tenants and made available throughout normal business hours and maintained throughout the Compliance Period. Tenants must be provided written notice of the elections made by the Development Owner. If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the requirement. All amenities must meet accessibility standards and spaces for activities must be sized appropriately to serve the proposed Target Population. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site.

(C) The common amenities and respective point values are set out in clauses (i) - (xxxi) of this subparagraph. Some amenities may be restricted for Applicants proposing a specific Target Population. An Applicant can only count an amenity once; therefore combined functions (a library which is part of a community room) will only qualify for points under one category:

(i) Full perimeter fencing (2 points);

(ii) Controlled gate access (2 points);

(iii) Gazebo w/sitting area (1 point);

(iv) Accessible walking/jogging path separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);

(v) Community laundry room with at least one washer and dryer for ~~each~~ every ~~25~~ 40 Units (3 points);

(vi) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point);

(vii) Covered pavilion that includes barbecue grills and tables with at least one grill and table for every 50 Units (2 points);

(viii) Swimming pool (3 points);

(ix) Splash pad/water feature play area (1 point);

(x) Furnished fitness center. Equipped with fitness equipment options with at least one option per every 40 Units or partial increment of 40 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight

bench, sauna, stair-climber, or other similar equipment. Equipment shall be commercial use grade or quality. All Developments must have at least two equipment options but are not required to have more than five equipment options regardless of number of Units (2 points);

(xi) Equipped and functioning business center or equipped computer learning center. Must be equipped with 1 computer for every 30 Units loaded with basic programs, 1 laser printer for every 3 computers (minimum of one printer) and at least one scanner which may be integrated with printer (2 points);

(xii) Furnished Community room (2 points);

(xiii) Library with an accessible sitting area (separate from the community room) (1 point);

(xiv) Enclosed community sun porch or covered community porch/patio (1 point);

(xv) Service coordinator office in addition to leasing offices (1 point);

(xvi) Senior Activity Room stocked with supplies (Arts and Crafts, etc.) (2 points);

(xvii) Health Screening Room (1 point);

(xviii) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);

(xix) Horseshoe pit, putting green; shuffleboard court; video game console(s) with a variety of games and a dedicated location accessible to all tenants to play such games (1 point);

(xx) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);

(xxi) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot (1 point). Can only select this item if clause (xxii) of this subparagraph is not selected; or

(xxii) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (2 points). Can only select this item if clause (xxi) of this subparagraph is not selected;

(xxiii) Sport Court (Tennis, Basketball or Volleyball) (2 points);

(xxiv) Furnished and staffed Children's Activity Center that must have age appropriate furnishings and equipment. Appropriate levels of staffing must be provided during after-school hours and during school vacations (3 points);

(xxv) Community Theater Room equipped with a 52 inch or larger screen with surround sound equipment; DVD player; and theater seating (3 points);

(xxvi) Dog Park area that is fully enclosed and intended for tenant owned dogs to run off leash or a dog wash station with plumbing for hot and cold water connections and tub drainage (requires that the Development allow dogs) (1 point);

(xxvii) Common area Wi-Fi (1 point);

(xxviii) Twenty-four hour live monitored camera/security system in each building (3 points);

(xxix) Secured bicycle parking (1 point);

(xxx) Rooftop viewing deck (2 points); or

(xxxi) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Points may be selected from only one of four categories: Limited Green Amenities, Enterprise Green Communities, Leadership in Energy and Environmental Design (LEED) and National Green Building Standard (NAHB) Green. A Development may qualify for no more than four (4) points total under this clause.

(I) Limited Green Amenities (2 points). The items listed in subclauses (I) – (IV) of this clause constitute the minimum requirements for demonstrating green building of multifamily Developments. Six (6) of the nine (9) items listed under items (-a-) - (-~~i~~l-) of this subclause must be met in order to qualify for the maximum number of two (2) points under this subclause;

(-a-) at ~~least 20 percent of the water needed annually for site irrigation is from a~~ rain water harvesting/collection system and/or locally approved greywater collection system~~. This can include rainwater harvested from gutters and downspouts to a storage tank or cistern where it can be treated or filtered for potable uses; untreated rainwater may be used for non-potable uses~~;

(-b-) native trees and plants installed that reduce irrigation requirements and are appropriate to the Development Site's soil and microclimate to allow for shading in the summer and heat gain in the winter;

(-c-) install water-conserving fixtures that meet the EPA's WaterSense Label. Such fixtures must include low-flow or high efficiency toilets, bathroom lavatory faucets, showerheads and kitchen faucets. Rehabilitation Developments may install compliant faucet aerators instead of replacing the entire faucets;

(-d-) all of the HVAC condenser units are located so they are fully shaded 75 percent of the time during summer months (i.e. May through August) as certified by the design team at cost certification;

(-e-) install Energy-Star qualified hot water heaters or install those that are part of an overall Energy-Star efficient system;

(-f-) install individual or sub-metered utility meters. Rehabilitation Developments may claim sub-meter only if not already sub-metered at the time of Application;

(-g-) healthy finish materials including the use of paints, stains, adhesives and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standard;

(-h-) install daylight sensor, motion sensors or timers on all exterior lighting and install fixtures that include automatic switching on timers or photocell controls for all lighting not intended for 24-hour operation or required for security;

(-i-) recycling service provided throughout the Compliance Period~~.~~;

(-j-) for Rehabilitation developments or developments with 41 units or less, construction waste management system provided by contractor that meets LEEDs minimum standards;

(-k-) for Rehabilitation developments or developments with 41 units or less, clothes dryers vented to the outside;

(-l-) for developments with 41 units or less, at least 25% by cost FSC certified salvaged wood products.

(II) Enterprise Green Communities (4 points). The Development must incorporate all mandatory and optional items applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at http://www.greencommunitiesonline.org.

(III) LEED (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e. Certified, Silver, Gold or Platinum).

(IV) National Green Building Standard (NAHB Green) (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NAHB Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(6) Unit Requirements.

(A) Unit Sizes. Developments proposing New Construction or Reconstruction will be required to meet the minimum sizes of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with any selection criteria. Developments proposing Rehabilitation (excluding Reconstruction) or Supportive Housing Developments will not be subject to the requirements of this subparagraph.

(i) five hundred (500) square feet for an Efficiency Unit;

(ii) six hundred (600) square feet for a one Bedroom Unit;

(iii) eight hundred (800) square feet for a two Bedroom Unit;

(iv) one thousand (1,000) square feet for a three Bedroom Unit; and

(v) one thousand, two-hundred (1,200) square feet for a four Bedroom Unit.

(B) Unit and Development Features. Housing Tax Credit Applicants may select amenities for the score of an Application under this section but must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values. Tax-Exempt Bond Developments must include enough amenities to meet a minimum of seven (7) points. Applications not funded with Housing Tax Credits (*e.g.* Direct Loan Applications) must include enough amenities to meet a minimum of four (4) points. The amenity shall be for every Unit at no extra charge to the tenant. The points selected at Application and corresponding list of amenities will be required to be identified in the LURA, and the points selected at Application must be maintained throughout the Compliance Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(i) Covered entries (0.5 point);

(ii) Nine foot ceilings in living room and all bedrooms (at minimum) (0.5 point);

(iii) Microwave ovens (0.5 point);

(iv) Self-cleaning or continuous cleaning ovens (0.5 point);

(v) Refrigerator with icemaker (0.5 point);

(vi) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the property site (0.5 point);

(vii) Laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (1.5 points);

(viii) Thirty (30) year shingle or metal roofing (0.5 point);

(ix) Covered patios or covered balconies (0.5 point);

(x) Covered parking (including garages) of at least one covered space per Unit (1.5 points);

(xi) Greater than 30% percent stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious siding) on all building exteriors ~~(includes stone and brick but excludes cementitious siding)~~; the percentage calculation may exclude exterior glass entirely (2 points);

(xii) R-15 Walls / R-30 Ceilings (rating of wall/ceiling system) (1.5 points);

(xiii) 14 SEER HVAC (or greater) for New Construction, Adaptive Reuse, and Reconstruction or radiant barrier in the attic for Rehabilitation (excluding Reconstruction) (1.5 points);

(xiv) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point); and

(xv) Desk or computer nook (0.5 point).

(7) Tenant Supportive Services. The supportive services include those listed in subparagraphs (A) – (T) of this paragraph. Tax Exempt Bond Developments must select a minimum of eight (8) points; Applications not funded with Housing Tax Credits (e.g. HOME Program or other Direct Loans) must include enough amenities to meet a minimum of four (4) points. The points selected and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.619 of this chapter (relating to Monitoring for Social Services) and maintained throughout the Compliance Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. Tenants must be provided written notice of the elections made by the Development Owner. No fees may be charged to the tenants for any of the services and there must be adequate space for the intended services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

(A) joint use library center, as evidenced by a written agreement with the local school district (2 points);

(B) weekday character building program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics, for example teen dating violence, drug prevention, teambuilding, internet dangers, stranger danger, etc.) (2 points);

(C) daily transportation such as bus passes, cab vouchers, specialized van on-site (4 points);

(D) Food pantry/common household items accessible to residents at least on a monthly basis (1 point);

(E) GED preparation classes (shall include an instructor providing on-site coursework and exam) (1 point);

(F) English as a second language classes (shall include an instructor providing on-site coursework and exam) (1 point);

(G) quarterly financial planning courses (i.e. homebuyer education, credit counseling, investing advice, retirement plans, etc.). Courses must be offered through an on-site instructor; a CD-Rom or online course is not acceptable (1 point);

(H) annual health fair (1 point);

(I) quarterly health and nutritional courses (1 point);

(J) organized team sports programs or youth programs offered by the Development (1 point);

(K) scholastic tutoring (shall include weekday homework help or other focus on academics) (3 points);

(L) Notary Public Services during regular business hours (§2306.6710(b)(3)) (1 point);

(M) weekly exercise classes (2 points);

(N) twice monthly arts, crafts and other recreational activities such as Book Clubs and creative writing classes (2 points);

(O) annual income tax preparation (offered by an income tax prep service) (1 point);

(P) monthly transportation to community/social events such as lawful gaming sites, mall trips, community theatre, bowling, organized tours, etc. (1 point);

(Q) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, etc.) (1 point);

(R) specific and pre-approved caseworker services for seniors, Persons with Disabilities or Supportive Housing (1 point);

(S) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc. and quarterly preventative maintenance including light bulb replacement) for seniors and Persons with Disabilities (2 points); and

(T) any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point).

(8) Development Accessibility Requirements. All Developments must meet all specifications and accessibility requirements as identified in subparagraphs (A) – (C) of this paragraph and any other applicable state or federal rules and requirements. The accessibility requirements are further identified in the Certification of Development Owner as provided in the Application.

(A) The Development shall comply with the accessibility requirements under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), as specified under 24 C.F.R. Part 8, Subpart C, and as further defined in Chapter 1 Subchapter B of this title (relating to Accessibility Requirements).

(B) New Construction (excluding New Construction of non-residential buildings) Developments where some Units are two-stories or single family design and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e., one bedroom one bath, two bedroom one bath, two bedroom two bath, three bedroom two bath) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level.

(C) The Development Owner is and will remain in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, the Code Requirements for Housing Accessibility 2000 (or as amended from time to time) produced by the International Code Council and the Texas Accessibility Standards. (§2306.257; §2306.6705(7)).

(D) All Applications proposing Rehabilitation (including Reconstruction) will be treated as Substantial Alteration, in accordance with §1.205 of this title.

Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC, Chapter 10 Uniform Multifamily Rules, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-clearance for Applications. Sections 10.201, 10.203 – 10.205 are adopted with changes to the text as published in the September 27, 2013, issue of the *Texas Register* (38 TexReg 6374). Sections 10.202, 10.206 – 10.207 are adopted without changes and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the rule will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition. The comments and responses include both administrative clarifications and corrections to the Uniform Multifamily Rule based on the comments received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the Draft Uniform Multifamily Rule as presented to the Board in September, such changes are indicated.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 21, 2013 with comments received from (1) Texas Affiliation of Affordable Housing Providers (TAAHP), (17) Joy Horak-Brown, New Hope Housing, (21) Barry Palmer, Coats Rose, (28) Alyssa Carpenter, S. Anderson Consulting, (31) Walter Moreau, Foundation Communities, (49) Daniel Beshara, P.C.

12. §10.201(1)(C) – Subchapter C – General Requirements (28)

COMMENT SUMMARY: Commenter (28) suggested this section include a requirement that the application file be a searchable PDF which is stated in the Multifamily Application Submission Procedures Manual.

STAFF RESPONSE: While staff may request that application files be searchable and non-secured in the manual, inclusion of the provision in the rule has the potential for widespread terminations of applications and subsequent appeals based on a hyper-technical requirement that may or may not affect staff's ability to review applications.

While staff is not recommending changes based on this comment, staff does recommend the following clarifying language in §10.201(7), related the Administrative Deficiency Process:

> "(B) Administrative Deficiencies for all other Applications or sources of funds. If Administrative Deficiencies are not resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice then an Administrative Deficiency Notice Late Fee of $500 for each business day the deficiency remains unresolved will be assessed and the Application will not be presented to the Board for consideration until all outstanding fees have been paid. Applications with unresolved deficiencies after 5:00 p.m. on the tenth day following the date of the deficiency notice ~~will~~ may be terminated. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination. Department staff may not assess an

Administrative Deficiency Notice Late Fee for or terminate Applications for Tax-Exempt Bond Developments during periods when private activity bond volume cap is undersubscribed. Applicants should be prepared for ~~delays~~ additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section."

Staff also recommends the following change in order to maintain consistency with changes made based on comment received on §11.9(e)(3) of the Qualified Allocation Plan:

"§10.203. Public Notifications (§2306.6705(9)). A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications must not be older than three (3) months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments notifications and proof thereof must not be older than three (3) months prior to the date Parts 5 and 6 of the Application are submitted and for all other Applications no older than three (3) months prior to the date the Application is submitted. If evidence of these notifications was submitted with the pre-application (if applicable to the program) for the same Application and satisfied the Department's review of the pre-application threshold, then no additional notification is required at Application. However, re-notification is required by all Applicants who have submitted a change in the Application, whether from pre-application to Application or as a result of an Administrative Deficiency that reflects a total Unit ~~change~~ increase of greater than 10 percent. In addition, should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official."

13. §10.204(4) – Subchapter C – Notice, Hearing, and Resolution for Tax-Exempt Bond Developments (49)

COMMENT SUMMARY: Commenter (49) expressed concern over the local government resolution of no objection, required for 4% HTC applications, citing the discriminatory impact potential is high for this new statutory requirement and how it may deter developers from considering whether to submit applications in high opportunity areas.

STAFF RESPONSE: Staff recommends the following language:

"(C) An Applicant must submit to the Department a resolution of no objection from the applicable Governing Body. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution a municipality or county should consult its own staff and legal counsel to as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any FHAST form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for CDBG block grant funds, such as HOME or CDBG funds."

14. §10.204(6) – Subchapter C – Experience Requirement (28)

COMMENT SUMMARY: Commenter (28) indicated this section requires experience documentation to be provided in the application; however, an experience certificate issued in the past two years is no longer an option to establish experience. Commenter (28) suggested a past experience certificate be allowed to establish the required experience and be included in the application so that staff does not have to spend time re-reviewing the same documentation every year.

STAFF RESPONSE: Staff believes that a re-evaluation of the experience of person participating in the program is warranted and has the capacity to process the requests. Should staff endeavor to process these requests before applications are submitted, instructions for that procedure will be included in the manual. Otherwise, should applicants submit insufficient information to evidence the appropriate experience, they will have the opportunity to cure this during the administrative deficiency process. Staff does recommend the following language to ensure that the person meeting the experience requirement actually has the requisite experience and was not simply added to a partnership agreement to gain signature authority at a later date.

> "(B) For purposes of this requirement any individual attempting to use the experience of another individual must demonstrate they ~~have or~~ had the authority to act on their behalf that substantiates the minimum 150 unit requirement."

15. §10.204(7)(C) – Subchapter C – Owner Contributions (17), (31)

COMMENT SUMMARY: Commenter (17) indicated the addition of any owner contribution to the 50% limit of deferred developer fee for purposes of scoring places is an unfair restriction on supportive housing and nonprofit housing in general. Commenter (17) further stated that at the time of application it is impossible to have all private fundraising completed/committed; therefore, a gap must be closed through an owner contribution as a guaranty of those funds. Commenter (17) recommended the following modification to this item:

> "(C) Owner Contributions. If the Development will be financed in part by a capital contribution by the General Partner, Managing General Partner, any other partner that is not a partner providing the syndication equity, a guarantor or a Principal in an amount that exceeds 5 percent of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or repository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds remain readily available at Commitment. Regardless of the amount, all capital contributions other than syndication equity will be added to the Deferred Developer Fee for feasibility purposes under §10.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless the Development is a Supportive Housing Development, the Development is not supported with Housing Tax Credits, or the ownership structure includes a nonprofit organization with a history of fundraising to support the development of affordable housing."

Commenter (31) expressed similar concerns as commenter (17) and suggested the following revision:

"(C) Owner Contributions. If the Development will be financed in part by a capital contribution by the General Partner, Managing General Partner, any other partner that is not a partner providing the syndication equity, a guarantor or a Principal in an amount that exceeds 5 percent of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or repository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds remain readily available at Commitment. Regardless of the amount, all capital contributions other than syndication equity will be added to the Deferred Developer Fee for feasibility purposes under §10.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, with the exception of §11.9(e)(4) in the case of a Development that is Supportive Housing or the Development has a Non-Profit Guarantor who meets the qualification in §11.9(e)(4)(B).

STAFF RESPONSE: Staff recognizes the concern expressed by Commenters (17) and (31) and recommends the modified language as proposed by Commenter (17).

16. §10.204(8)(E) – Subchapter C – Off-Site Costs (28)
COMMENT SUMMARY: Commenter (28) recommended staff provide an area on the Off-Site Cost Breakdown form where the engineer can describe the necessity of the improvements and the requirements of the local jurisdiction; such change would be consistent with the requirement in this section.

STAFF RESPONSE: Staff agrees and can modify the Off-Site Cost Breakdown form accordingly.

No change to the rule is necessary to implement this recommendation.

17. §10.204(11) – Subchapter C – Zoning (1), (28)
COMMENT SUMMARY: Commenter (1) suggested the following revision regarding subparagraph (C) of this section:

"(C) Requesting a Zoning Change. The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate is in the process of seeking a zoning change and must ~~(may~~ include an acknowledgement that a zoning application was received by the political subdivision~~)~~ and that the jurisdiction received a release agreeing to hold the political subdivision and all other parties harmless in the event the appropriate zoning is denied. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice."

Similarly, commenter (28) suggested this section is not clear as to whether the applicant must have already submitted an application for a zoning change to the local jurisdiction and proposed the tax credit application require the application for zoning change be included.

STAFF RESPONSE: In response to Commenters (1) and (28) staff recommends the following modification:

"The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate is in the process of seeking a zoning change, ~~(may include an acknowledgement~~ that a zoning application was received by the political subdivision~~)~~ and that the jurisdiction received a release agreeing to hold the political subdivision and all other parties harmless in the event the appropriate zoning is denied. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice."

18. §10.205 – Subchapter C – Third Party Reports

CHANGES NEESSARY FOR CONSISTENCY WITH CHAPTER 11: In order to be consistent with the Program Calendar included in §11.2 of the QAP as well as to clarify the Market Analysis Summary required for competitive HTC applications, staff recommends several changes. Additionally, several comments concerning the Market Study Summary were made and included in the preamble to Chapter 11.

"The Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), Market Analysis and the Site Design and Development Feasibility Report must be submitted no later than the Third Party Report Delivery Date~~Resolutions Delivery Date~~ as identified in §10.4 of this chapter (relating to Program Dates). For Competitive HTC Applications, the Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), the Site Design and Development Feasibility Report and the Market Analysis Summary must be submitted no later than the ~~or~~ Full Application Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) and the Market Analysis must be submitted no later than the Market Analysis Delivery Date as identified in §11.2 of this title~~, as applicable~~."

"**(2) Market Analysis and Market Analysis Summary**. This report, required for all Developments and prepared in accordance with the requirements of §10.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If the report is older than six (6) months but not more than twelve (12) months prior to the first day of the Application Acceptance Period, the Qualified Market Analyst that prepared the report may provide a statement that reaffirms the findings of the original Market Analysis. The statement may not be dated more than six (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original Market Analysis. The Market Analysis Summary is required for Competitive HTC Applications only and must include a Primary Market Area (PMA) map file (in electronic form if available), how the PMA is defined, and basic demographic information."

19. §10.207 – Subchapter C – Waiver of Rules or Pre-Clearance for Applications (21)

COMMENT SUMMARY: Commenter (21) suggested this section be revised to remove the requirement that a waiver may only be requested at or prior to submission of the pre-application or application. Commenter (21) asserted that sometimes it is unknown whether a waiver will be required until staff has evaluated an application because it will often be an issue of interpretation of the rules. Commenter (21) recommended the following revision:

> "(a) General Waiver Process. This waiver section is applicable only to Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions), Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules), Subchapter E of this chapter (relating to Post Award and Asset Management Requirements), and Subchapter G of this chapter (relating to Fee Schedule, Appeals, and Other Provisions), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), and Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules). ~~An Applicant may request a waiver in writing at or prior to the submission of the pre-application (if applicable) or the Application. Waiver requests will not be accepted after submission of the Application.~~ The waiver request must establish how it is necessary to address circumstances beyond the Applicant's control and how, if the waiver is not granted, the Department will not fulfill some specific requirement of law…"

Commenter (21) suggested that subparagraph (d) regarding Waivers Granted by the Board be revised to reflect that the Board may waive any one or more of the rules in Chapter 11 and 12, which is already covered under subparagraph (a) of this section.

STAFF RESPONSE: Staff believes that the majority of waivers necessary for an application to be considered eligible can be contemplated by the applicant before the application is submitted since they often involve issues surrounding the development site and/or design features. Most often, when there is question about interpretation of a rule, those questions (even more often surrounding scoring items in the QAP) can be resolved through the appeals process. Staff also believes that the relatively high threshold of proving that a waiver is necessary for the Department to fulfill some purpose of law warrants those issues being addressed early in the development process. Staff does, however, believe that unexpected issues may arise in the development process subsequent to award and is recommending the following language change to accommodate such uncertainties and the possible need for a waiver after an award is approved:

> (a) General Waiver Process. This waiver section is applicable only to Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions), Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules), Subchapter E of this chapter (relating to Post Award and Asset Management Requirements), and Subchapter G of this chapter (relating to Fee Schedule, Appeals, and Other Provisions), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), and Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules). An Applicant may request a waiver in writing at or prior to the submission of the pre-application (if applicable) or the Application or subsequent to an award. Waiver requests will not be accepted ~~after~~

between submission of the Application and any award for the Application. The waiver request must establish how it is necessary to address circumstances beyond the Applicant's control and how, if the waiver is not granted, the Department will not fulfill some specific requirement of law. In this regard the policies and purposes articulated in Texas Government Code, §§2306.001, 2306.002, 2306.359, and 2306.6701 are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program. Where appropriate the Applicant is encouraged to submit with the requested waiver any plans for mitigation or alternative solutions. Any such request for waiver must be specific to the unique facts and circumstances of an actual proposed Development and must be submitted to the Department in the format required in the Application materials. Any waiver, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are adopted pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

Subchapter C

Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-clearance for Applications

§10.201. Procedural Requirements for Application Submission.

The purpose of this section is to identify the procedural requirements for Application submission. Only one Application may be submitted for a Development Site in an Application Round. While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original pre-application fee (as applicable) that was paid as long as no substantive evaluation was performed by the Department. Applicants are subject to the schedule of fees as set forth in §10.901 of this chapter (relating to Fee Schedule).

(1) General Requirements.

(A) An Applicant requesting funding from the Department must submit an Application in order to be considered for an award. An Application must be complete (including all required exhibits and supporting materials) and submitted by the required program deadline. If an Application, including the corresponding Application fee as described in §10.901 of this chapter, is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed not to have made an Application.

(B) Applying for multifamily funds from the Department is a technical process that must be followed completely. As a result of the competitive nature of some funding sources an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Applicants should ensure that all documents are legible, properly organized and tabbed and that digital media is fully readable by the Department. Department staff receiving an application may perform a cursory review to see if there are any glaring problems. This is a cursory review and may not be relied upon as confirmation that the Application was complete or in proper form.

(C) The Applicant must deliver one (1) CD-R containing a PDF copy and Excel copy of the complete Application to the Department. Each copy must be in a single file and individually bookmarked in the order as required by the Multifamily Programs Procedures Manual. Additional files required for Application submission (*e.g.*, Third Party Reports) outside of the Uniform Application may be included on the same CD-R or a separate CD-R as the Applicant sees fit.

(D) Applications must include materials addressing each and all of the items enumerated in this chapter and other chapters as applicable. If an Applicant does not believe that a specific item should be applied, the Applicant must include, in its place, a statement identifying the required item, stating that it is not being supplied, and a statement as to why the Applicant does not believe it should be required.

(2) Filing of Application for Tax-Exempt Bond Developments. Applications may be submitted to the Department as described in subparagraphs (A) and (B) of this paragraph. Multiple site

applications for Tax-Exempt Bond Developments will be considered to be one Application as identified in Texas Government Code, Chapter 1372. Applications that receive a Certificate of Reservation from the Texas Bond Review Board (TBRB) on or before November 15 of the prior program year will be required to satisfy the requirements of the prior year Qualified Allocation Plan and Uniform Multifamily Rules. Applications that receive a Certificate a Reservation from the TBRB on or after January 2 of the current program year will be required to satisfy the requirements of the current program year QAP and Uniform Multifamily Rules.

(A) Lottery Applications. For Applicants participating in the TBRB lottery for private activity bond volume cap and whereby advance notice is given regarding a Certificate of Reservation, the Applicant must submit a Notice to Submit Lottery Application form to the Department no later than the Notice to Submit Lottery Application Delivery Date described in §10.4 of this chapter (relating to Program Dates). The complete Application, accompanied by the Application Fee described §10.901 of this chapter must be submitted no later than the Applications Associated with Lottery Delivery Date described in §10.4 of this chapter.

(B) Waiting List Applications. Applications designated as Priority 1 or 2 by the TBRB and receiving advance notice of a Certificate of Reservation for private activity bond volume cap must submit Parts 1 - 4 of the Application and the Application Fee described in §10.901 of this chapter prior to the issuance of the Certificate of Reservation by the TBRB. Those Applications designated as Priority 3 must submit Parts 1 - 4 within fourteen (14) calendar days of the Certificate of Reservation date if the Applicant intends to apply for tax credits regardless of the Issuer. The remaining parts of the Application and any other substantive outstanding documentation, in Department staff's determination and regardless of TBRB Priority designation, must be submitted to the Department at least seventy-five (75) calendar days prior to the Board meeting at which the decision to issue a Determination Notice would be made, unless Department staff completes its evaluation in sufficient time for Board consideration. Applicants should be aware that changes to an Application (*e.g.* submission of new financing term sheets) subsequent to submission may delay completion of Department staff's review or underwriting of the Application and presentation to the Board for consideration of a Determination Notice. Department staff may choose to delay presentation to the Board in instances in which an Applicant is not reasonably expected to close within sixty (60) days of the issuance of a Determination Notice.

(3) Certification of Tax Exempt Bond Applications with New Docket Numbers. Applications that receive an affirmative Board Determination but for which closing on the bonds does not occur prior to the Certificate of Reservation expiration date and which subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. The Applicant in such a situation would need to receive a new docket number from the TBRB and meet the requirements described in subparagraphs (A) and (B) of this paragraph:

(A) the new docket number must be issued in the same program year as the original docket number and must not be more than four (4) months from the date the original application was withdrawn from the TBRB. The Application must remain unchanged which means that at a minimum, the following cannot have changed: Site Control, total number of Units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, Target Population, scoring criteria (TDHCA issues) or TBRB priority status including the effect on the inclusive capture rate. Note that the entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as long as the financing structure and terms remain unchanged. Notifications under §10.203 of

this chapter (relating to Public Notifications (§2306.6705(9))) are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty (30) calendar days after the date the TBRB issues the new docket number. In the event that the Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately provided to the Board for consideration; or

(B) if there are changes to the Application as referenced in subparagraph (A) of this paragraph the Applicant will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new Determination Notice to be issued. If there is public opposition but the Application remains the same pursuant to subparagraph (A) of this paragraph, a new Application will not be required to be submitted; however, the Application must be presented before the Board for consideration of a reissuance of the Determination Notice.

(4) Withdrawal of Application. An Applicant may withdraw an Application prior to or after receiving an award of funding by submitting to the Department written notice of the withdrawal. An Applicant may be subject to a fee associated with a withdrawal if warranted and allowable under §10.901 of this chapter.

(5) Evaluation Process. Priority Applications, which shall include those Applications believed likely to be competitive, will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, Application reviews by the Department shall be prioritized based upon the likelihood that an Application will be competitive for an award based upon the set-aside, self score, received date, or other ranking factors. Thus, non-competitive or lower scoring Applications may never be reviewed. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application's priority but no Application with a competitive ranking shall be skipped or otherwise overlooked. This initial assessment may be a high level assessment, not a full assessment. Applications deemed to be priority Applications may change from time to time. The Department shall underwrite Applications that received a full program review and remain competitive to determine financial feasibility and an appropriate funding amount. In making this determination, the Department will use §10.302 of this chapter (relating to Underwriting Rules and Guidelines) and §10.307 of this chapter (relating to Direct Loan Requirements). The Department may have an external party perform all or part or none of the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation. Applications will undergo a previous participation review in accordance with §1.5 of this title (relating to Previous Participation Reviews) and Development Site conditions may be evaluated through a physical site inspection by the Department or its agents.

(6) Prioritization of Applications under various Programs. This paragraph identifies how ties or other prioritization matters will be handled when dealing with de-concentration requirements, capture rate calculations, and general review priority of Applications submitted under different programs.

(A) De-concentration and Capture Rate. Priority will be established based on the earlier date associated with an Application. The dates that will be used to establish priority are as follows:

(i) For Tax-Exempt Bond Developments, the issuance date of the Certificate of Reservation issued by the TBRB; and

(ii) For all other Developments, the date the Application is received by the Department; and

(iii) Notwithstanding the foregoing, after July 31 a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any Housing Tax Credit Application from the current Application Round on the waiting list.

(B) General Review Priority. Review priority for Applications under various multifamily programs will be established based on Department staff's consideration of any statutory timeframes associated with a program or Application in relation to the volume of Applications being processed. In general, those with statutory deadlines or more restrictive deadlines will be prioritized for review and processing ahead of those that are not subject to the same constraints. In general, any non-Competitive Housing Tax Credit Applications received during the competitive tax credit round will take longer to process due to the statutory constraints on the award and allocation of competitive tax credits.

(7) Administrative Deficiency Process. The purpose of the Administrative Deficiency process is to allow staff to request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. The review may occur in several phases and deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail, or if an e-mail address is not provided in the Application, by facsimile to the Applicant and one other contact party if identified by the Applicant in the Application. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period and may also be sent in response to reviews on post-award submissions. A review of the response provided by the Applicant may reveal that issues initially identified as an Administrative Deficiency are actually determined to be beyond the scope of an Administrative Deficiency process, meaning that they in fact implicated matters of a material nature not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an Administrative Deficiency response has been received or that such response is satisfactory. Communications from staff that the response was satisfactory do not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determinations regarding the sufficiency of documentation submitted to cure an Administrative Deficiency as well as the distinction between material and non-material missing information are reserved for the Director of Multifamily Finance, Executive Director, and Board.

(A) Administrative Deficiencies for Competitive HTC Applications. Unless an extension has been timely requested and granted, if an Administrative Deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then (5 points) shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not resolved by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, and may not add any set-asides, increase the requested credit amount, revise the Unit mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency. (§2306.6708(b); §2306.6708) To the extent that the review of Administrative Deficiency documentation alters the score assigned to the Application, Applicants will be re-notified of their final adjusted score.

(B) Administrative Deficiencies for all other Applications or sources of funds. If Administrative Deficiencies are not resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice then an Administrative Deficiency Notice Late Fee of $500 for each business day the deficiency remains unresolved will be assessed and the Application will not be presented to the Board for consideration until all outstanding fees have been paid. Applications with unresolved deficiencies after 5:00 p.m. on the tenth day following the date of the deficiency notice ~~will~~ may be terminated. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination. Department staff may not assess an Administrative Deficiency Notice Late Fee for or terminate Applications for Tax-Exempt Bond Developments during periods when private activity bond volume cap is undersubscribed. Applicants should be prepared for ~~delays~~ additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section.

(8) Limited Priority Reviews. If, after the submission of the Application, an Applicant identifies an error in the Application that would generally be the subject of an Administrative Deficiency, the Applicant may request a limited priority review of the specific and limited issues in need of clarification or correction. The issue may not relate to the score of an Application. This limited priority review may only cover the specific issue and not the entire Application. If the limited priority review results in the identification of an issue that does indeed need correction or clarification, staff will request such through the Administrative Deficiency process as stated in paragraph (7) of this section if deemed appropriate. A limited priority review is intended to address:

(A) clarification of issues that Department staff would have difficulty identifying due to the omission of information that the Department may have access to only through Applicant disclosure, such as a prior removal from a tax credit transaction or participation in a Development that is not identified in the previous participation portion of the Application; or

(B) technical correction of non-material information that would cause an Application deemed non-competitive to be deemed competitive and, therefore, subject to a staff review. For example, failure to mark the Nonprofit Set-Aside in an Application that otherwise included complete submission of documentation for participation in the Nonprofit Set-Aside.

(9) Challenges to Opposition for Tax-Exempt Bond Developments. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such comment is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §10.4 of this chapter. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

§10.202. Ineligible Applicants and Applications.

The purpose of this section is to identify those situations in which an Application or Applicant may be considered ineligible for Department funding and subsequently terminated. If such ineligibility is determined by staff to exist, then prior to termination the Department may send a notice to the Applicant and provide them the opportunity to explain how they believe they or their Application is eligible. The items listed below include those requirements in §42 of the Internal Revenue Code, Texas Government Code, Chapter 2306 and other criteria considered important by the Department and does not represent an exhaustive list of ineligibility criteria that may otherwise be identified in applicable rules or a NOFA specific to the programmatic funding.

(1) Applicants. An Applicant shall be considered ineligible if any of the criteria in subparagraphs (A) – (N) of this paragraph apply to the Applicant. If any of the criteria apply to any other member of the Development Team, the Applicant will also be deemed ineligible unless a substitution of that Development Team member is specifically allowable under the Department's rules and sought by the Applicant or appropriate corrective action has been accepted and approved by the Department. An Applicant is ineligible if the Applicant:

(A) has been or is barred, suspended, or terminated from procurement in a state or Federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; (§2306.6721(c)(2))

(B) has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen (15) years preceding the Application submission;

(C) is, at the time of Application, subject to an enforcement or disciplinary action under state or federal securities law or by the NASD; subject to a federal tax lien; or the subject of a proceeding in which a Governmental Entity has issued an order to impose penalties, suspend funding, or take adverse action based on an allegation of financial misconduct or uncured violation of material laws, rules, or other legal requirements governing activities considered relevant by the Governmental Entity;

(D) has breached a contract with a public agency and failed to cure that breach;

(E) has misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Developer's participation in contracts with the agency and the amount of financial assistance awarded to the Developer by the agency;

(F) has been found by the Board to be ineligible because of material uncured noncompliance reflected in the Applicant's compliance history to the extent and where allowed by law or as assessed in accordance with §1.5 of this title (relating to Previous Participation Reviews);

(G) is delinquent in any loan, fee, or escrow payments to the Department in accordance with the terms of the loan, as amended, or is otherwise in default with any provisions of such loans;

(H) has failed to cure any past due fees owed to the Department at least ten (10) days prior to the Board meeting at which the decision for an award is to be made;

(I) is in violation of a state revolving door or other standard of conduct or conflict of interest statute, including Texas Government Code, §2306.6733, or a provision of Texas Government Code, Chapter 572, in making, advancing, or supporting the Application;

(J) has previous contracts or commitments that have been partially or fully deobligated during the twelve (12) months prior to the submission of the Application and through the date of final allocation due to a failure to meet contractual obligations and the Party is on notice that such deobligation results in ineligibility under this chapter;

(K) has provided fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation or omission in an Application or Commitment, as part of a challenge to another Application or any other information provided to the Department for any reason. The conduct described in this subparagraph is also a violation of this chapter and will subject the Applicant to the assessment of administrative penalties under Texas Government Code, Chapter 2306 and this title;

(L) was the owner or Affiliate of the owner of a Department HOME-assisted rental development for which the federal affordability requirements were prematurely terminated and the affordability requirements have not re-affirmed or HOME funds repaid;

(M) fails to disclose, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, voluntarily or involuntarily, that has terminated within the past ten (10) years or plans to or is negotiating to terminate their relationship with any other affordable housing development. Failure to disclose is grounds for termination. The disclosure must identify the person or persons and development involved, the identity of each other development and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. An Application may be terminated based upon factors in the disclosure. If, not later than thirty (30) days after the date on which the Applicant has made full disclosure, including providing information responsive to any supplemental Department staff requests, the Executive Director makes an initial determination that the person or persons should not be involved in the Application, that initial determination shall be brought to the Board for a hearing and final determination. If the Executive Director has not made and issued such an initial determination on or before the day thirty (30) days after the date on which the Applicant has made full disclosure, including providing information responsive to any supplemental Department staff requests, the person or persons made the subject of the disclosure shall be presumptively fit to proceed in their current role or roles. Such presumption in no way affects or limits the ability of the Department staff to initiate debarment proceedings under the Department's debarment rules at a future time if it finds that facts and circumstances warranting debarment exist. In the Executive Director's making an initial determination or the Board's making a final determination as to a person's fitness to be involved as a principal with respect to an Application, the factors described in clauses (i) – (v) of this subparagraph shall be considered:

(i) the amount of resources in a development and the amount of the benefit received from the development;

(ii) the legal and practical ability to address issues that may have precipitated the termination or propose termination of the relationship;

(iii) the role of the person in causing or materially contributing to any problems with the success of the development;

(iv) the person's compliance history, including compliance history on other developments; and

(v) any other facts or circumstances that have a material bearing on the question of the person's ability to be a compliant and effective participant in their proposed role as described in the Application; or

(N) is found to have participated in the dissemination of misinformation about affordable housing and the persons it serves that would likely have the effect of fomenting opposition to

an Application where such opposition is not based in substantive and legitimate concerns that do not implicate potential violations of fair housing laws. Nothing herein shall be construed or effectuated in a manner to deprive a person of their right of free speech, but it is a requirement of those who voluntarily choose to participate in this program that they refrain from participating in the above-described inappropriate behaviors. Applicants may inform Department staff about activities potentially prohibited by this provision outside of the challenge process described in §11.10 of this title (relating to Challenges of Competitive HTC Applications). An Applicant submitting documentation of a potential violation may not appeal any decision that is made with regard to another competing Applicant's application.

(2) Applications. An Application shall be ineligible if any of the criteria in subparagraphs (A) – (C) of this paragraph apply to the Application:

(A) a violation of Texas Government Code, §2306.1113 exists relating to Ex Parte Communication. An ex parte communication occurs, when an Applicant or Person representing an Applicant initiates substantive contact (other than permitted social contact) with a board member, or vice versa, in a setting other than a duly posted and convened public meeting, in any manner not specifically permitted by Texas Government Code, §2306.1113(b). Such action is prohibited. For Applicants seeking funding after initial awards have been made, such as waiting list Applicants, the ex parte communication prohibition remains in effect so long as the Application remains eligible for funding. The ex parte provision does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may, or will be present; provided that no matters related to any Application being considered by the Board may be discussed. An attempted but unsuccessful prohibited ex parte communication, such as a letter sent to one or more board members but not opened, may be cured by full disclosure in a public meeting, and the Board may reinstate the Application and establish appropriate consequences for cured actions, such as denial of the matters made the subject to the communication.

(B) the Application is submitted after the Application submission deadline (time or date); is missing multiple parts of the Application; or has a Material Deficiency; or

(C) for any Development utilizing Housing Tax Credits or Tax-Exempt Bonds:

(i) at the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been a member of the Board or employed by the Department as the Executive Director, Chief of Staff, General Counsel, a Deputy Executive Director, the Director of Multifamily Finance, the Chief of Compliance, the Director of Real Estate Analysis, a manager over the program for which an Application has been submitted, or any person exercising such responsibilities regardless of job title; or (§2306.6703(a)(1))

(ii) the Applicant proposes to replace in less than fifteen (15) years any private activity bond financing of the Development described by the Application, unless the exceptions in §2306.6703(a)(2) of the Texas Government Code are met.

§10.203. Public Notifications (§2306.6705(9)).

A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications must not be older than

three (3) months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments notifications and proof thereof must not be older than three (3) months prior to the date Parts 5 and 6 of the Application are submitted and for all other Applications no older than three (3) months prior to the date the Application is submitted. If evidence of these notifications was submitted with the pre-application (if applicable to the program) for the same Application and satisfied the Department's review of the pre-application threshold, then no additional notification is required at Application. However, re-notification is required by all Applicants who have submitted a change in the Application, whether from pre-application to Application or as a result of an Administrative Deficiency that reflects a total Unit ~~change~~ increase of greater than 10 percent. In addition, should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official.

(1) Neighborhood Organization Notifications.

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state whose boundaries include the proposed Development Site.

(B) The Applicant must list, in the certification form provided in the Application, all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as of the submission of the Application.

(2) Notification Recipients. No later than the date the Application is submitted, notification must be sent to all of the persons or entities identified in subparagraphs (A) – (H) of this paragraph. Developments located in an ETJ of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with return receipt requested or similar tracking mechanism in the format required in the Application Notification Template provided in the Application. Evidence of notification is required in the form of a certification provided in the Application. The Applicant is encouraged to retain proof of delivery in the event it is requested by the Department. Evidence of proof of delivery is demonstrated by a signed receipt for mail or courier delivery and confirmation of receipt by recipient for fax and e-mail. Officials to be notified are those officials in office at the time the Application is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

(A) Neighborhood Organizations on record with the state or county whose boundaries include the Development Site;

(B) Superintendent of the school district in which the Development Site is located;

(C) Presiding officer of the board of trustees of the school district in which the Development Site is located;

(D) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(E) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(F) Presiding officer of the Governing Body of the county in which the Development Site is located;

(G) All elected members of the Governing Body of the county in which the Development Site is located; and

(H) State Senator and State Representative of the districts whose boundaries include the Development Site.

(3) Contents of Notification.

(A) The notification must include, at a minimum, all information described in clauses (i) – (vi) of this subparagraph.

(i) the Applicant's name, address, individual contact name and phone number;

(ii) the Development name, address, city and county;

(iii) a statement indicating the program(s) to which the Applicant is applying with the Texas Department of Housing and Community Affairs;

(iv) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse or Rehabilitation;

(v) the physical type of Development being proposed (*e.g.* single family homes, duplex, apartments, townhomes, high-rise etc.); and

(vi) the total number of Units proposed and total number of low-income Units proposed.

(B) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve the elderly unless 100 percent of the Units will be for Qualified Elderly and it may not imply or indicate that it will target or prefer any subpopulation unless such targeting or preference is in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

§10.204. Required Documentation for Application Submission.

The purpose of this section is to identify the documentation that is required at the time of Application submission unless specifically indicated or otherwise required by Department rule. If any of the documentation indicated below is not resolved, clarified or corrected to the satisfaction of the Department through either original Application submission or the Administrative Deficiency process, the Application will be terminated. Unless stated otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program. The Application may include, or Department staff may request, documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development.

(1) Certification of Development Owner. This form, as provided in the Application, must be executed by the Development Owner and address the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification, that they have given it with all required authority and with actual knowledge of the matters certified. Applicants must read the certification carefully as it contains certain construction and Development specifications that each Development must meet.

(A) The Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes

or, if no local building codes are in place, then to the most recent version of the International Building Code.

(B) This Application and all materials submitted to the Department constitute records of the Department subject to Texas Government Code, Chapter 552 and the Texas Public Information Act.

(C) All representations, undertakings and commitments made by Applicant in the Application process for Development assistance expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment by the Department. If any such representations, undertakings and commitments concern or relate to the ongoing features or operation of the Development, they shall each and all shall be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, in accordance with the Land Use Restriction Agreement.

(D) The Development Owner has read and understands the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.

(E) The Development Owner agrees to implement a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Development Owner will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609 or, if the Development does not have Housing Tax Credits, release of retainage.

(F) The Applicant will attempt to ensure that at least 30 percent of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Texas Government Code, §2306.6734.

(G) The Development Owner will affirmatively market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will affirmatively market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.

(H) The Development Owner will comply with any and all notices required by the Department.

(2) Certification of Principal. This form, as provided in the Application, must be executed by all Principals and identifies the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §10.202 of this chapter (relating to Ineligible Applicants and Applications).

(3) Architect Certification Form. This form, as provided in the Application, must be executed by the Development engineer, an accredited architect or Department-approved Third Party accessibility specialist. (§2306.6722 and §2306.6730)

(4) Notice, Hearing, and Resolution for Tax-Exempt Bond Developments. In accordance with Texas Government Code §2306.67071, the following actions must take place with respect to the filing of an Application and any Department awards for a Tax-Exempt Bond Development.

(A) Prior to submission of an Application to the Department, an Applicant must provide notice of the intent to file the Application in accordance with §10.203 of this chapter (relating to Public Notifications).

(B) The Governing Body of a municipality must hold a hearing if the Development Site is located within a municipality or the extra territorial jurisdiction (ETJ) of a municipality. The Governing Body of a county must hold a hearing unless the Development Site is located within a municipality. For Development Sites located in an ETJ the county and municipality must hold hearings; however, the county and municipality may arrange for a joint hearing. The purpose of the hearing(s) must be to solicit public input concerning the Application or Development and the hearing(s) must provide the public with such an opportunity. The Applicant may be asked to substantively address the concerns of the public or local government officials.

(C) An Applicant must submit to the Department a resolution of no objection from the applicable Governing Body. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution a municipality or county should consult its own staff and legal counsel to as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any FHAST form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, HOME or CDBG funds. For an Application with a Development Site that is:

(i) Within a municipality, the Applicant must submit a resolution from the Governing Body of that municipality;

(ii) Within the extraterritorial jurisdiction (ETJ) of a municipality, the Applicant must submit both:

(I) a resolution from the Governing Body of that municipality; and

(II) a resolution from the Governing Body of the county; or

(iii) Within a county and not within a municipality or the ETJ of a municipality, a resolution from the Governing Body of the county.

(D) For purposes of meeting the requirements of subparagraph (C) of this paragraph, the resolution(s) must be submitted no later than the Resolutions Delivery Date described in §10.4 of this chapter (relating to Program Dates). An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Applicants should ensure that the resolutions all have the appropriate references and certifications or the Application may be terminated. The resolution(s) must certify that:

(i) Notice has been provided to the Governing Body in accordance with Texas Government Code, §2306.67071(a) and subparagraph (A) of this paragraph;

(ii) The Governing Body has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed Development;

(iii) The Governing Body has held a hearing at which public comment may be made on the proposed Development in accordance with Texas Government Code, §2306.67071(b) and subparagraph (B) of this paragraph; and

(iv) After due consideration of the information provided by the Applicant and public comment, the Governing Body does not object to the proposed Application.

(5) Designation as Rural or Urban. Each Application must identify whether the Development Site is located in an Urban Area or Rural Area of a Uniform State Service Region. The Department shall make available a list of Places meeting the requirements of Texas Government Code, §2306.004(28-a)(A) and (B) for designation as a Rural Area and those that are an Urban Area in the Site Demographics Characteristics Report. Some Places are municipalities. For any Development Site located in the ETJ of a municipality and not in a Place, the Application shall have the Rural Area or Urban Area designation of the municipality whose ETJ within which the Development Site is located. For any Development Site not located within the boundaries of a Place or the ETJ of a municipality, the applicable designation is that of the closest Place.

(6) Experience Requirement. Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application. Experience of multiple parties may not be aggregated to meet this requirement.

(A) A Principal of the Developer, Development Owner, or General Partner must establish that they have experience in the development and placement in service of 150 units or more. Acceptable documentation to meet this requirement shall include any of the items in clauses (i) – (ix) of this subparagraph:

(i) American Institute of Architects (AIA) Document (A102) or (A103) 2007 - Standard Form of Agreement between Owner and Contractor;

(ii) AIA Document G704--Certificate of Substantial Completion;

(iii) AIA Document G702--Application and Certificate for Payment;

(iv) Certificate of Occupancy;

(v) IRS Form 8609, (only one per development is required);

(vi) HUD Form 9822;

(vii) Development agreements;

(viii) Partnership agreements; or

(ix) other documentation satisfactory to the Department verifying that the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals have the required experience.

(B) For purposes of this requirement any individual attempting to use the experience of another individual must demonstrate they ~~have or~~ had the authority to act on their behalf that substantiates the minimum 150 unit requirement.

(i) The names on the forms and agreements in subparagraph (A)(i) - (ix) of this paragraph must tie back to the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals as listed in the Application.

(ii) Experience may not be established for a Person who at any time within the preceding three years has been involved with affordable housing in another state in which the Person or Affiliate has been the subject of issued IRS Form 8823 citing non-compliance that has not been or is not being corrected with reasonable due diligence.

(iii) If a Principal is determined by the Department to not have the required experience, an acceptable replacement for that Principal must be identified prior to the date the award is made by the Board.

(iv) Notwithstanding the foregoing, no person may be used to establish such required experience if that Person or an Affiliate of that Person would not be eligible to be an Applicant themselves.

(7) Financing Requirements.

(A) Non-Department Debt Financing. Interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department must be included in the Application. For any Development that is a part of a larger development plan on the same site, the Department may request and evaluate information related to the other components of the development plan in instances in which the financial viability of the Development is in whole or in part dependent upon the other portions of the development plan. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required pursuant to this chapter or elected in accordance with Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be imposed by the LURA and monitored for compliance. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) and (ii) of this subparagraph.

(i) Financing is in place as evidenced by:

(I) a valid and binding loan agreement; and

(II) a valid recorded deed(s) of trust lien on the Development in the name of the Development Owner as grantor covered by a lender's policy of title insurance; or

(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money must:

(I) have been signed by the lender;

(II) be addressed to the Development Owner or Affiliate;

(III) for the permanent loan, include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization;

(IV) include anticipated interest rate, including the mechanism for determining the interest rate;

(V) include any required Guarantors, if known;

(VI) include the principal amount of the loan; and

(VII) include and address any other terms and conditions applicable to the financing. The term sheet may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits, if applicable.

(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified in the Application. Acceptable documentation may include a term sheet from the lending agency which clearly describes the amount and terms of the

financing. Other Department funding requested with Housing Tax Credit Applications must be on a concurrent funding period with the Housing Tax Credit Application and no term sheet is required for such a request. Permanent loans must include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization or for non-amortizing loan structures a term of not less than thirty (30) years.

(C) Owner Contributions. If the Development will be financed in part by a capital contribution by the General Partner, Managing General Partner, any other partner that is not a partner providing the syndication equity, a guarantor or a Principal in an amount that exceeds 5 percent of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or repository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds remain readily available at Commitment. Regardless of the amount, all capital contributions other than syndication equity will be added to the Deferred Developer Fee for feasibility purposes under §10.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless the Development is a Supportive Housing Development, the Development is not supported with Housing Tax Credits, or the ownership structure includes a nonprofit organization with a history of fundraising to support the development of affordable housing.

(D) Equity Financing. (§2306.6705(2) and (3)) If applicable to the program, the Application must include a term sheet from a syndicator that, at a minimum, includes:

(i) an estimate of the amount of equity dollars expected to be raised for the Development;

(ii) the amount of Housing Tax Credits requested for allocation to the Development Owner;

(iii) pay-in schedules;

(iv) anticipated developer fees paid during construction; and

(v) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis.

(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes the complete financing plan for the Development, including but not limited to, the sources and uses of funds; construction, permanent and bridge loans, rents, operating subsidies, and replacement reserves; and the status of commitments for all funding sources. For applicants requesting HOME funds, Match in the amount of at least 5% of the HOME funds requested must be documented with a letter from the anticipated provider of Match indicating the provider's willingness and ability to make a financial commitment should the Development receive an award of HOME funds. The information provided must be consistent with all other documentation in the Application.

(8) Operating and Development Cost Documentation.

(A) 15-year Pro forma. All Applications must include a 15-year pro forma estimate of operating expenses, in the form provided by the Department. Any "other" debt service included in the pro forma must include a description.

(B) Utility Allowances. This exhibit, as provided in the Application, must be submitted along with documentation from the source of the utility allowance estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate and must comply with the requirements of §10.614 of this chapter (relating to Utility Allowances). Where the Applicant uses any method that requires

Department review, such review must have been requested prior to submission of the Application.

(C) Operating Expenses. This exhibit, as provided in the Application, must be submitted indicating the anticipated operating expenses associated with the Development. Any expenses noted as "other" in any of the categories must be identified. "Miscellaneous" or other nondescript designations are not acceptable.

(D) Rent Schedule. This exhibit, as provided in the Application, must indicate the type of Unit designation based on the Unit's rent and income restrictions. The rent and utility limits available at the time the Application is submitted should be used to complete this exhibit. Gross rents cannot exceed the maximum rent limits unless documentation of project-based rental assistance is provided. The unit mix and net rentable square footages must be consistent with the site plan and architectural drawings. For Units restricted in connection with Direct Loans, the restricted Units will generally be designated "floating" unless specifically disallowed under the program specific rules. For Applications that propose utilizing HOME funds, at least 90 percent of the Units restricted in connection with the HOME program must be available to families whose incomes do not exceed 60 percent of the Area Median Income.

(E) Development Costs. This exhibit, as provided in the Application, must include the contact information for the person providing the cost estimate and must meet the requirements of clauses (i) and (ii) of this subparagraph.

(i) Applicants must provide a detailed cost breakdown of projected Site Work costs, if any, prepared by a Third Party engineer. If Site Work costs exceed $15,000 per Unit and are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis.

(ii) If costs for Off-Site Construction are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the Off-Site Cost Breakdown prepared by a Third Party engineer must be provided. The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes. If any Off-Site Construction costs are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those costs should be included in Eligible Basis. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the Development matches the fact pattern in PLR 200916007.

(F) Rental Assistance/Subsidy. (§2306.6705(4)) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds or proof of application for such funds must be provided. Such documentation shall, at a minimum, identify the source and annual amount of the funds, the number of units receiving the funds, and the term and expiration date of the contract or other agreement.

(G) Occupied Developments. The items identified in clauses (i) – (vi) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins. If the current property owner is unwilling to provide the required

documentation then a signed statement from the Applicant attesting to that fact must be submitted. If one or more of the items described in clauses (i) – (vi) of this subparagraph is not applicable based upon the type of occupied structures on the Development Site, the Applicant must provide an explanation of such non-applicability. Applicant must submit:

(i) at least one of the items identified in subclauses (I) – (IV) of this clause:

(I) historical monthly operating statements of the Existing Residential Development for twelve (12) consecutive months ending not more than three (3) months from the first day of the Application Acceptance Period;

(II) the two (2) most recent consecutive annual operating statement summaries;

(III) the most recent consecutive six (6) months of operating statements and the most recent available annual operating summary; or

(IV) all monthly or annual operating summaries available; and

(ii) a rent roll not more than six (6) months old as of the first day the Application Acceptance Period that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and tenant names or vacancy;

(iii) a written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))

(iv) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))

(v) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or to ensure compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and

(vi) if applicable, evidence that the relocation plan has been submitted to the appropriate legal or governmental agency. (§2306.6705(6))

(9) Architectural Drawings. All Applications must include the items identified in subparagraphs (A) - (D) of this paragraph unless specifically stated otherwise and must be consistent with all applicable exhibits throughout the Application. The drawings must have a legible scale and show the dimensions of each perimeter wall and floor heights.

(A) A site plan which:

(i) includes a unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application;

(ii) identifies all residential and common buildings;

(iii) clearly delineates the flood plain boundary lines and shows all easements;

(iv) if applicable, indicates possible placement of detention/retention pond(s); and

(v) indicates the location of the parking spaces;

(B) Building floor plans must be submitted for each building type. Applications for Adaptive Reuse are only required to include building plans delineating each Unit by number and type. Building floor plans must include square footage calculations for balconies, breezeways, corridors and any other areas not included in net rentable area;

(C) Unit floor plans for each type of Unit must be included in the Application and must include the square footage for each type of Unit. Applications for Adaptive Reuse are only required to

include Unit floor plans for each distinct typical Unit type such as one-bedroom, two-bedroom and for all Unit types that vary in Net Rentable Area by 10 percent from the typical Unit; and

(D) Elevations must be submitted for each building type and include a percentage estimate of the exterior composition and proposed roof pitch. Applications for Rehabilitation and Adaptive Reuse may submit photographs if the Unit configurations are not being altered and post-renovation drawings must be submitted if Unit configurations are proposed to be altered.

(10) Site Control.

(A) Evidence that the Development Owner has Site Control must be submitted. If the evidence is not in the name of the Development Owner, then an Affiliate of the Development Owner must have Site Control that does not expressly preclude an ability to assign the Site Control to the Development Owner or another party. All of the sellers of the proposed Property for the thirty-six (36) months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development Team must be identified at the time of Application. The Department may request documentation at any time after submission of an Application of the Development Owner's ability to compel title and the Development Owner must be able to promptly provide such documentation or the Application, award, or Commitment may be terminated. The Department acknowledges and understands that the Property may have one or more encumbrances at the time of Application submission and the Department will use a reasonableness standard in determining whether such encumbrance is likely to impede an Applicant's ability to meet the program's requirements. Tax-Exempt Bond Lottery Applications must have Site Control valid through December 1 of the prior program year with the option to extend through March 1 of the current program year.

(B) In order to establish Site Control, one of the items described in clauses (i) – (iii) of this subparagraph must be provided:

(i) a recorded warranty deed with corresponding executed settlement statement (or functional equivalent for an existing lease with at least forty-five (45) years remaining); or

(ii) a contract or option for lease with a minimum term of forty-five (45) years that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date; or

(iii) a contract for sale or an option to purchase that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date;

(C) If the acquisition can be characterized as an identity of interest transaction, as described in §10.302 of this chapter, then the documentation as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.

(11) Zoning. (§2306.6705(5)) Acceptable evidence of zoning for all Developments must include one of subparagraphs (A) – (D) of this paragraph.

(A) No Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision that has no zoning.

(B) Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating the Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development.

(C) Requesting a Zoning Change. The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate is in the process of seeking a zoning change, ~~(may include an acknowledgement~~ that a zoning application was received by the political subdivision~~)~~ and that the jurisdiction received a release agreeing to hold the political subdivision and all other parties harmless in the event the appropriate zoning is denied. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice.

(D) Zoning for Rehabilitation Developments. The Application must include documentation of current zoning. If the Property is currently conforming but with an overlay that would make it a non-conforming use as presently zoned, the Application must include a letter from a local government official with appropriate jurisdiction which addresses the items in clauses (i) - (iv) of this subparagraph:

(i) a detailed narrative of the nature of non-conformance;

(ii) the applicable destruction threshold;

(iii) Owner's rights to reconstruct in the event of damage; and

(iv) penalties for noncompliance.

(12) Title Commitment/Policy. A title commitment or title policy must be submitted that includes a legal description that is consistent with the Site Control. If the title commitment or policy is dated more than six (6) months prior to the beginning of the Application Acceptance Period then a letter from the title company indicating that nothing further has transpired during the six-month period on the commitment or policy must be submitted.

(A) The title commitment must list the name of the Development Owner as the proposed insured and lists the seller or lessor as the current owner of the Development Site.

(B) The title policy must show that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner.

(13) Ownership Structure.

(A) Organizational Charts. A chart must be submitted that clearly illustrates the complete organizational structure of the final proposed Development Owner and of any Developer or Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner or the Developer or Guarantor, as applicable, whether directly or through one or more subsidiaries. Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must be included in this exhibit and trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries.

(B) Previous Participation. Evidence must be submitted that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, has provided a copy of the completed and executed Previous Participation and Background Certification Form to the Department. Nonprofit entities, public housing authorities, other government instrumentalities and publicly traded corporations are required to submit documentation for the entities involved, individual board members, and executive directors. Any Person (regardless of any Ownership interest or lack thereof) receiving more than 10 percent of the Developer fee is also required to submit this document. The form must include a list of all developments that are, or were, previously under ownership or Control of the Applicant and/or each Principal, including any Person providing the required experience. All

participation in any Department funded or monitored activity, including non-housing activities, as well as Housing Tax Credit developments or other programs administered by other states using state or federal programs must be disclosed. The Previous Participation and Background Certification Form will authorize the parties overseeing such assistance to release compliance histories to the Department.

(14) Nonprofit Ownership. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner shall submit the documentation identified in subparagraph (A) or (B) of this paragraph as applicable.

(A) Competitive HTC Applications. Applications for Competitive Housing tax Credits involving a §501(c)(3) or (4) nonprofit General Partner and which meet the Nonprofit Set-Aside requirements, must submit all of the documents described in this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609. (§2306.6706) Applications that include an affirmative election to not be treated under the set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit only need to submit the documentation in subparagraph (B) of this paragraph.

(i) An IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity;

(ii) The Nonprofit Participation exhibit as provided in the Application;

(iii) A Third Party legal opinion stating:

(I) that the nonprofit organization is not affiliated with or Controlled by a for-profit organization and the basis for that opinion;

(II) that the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside pursuant to §42(h)(5) of the Code and the basis for that opinion;

(III) that one of the exempt purposes of the nonprofit organization is to provide low-income housing;

(IV) that the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board;

(V) that the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement;

(iv) a copy of the nonprofit organization's most recent financial statement as prepared by a Certified Public Accountant; and

(v) evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:

(I) in this state, if the Development is located in a Rural Area; or

(II) not more than ninety (90) miles from the Development, if the Development is not located in a Rural Area.

(B) All Other Applications. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner must submit an IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity and the Nonprofit Participation exhibit as provided

in the Application. If the Application involves a nonprofit that is not a §501(c)(3) or (4) then they must disclose in the Application the basis of their nonprofit status.

§10.205. Required Third Party Reports.

The Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), Market Analysis and the Site Design and Development Feasibility Report must be submitted no later than the Third Party Report Delivery Date~~Resolutions Delivery Date~~ as identified in §10.4 of this chapter (relating to Program Dates). For Competitive HTC Applications, the Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), the Site Design and Development Feasibility Report and the Market Analysis Summary must be submitted no later than the ~~or~~ Full Application Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) and the Market Analysis must be submitted no later than the Market Analysis Delivery Date as identified in §11.2 of this title~~, as applicable~~. For Competitive HTC Applications, if the reports, in their entirety, are not received by the deadline the Application will be terminated. An electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name and Development location are required. All Third Party reports must be prepared in accordance with Subchapter D of this chapter (relating to Underwriting and Loan Policy). The Department may request additional information from the report provider or revisions to the report as needed. In instances of non-response by the report provider, the Department may substitute in-house analysis. The Department is not bound by any opinions expressed in the report.

(1) Environmental Site Assessment. This report, required for all Developments and prepared in accordance with the requirements of §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines), must not be dated more than twelve (12) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded then a letter or updated report must be submitted, dated not more than three (3) months prior to the first day of the Application Acceptance Period from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report.

(A) Developments funded by USDA will not be required to supply this information; however, it is the Applicant's responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(B) If the report includes a recommendation that an additional assessment be performed then a statement from the Applicant must be submitted with the Application indicating those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations then evidence indicating the mitigating recommendations have been carried out must be submitted at cost certification.

(2) Market Analysis and Market Analysis Summary. This report, required for all Developments and prepared in accordance with the requirements of §10.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If the report is older than six (6) months but not more than twelve (12) months prior to the first day of the Application Acceptance Period, the Qualified Market Analyst that prepared the report may provide a statement that reaffirms the findings of the original Market Analysis. The statement may not be dated more than six (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original Market Analysis. The Market Analysis Summary is required for Competitive HTC Applications only

and must include a Primary Market Area (PMA) map file (in electronic form if available), how the PMA is defined, and basic demographic information.

(A) The report must be prepared by a Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §10.303 of this chapter;

(B) Applications in the USDA Set-Aside proposing Rehabilitation with residential structures at or above 80 percent occupancy at the time of Application submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §10.304 of this chapter (relating to Appraisal Rules and Guidelines), will satisfy the requirement for a Market Analysis; however, the Department may request additional information as needed. (§2306.67055; §42(m)(1)(A)(iii))

(C) It is the responsibility of the Applicant to ensure that this analysis forms a sufficient basis for the Applicant to be able to use the information obtained to ensure that the Development will comply with fair housing laws.

(3) Property Condition Assessment (PCA). This report, required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Developments and prepared in accordance with the requirements of §10.306 of this chapter (relating to Property Condition Assessment Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If the report is older than six (6) months but not more than twelve (12) months prior to the first day of the Application Acceptance Period, the report provider may provide a statement that reaffirms the findings of the original PCA. The statement may not be dated more than six (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original PCA. For Developments which require a capital needs assessment from USDA, the capital needs assessment may be substituted and may be more than six (6) months old, as long as USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §10.306 of this chapter.

(4) Appraisal. This report, required for all Rehabilitation Developments and prepared in accordance with the requirements of §10.304 of this chapter is required for any Application claiming any portion of the building acquisition in Eligible Basis, and Identity of Interest transactions pursuant to Subchapter D of this chapter, must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. For Developments that require an appraisal from USDA, the appraisal may be more than six (6) months old, as long as USDA has confirmed in writing that the existing appraisal is still acceptable.

(5) Site Design and Development Feasibility Report. This report, compiled by the Applicant or Third Party Consultant, and prepared in accordance with this paragraph, which reviews site conditions and development requirements of the Development and Development Site is required for any New Construction Development.

(A) Executive Summary as a narrative overview of the Development in sufficient detail that would help a reviewer of the Application better understand the site, the site plan, off site requirements (including discussion of any seller contributions or reimbursements), any other unique development requirements and their impact on Site Work and Off Site Construction costs. The summary should contain a general statement regarding the level of due diligence that has been done relating to site development (including discussions with local government development offices). Additionally, the overview should contain a summary of zoning requirements, subdivision requirements, property identification number(s) and millage rates for all taxing jurisdictions, development ordinances, fire department requirements, site ingress and egress requirements, building codes and local design requirements impacting the

Development (do not attach ordinances). Careful focus and attention should be made regarding any atypical items materially impacting costs.

(B) Survey or current plat as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey or Category 1B - Standard Land Boundary Survey). The survey or plat may not be older than twelve (12) months from the beginning of the Application Acceptance Period.

(C) Preliminary site plan prepared by the civil engineer with a statement that the plan materially adheres to all applicable zoning, site development and building coded ordinances. The site plan must identify all structures, site amenities, parking spaces (include handicap spaces and ramps) and driveways, topography (using either existing seller topographic survey or U.S. Geological Survey (USGS)/other database topography), site drainage and detention, water and waste water utility tie-ins, general placement of, retaining walls, set-back requirements and any other typical or locally required items. Off-site improvements required for utilities, detention, access or other requirement must be shown on the site plan or ancillary drawings.

(D) Architect or civil engineer prepared statement describing the entitlement, site development permitting process and timing, building permitting process and timing and an itemization specific to the Development of total anticipated impact, site development permit, building permit and other required fees.

§10.206. Board Decisions. (§§2306.6725(c); 2306.6731; and 42(m)(1)(A)(iv))

The Board's decisions regarding awards shall be based upon the Department's and the Board's evaluation of the proposed Developments' consistency with and fulfillment of the criteria and requirements set forth in this chapter, Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) and other applicable Department rules. The Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause and the reasons for any decision that conflicts with the recommendations made by Department staff. Good cause includes the Board's decision to apply discretionary factors where authorized. The Department reserves the right to reduce the amount of funds requested in an Application, condition the award recommendation or terminate the Application based on the Applicant's inability to demonstrate compliance with program requirements.

§10.207. Waiver of Rules or Pre-clearance for Applications.

(a) General Waiver Process. This waiver section is applicable only to Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions), Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules), Subchapter E of this chapter (relating to Post Award and Asset Management Requirements), and Subchapter G of this chapter (relating to Fee Schedule, Appeals, and Other Provisions), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), and Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules). An Applicant may request a waiver in writing at or prior to the submission of the pre-application (if applicable) or the Application or subsequent to an award. Waiver requests will not be accepted ~~after~~ between submission of the Application and any award for the Application. The waiver request must establish how it is necessary to address circumstances beyond the Applicant's control and how, if the waiver is not granted, the Department will not fulfill some specific

requirement of law. In this regard the policies and purposes articulated in Texas Government Code, §§2306.001, 2306.002, 2306.359, and 2306.6701 are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program. Where appropriate the Applicant is encouraged to submit with the requested waiver any plans for mitigation or alternative solutions. Any such request for waiver must be specific to the unique facts and circumstances of an actual proposed Development and must be submitted to the Department in the format required in the Application materials. Any waiver, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved.

(b) General Pre-clearance Process. Pre-clearance may be requested for issues related to Undesirable Area Features pursuant to §10.101(a)(4) of this chapter (relating to Site and Development Requirements and Restrictions). An Applicant may request pre-clearance in writing at or prior to the submission of the pre-application (if applicable) or the Application. Pre-clearance requests will not be accepted after submission of the Application. Requests for pre-clearance should include sufficient documentation for the Board to make a fully informed determination and must be submitted to the Department in the format required in the Application materials. Where appropriate the Applicant is encouraged to submit with the requested pre-clearance any plans for mitigation or alternative solutions. Any pre-clearance, if granted, shall apply solely to the Application and should not be construed to apply in other situations that may appear similar.

(c) Waivers and/or Pre-Clearance Granted by the Executive Director. The Executive Director may waive requirements or grant pre-clearance as provided in this rule. Even if this rule grants the Executive Director authority to waive or pre-clear a given item, the Executive Director may present the matter to the Board for consideration and action. Neither the Executive Director nor the Board shall grant any waiver or pre-clear any item to the extent such requirement is mandated by statute. Denial of a waiver and/or pre-clearance by the Executive Director may be appealed to the Board in accordance with §10.902 of this chapter (relating to Appeals Process. (§2306.0321; §2306.6715)). Applicants should expect that waivers granted by the Executive Director will generally be very limited. The Executive Director's decision to defer to the Board will not automatically be deemed an adverse staff position with regard to the waiver request as public vetting of such requests is generally appropriate and preferred. However, this does not preclude a staff recommendation to approve or deny any specific request for a waiver.

(d) Waivers Granted by the Board. The Board, in its discretion, may waive any one or more of the rules in Subchapters B, C, E, and G of this chapter except no waiver shall be granted to provide forward commitments or if the requested waiver is prohibited by statute (i.e., statutory requirements may not be waived). The Board, in its discretion, may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the multifamily rules.

Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC, Chapter 10 Uniform Multifamily Rules, Subchapter G, §§10.901 – 10.904 concerning Fee Schedule, Appeals and Other Provisions. Sections 10.901 - 10.904 are adopted without changes to text as published in the September 27, 2013, issue of the *Texas Register* (38 TexReg 6432) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the rule will result in a more consistent approach to governing multifamily activity and to the awarding of funding or assistance through the Department and to minimize repetition.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

Public comments were accepted through October 21, 2013. No public comment was received regarding Subchapter G.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are adopted pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan, and Texas Government Code, §2306.144, §2306.147, and §2306.6716.

Subchapter G

Fee Schedule, Appeals and Other Provisions

§10.901. Fee Schedule.

Any fees, as stated in this section, not paid will cause an Applicant to be ineligible to apply for Department funding, ineligible to receive additional Department funding associated with a Commitment, Determination Notice or Contract and ineligible to submit extension requests, ownership transfers and Application amendments until such time the Department receives payment. Payments of the fees shall be in the form of a check and to the extent there are insufficient funds are available, it may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. The Executive Director may grant a waiver for specific extenuating and extraordinary circumstances provided the Applicant submits a written request for a waiver no later than ten (10) business days prior to the deadline associated with the particular fee. For those requests that do not have a specified deadline, the written request for a fee waiver and description of extenuating and extraordinary circumstances must be included in the original request cover letter.

(1) Competitive Housing Tax Credit Pre-Application Fee. A pre-application fee, in the amount of $10 per Unit, based on the total number of Units reflected in the pre-application, must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Pre-applications in which a Community Housing Development Corporation (CHDO) or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, will receive a discount of 10 percent off the calculated pre-application fee. (§2306.6716(d))

(2) Refunds of Pre-application Fees. (§2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of the pre-application fee for a pre-application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Intake and data entry will constitute 50 percent of the review, threshold review prior to a deficiency issued will constitute 30 percent of the review and deficiencies submitted and reviewed constitute 20 percent of the review.

(3) Application Fee. Each Application must be accompanied by an Application fee.

(A) Housing Tax Credit Applications. The fee will be $30 per Unit based on the total number of Units. For Applicants having submitted a competitive housing tax credit pre-application which met the pre-application threshold requirements and for which a pre-application fee was paid, the Application fee will be $20 per Unit based on the number of Units in the full Application. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, will receive a discount of 10 percent off the calculated Application fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be $1,000 per Application. Pursuant to Texas Government Code, §2306.147(b) the Department is required to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. In lieu of the Application fee, these organizations must include proof of their exempt status and a description of their supportive services as part of the Application. An Application fee is not required for Applications that have an existing Housing Tax Credit Allocation or HOME Contract with the Department and

construction on the development has not begun or if requesting an increase in the existing HOME award. The Application fee is not a reimbursable cost under the HOME Program.

(4) Refunds of Application Fees. Upon written request from the Applicant, the Department shall refund the balance of the Application fee for an Application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Intake and data entry will constitute 20 percent, the site visit will constitute 20 percent, eligibility and selection review will constitute 20 percent, threshold review will constitute 20 percent, and underwriting review will constitute 20 percent.

(5) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation in whole or in part of a Development by an independent external underwriter in accordance with §10.201(5) of this chapter (relating to Procedural Requirements for Application Submission) if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the Commitment or Determination Notice Fee, as applicable, established in paragraphs (8) and (9) of this section, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.

(6) Administrative Deficiency Notice Late Fee. (Not applicable for Competitive Housing Tax Credit Applications). Applications that fail to resolve Administrative Deficiencies pursuant to §10.201(7) of this chapter shall incur a late fee in the amount of $500 for each business day the deficiency remains unresolved.

(7) Challenge Processing Fee. For Competitive Housing Tax Credits (HTC) Applications, a fee equal to $500 for challenges submitted per Application.

(8) Housing Tax Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and returns the credits by November 1 of the current Application Round then a refund of 50 percent of the Commitment Fee may be issued upon request.

(9) Tax Exempt Bond Development Determination Notice Fee. No later than the expiration date in the Determination Notice, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and is not able close on the bonds within ninety (90) days of the issuance date of the Determination Notice then a refund of 50 percent of the Determination Notice Fee may be issued upon request.

(10) Building Inspection Fee. (For Housing Tax Credit and Tax-Exempt Bond Developments only.) No later than the expiration date on the Commitment or Determination Notice, a fee of $750 must be submitted. Building inspection fees in excess of $750 may be charged to the Development Owner not to exceed an additional $250 per Development.

(11) Tax-Exempt Bond Credit Increase Request Fee. Requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to 4 percent of the amount of the credit increase for one (1) year.

(12) Extension Fees. All extension requests for deadlines relating to the Carryover, 10 Percent Test (submission and expenditure), or Cost Certification requirements submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee. Any extension request submitted fewer than thirty (30) days in advance or after the applicable deadline must be accompanied by an extension fee of $2,500. An extension fee will not be required for extensions requested on Developments that involved Rehabilitation when the Department is the primary lender, or for Developments that involve U.S. Department of

Agriculture (USDA) as a lender if USDA or the Department is the cause for the Applicant not meeting the deadline.

(13) Amendment Fees. An amendment request for a non-material change that has not been implemented will not be required to pay an amendment fee. Material amendment requests (whether implemented or not), or non-material amendment requests that have already been implemented will be required to submit an amendment fee of $2,500. Amendment fees are not required for the Direct Loan programs.

(14) Right of First Refusal Fee. Requests to offer a property for sale under a Right of First Refusal provision of the Land Use Restriction Agreement (LURA) must be accompanied by a non-refundable fee of $2,500.

(15) Qualified Contract Pre-Request Fee. A Development Owner must file a preliminary Qualified Contract Request to confirm eligibility to submit a Qualified Contract request. The Pre-Request must be accompanied by a non-refundable processing fee of $250.

(16) Qualified Contract Fee. Upon eligibility approval of the Qualified Contract Pre-Request, the Development Owner may file a Qualified Contract Request. Such request must be accompanied by a non-refundable processing fee in an amount equal to the lesser of $3,000 or one-fourth (1/4) of 1 percent of the Qualified Contract Price determined by the Certified Public Accountant.

(17) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of $500.

(18) Unused Credit or Penalty Fee. Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of IRS Form 8609. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10 percent of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of IRS Form 8609 if the tax credits are not returned, and 8609's issued, within one hundred eighty (180) days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with Internal Revenue Code, §42. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director will recommend to the Board the imposition of a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate for any Application in an Application Round occurring concurrent to the return of credits or if no Application Round is pending, the Application Round immediately following the return of credits. If any such point penalty is recommended to be assessed and presented for final determination by the Board, it must include notice from the Department to the affected party not less than fourteen (14) calendar days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point penalties. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20 percent.

(19) Compliance Monitoring Fee. (HTC and HOME Developments Only.) Upon receipt of the cost certification for HTC or HTC and HOME Developments, or upon the completion of the 18-month development period and the beginning of the repayment period for HOME only Developments, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal $40 per tax credit Unit and $34 per HOME designated Unit, with two fees due for units that are dually designated. For HTC Developments, the fee will be collected, retroactively if applicable, beginning with the first year of the credit period. For HOME only Developments, the

fee will be collected beginning with the first year of the repayment period. The invoice must be paid prior to the issuance of IRS Form 8609 for HTC properties. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. Compliance fees may be adjusted from time to time by the Department.

(20) Public Information Request Fee. Public information requests are processed by the Department in accordance with the provisions of the Texas Government Code, Chapter 552. The Department uses the guidelines promulgated by the Office of the Attorney General to determine the cost of copying and other costs of production.

(21) Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b)) All fees charged by the Department in the administration of the tax credit and HOME programs will be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

§10.902. Appeals Process. (§2306.0321; §2306.6715)

(a) An Applicant or Development Owner may appeal decisions made by the Department pursuant to the process identified in this section. Matters that can be appealed include:

(1) A determination regarding the Application's satisfaction of applicable requirements, Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules), pre-application threshold criteria, underwriting criteria;

(2) The scoring of the Application under the applicable selection criteria;

(3) A recommendation as to the amount of Department funding to be allocated to the Application;

(4) Misplacement of an Application or parts of an Application, mathematical errors in scoring an Application, or procedural errors resulting in unequal consideration of the Applicant's proposal;

(5) Denial of a change to a Commitment or Determination Notice;

(6) Denial of a change to a loan agreement;

(7) Denial of a change to a LURA;

(8) Any Department decision that results in the erroneous termination of an Application; and

(9) Any other matter for which an appeal is permitted under this chapter.

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or Development Owner.

(c) An Applicant or Development Owner must file its appeal in writing with the Department not later than seven (7) calendar days after the date the Department publishes the results of any stage of the Application evaluation or otherwise notifies the Applicant or Development Owner of a decision subject to appeal. The appeal must be signed by the person designated to act on behalf of the Applicant or an attorney that represents the Applicant. For Application related appeals, the

Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application as supplemented in accordance with the limitations and requirements of this chapter.

(d) The Executive Director may respond in writing not later than fourteen (14) calendar days after the date of actual receipt of the appeal by the Department. If the Applicant is not satisfied with the Executive Director's response to the appeal or the Executive Director does not respond, the Applicant may appeal directly in writing to the Board. While additional information can be provided in accordance with any rules related to public comment before the Board, the Department expects that a full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal be disclosed in the appeal documentation filed with the Executive Director. Full disclosure allows the Executive Director to make a fully informed decision based on a complete analysis of the circumstances and verification of any information that may warrant a granting of the appeal in the Applicant's or Development Owner's favor.

(e) An appeal filed with the Board must be received by Department staff not more than seven (7) days after a response from the Executive Director and at least seven (7) days prior to the applicable Board meeting or if the period for an Executive Director response has elapsed the appeal can be heard by the Board if filed at least three (3) days prior to the applicable meeting.

(f) Board review of an Application related appeal will be based on the original Application.

(g) The decision of the Board regarding an appeal is the final decision of the Department.

(h) The Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of an Application related appeal. (§2306.6717(a)(5))

§10.903. Adherence to Obligations. (§2306.6720) Any Applicant, Development Owner, or other Person that fails to adhere to its obligations with regard to the programs of the Department, whether contractual or otherwise, made false or misleading representations to the Department with regard to an Application, request for funding, or compliance requirements, or otherwise violated a provision of Texas Government Code, Chapter 2306 or a rule adopted under that chapter, may be subject to:

(1) Assessment of administrative penalties in accordance with the Department's rules regarding the assessment of such penalties. Each day the violation continues or occurs is a separate violation for purposes of imposing a penalty; and/or

(2) in the case of the competitive Low Income Housing Tax Credit Program, a point reduction of up to ten (10) points for any Application involving that Applicant over the next two Application Rounds succeeding the date on which the Department first gives written notice of any such failure to adhere to obligations or false or misleading representations. Point reductions under this section may be appealed to the Board.

§10.904. Alternative Dispute Resolution (ADR) Policy. In accordance with Texas Government Code, §2306.082, it is the Department's policy to encourage the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Texas Government Code, Chapter 2010, to assist in resolving disputes under the Department's jurisdiction. As described in Civil Practices and Remedies Code, Chapter 154, ADR procedures include mediation. Except as prohibited by law and the Department's Ex Parte Communications policy, the Department encourages informal communications between Department staff and Applicants, and other

interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title. Any Applicant may request an informal conference with staff to attempt to resolve any appealable matter, and the Executive Director may toll the running of periods for appeal to accommodate such meetings. In the event a successful resolution cannot be reached, the statements made in the meeting process may not be used by the Department as admissions.

Index of all Commenters on Subchapters A, B, C and G

(1) Texas Affiliation of Affordable Housing Providers (TAAHP)
(17) Joy Horak-Brown, New Hope Housing
(19) Bobby Bowling, Tropicana Building Corporation
(21) Barry Palmer, Coats Rose
(22) Sarah Anderson, S. Anderson Consulting
(28) Alyssa Carpenter, S. Anderson Consulting
(29) Neal Rackleff, City of Houston Housing and Community Development Department
(31) Walter Moreau, Foundation Communities
(34) Donna Rickenbacker, Marque Real Estate Consultants
(37) Toni Jackson, Coats Rose
(38) Belinda Carlton, Texas Council for Developmental Disabilities
(49) Daniel Beshara, P.C.

Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC, Chapter 10, Uniform Multifamily Rules Subchapter A §§10.1 - 10.4, concerning General Information and Definitions without changes to the proposed text as published in the September 27, 2013, of the *Texas Register* (38 TexReg 6358) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 27, 2013, and October 21, 2013. Comments regarding the repealed were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 7, 2013.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is adopted pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

§10.1. Purpose.
§10.2. General.
§10.3. Definitions.
§10.4. Program Dates.

Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules Subchapter B §10.101, concerning Site and Development Requirements and Restrictions without changes to the proposed text as published in the September 27, 2013, issue of the *Texas Register* (38 TexReg 6367) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 27, 2013 and October 21, 2013. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 7, 2013.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is adopted pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

§*10.101. Site and Development Requirements and Restrictions.*

Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules Subchapter C §§10.201 - 10.207, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules without changes to the proposed text as published in the September 27, 2013, issue of the *Texas Register* (38 TexReg 6373) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 27, 2013 and October 21, 2013. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 7, 2013.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is adopted pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

§10.201. Procedural Requirements for Application Submission.
§10.202. Ineligible Applicants and Applications.
§10.203. Public Notifications.
§10.204. Required Documentation for Application Submission.
§10.205. Required Third Party Reports.
§10.206. Board Decisions.
§10.207. Waiver of Rules for Applications.

Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter G §§10.901 - 10.904, concerning Fee Schedule, Appeals and Other Provisions, without changes to the proposed text as published in the September 27, 2013, issue of the *Texas Register* (38 TexReg 6431) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the purpose of the repeal is to replace the sections with a new rule that encompasses all funding made available to multifamily programs. Accordingly, the repeal provides for consistency and minimizes repetition among the programs.

The Department accepted public comments between September 27, 2013 and October 21, 2013. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 7, 2013.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is adopted pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

§10.901. Fee Schedule.
§10.902. Appeals Process.
§10.903. Adherence to Obligations.
§10.904. Alternative Dispute Resolution (ADR) Policy.

Public Comment

(1) Texas Affiliation of Affordable Housing Providers (“TAAHP”)

TAAHP
TEXAS AFFILIATION OF AFFORDABLE HOUSING PROVIDERS | 221 E. 9th street, ste. 408 | Austin, TX 78701
tel 512.476.9901 fax 512.476.9903 taahp.org texashousingconference.org

October 10, 2013

Board of Directors
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Dear Chairman Oxer & Members of the Board:

On behalf of the Texas Affiliation of Affordable Housing Providers (TAAHP), we would like to submit several recommendations for modifications to the 2014 Multifamily Program Rules and Qualified Allocation Plan (QAP) that are being suggested by our membership. TAAHP has more than 300 members including affordable housing professionals active in the development, ownership and management of affordable housing in the State of Texas.

It is TAAHP's policy to submit only recommendations that represent consensus opinions from the membership. Please note that there are several important provisions of the QAP that are not addressed in these consensus comments because the diverse TAAHP Membership has different views on the best ways to address those issues. TAAHP Members will be raising those issues for which there is no consensus individually. TAAHP's recommendations were developed at a meeting with the TAAHP Membership on September 26, 2013 in response to the QAP and Multifamily Rules approved by the TDHCA Governing Board on September 12, 2013.

Chapter 11. State of Texas 2013 Qualified Allocation Plan Housing Tax Credit Program:

RECOMMENDATION #1
§11.2 Program Calendar for Competitive Housing Tax Credits.
TAAHP recommends that:

- the Market Analysis Summary requirement be deleted and that the final Market Analysis Delivery Date remain on 04/01/2014; and
- the Site Design and Development Feasibility Report and ALL of the resolutions including those necessary under §11.3 of this chapter related to Housing De-Concentration Factors be due on 04/01/2014.

We understand that one of the primary reasons for requesting the market summary or market study earlier than April 1 is that State Representatives may want to see market information before submitting their letters. The developers in our membership report that they do not usually get requests for market information from State Representatives. Rather than impose additional and earlier requirements for market studies for all applications, we recommend leaving it to the State Representatives to request the information that they want with respect to each application from the developer for that particular application.

In addition, all resolutions should be due April 1 because the February 28 deadline will most likely result in only having the opportunity to try to get on the agenda for one council and/or commissioners' court meeting. This means that an applicant may be in a position where it fails to get a resolution if (i) the council needs to table the motion to give council an opportunity to get more information or (ii) there is not a quorum for the meeting.

RECOMMENDATION #2
§11.3(e) Developments in Certain Sub-Regions and Counties.
TAAHP recommends that the prohibition of Qualified Elderly Developments in the urban counties listed, as well as Regions five (5); six (6); and (8) be deleted. If the prohibition continues then TAAHP's recommendation is to limit that not more than 65% of the tax credits available in the sub region be awarded to senior developments and elderly developments should not be ineligible in sub-regions where there are only enough tax credits for one allocation.

RECOMMENDATION #3
§11.4(a)(4) Tax Credit Request and Award Limits.
TAAHP recommends the following revision:

> *(4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for ~~Qualified~~ non-profit developments defined under federal, state, or local codes) to be paid or $150,000, whichever is greater.*

RECOMMENDATION #4
§11.5(3)(b)At Risk Set-Aside.
TAAHP supports public housing developments converting their assistance to long term project based Section 8 rental assistance contracts under HUD's Rental Assistance Demonstration (RAD) Program and those developments should be included to qualify to apply in the at-risk set aside. Pursuant to the legislation, the at-risk set aside is intended for public housing units disposed of or demolished by a housing authority and retaining operating subsidy for the development. The RAD program uses public housing funding, maintains the same tenants and requires PHA ownership. It is HUD's intention that the RAD program "is a central part of the Department's rental housing preservation strategy". Therefore, developments under the RAD program should qualify for the HTC At-Risk Set Aside.

RECOMMENDATION #5
§11.9(c)(4)(B) Opportunity Index.
TAAHP recommends the following revision:

> *(i)The Development Site is located within the attendance zone and within one linear mile of an elementary, middle or high ~~-~~school with a MET Standard rating (3 points);*
>
> *(ii) The Development Site is within one linear mile of a school-age before or after-school program that meets the minimum standards established by the appropriate federal, state or local agencies for such programs ~~Department of Family and Protective Services~~ for such programs (2 points);*

AND

> *(iv) The Development Site is located within one linear mile of a child-care ~~center~~ provider that is licensed by the Department of Family and Protective Services and provides day care for children ages 6 months through 5 years, at a minimum (2 points);*

RECOMMENDATION #6
§11.9(c)(5) Educational Excellence.
TAAHP recommends revising clause (B) and adding the following clause (C):

> *(B) The Development Site is within the attendance zone of an elementary school and either a middle or high school with the appropriate rating (2~~1~~ points);*
>
> *(C) The Development Site is within the attendance zone of an elementary school with the appropriate rating (1 point).~~;~~*

RECOMMENDATION #7
§11.9(c)(6) Underserved Area.
TAAHP recommends the following revision:

(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive two (2) points for general population or Supportive Housing Developments or one (1) point for Qualified Elderly Developments, if the Development Site is located in one of the areas described in subparagraphs (A) – (D) of this paragraph.

RECOMMENDATION #8
§11.9(c)(6)(C) Underserved Area.
TAAHP recommends the following revision:

(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population;

RECOMMENDATION #9
§11.9(c)(7) Tenant Populations with Special Housing Needs.

The Section 811 Project Rental Assistance Demonstration Program is just a pilot program and, as provided in §11.9(c)(7)(B), HUD has not yet released Section 811 Program Guidelines. For these reasons participation in the Section 811 Program should not be required but should be optional. All applicants should have the option to meet the requirements under subparagraphs (A) or (C) of this paragraph. In addition, if an applicant elects to participate in the Section 811 Program, the applicant should have the option to opt out of the Section 811 Program and meet the requirements under subparagraph of (C) of this paragraph after the applicant has been given the opportunity to review the HUD Section 811 Program Guidelines and any agreements between the Department and HUD related to the Section 811 Program.

RECOMMENDATION #10
§11.9(c)(8) Location Outside of "Food Deserts".
TAAHP recommends deleting this scoring item because of the lack of quantifiable comprehensive valid data.

RECOMMENDATION #11
§11.9(d)(2)(B)
TAAHP recommends the following revisions:

(B) Applications will qualify for points based on the amount of funds at the levels described in clauses (i) – (iv) of this subparagraph. For the purpose of this calculation, the Department will use the population of the Place from which the Development Site's Rural or Urban Area designation is derived.

(i) eleven (11) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.075~~15~~ in funding per Low Income Unit or ~~$15,07~~7,500 in funding per Low Income Unit;

(ii) ten (10) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.05~~10~~ in funding per Low Income Unit or ~~$10~~5,000 in funding per Low Income Unit;

(iii) nine (9) points for a commitment by a Local Political Subdivision of the lesser of population of the Place multiplied by a factor of 0.05~~2~~5 in funding per Low Income Unit or ~~$5,02~~2,500 in fundingper Low Income Unit;

(iv) eight (8) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.0125 in funding per Low Income Unit or ~~$1,050~~ $1,0500 in funding per Low Income Unit; or

(v) seven (7) points for a commitment by a Local Political Subdivision of the lesser of the population of the Place multiplied by a factor of 0.005~~1~~ in funding per Low Income Unit or ~~$50~~$50250 in funding per Low Income Unit.

(vi) seven (7) points for a resolution of support from the Governing Body of the city (if located in a city) or county (if not located within a city) in which the Development is located stating that the city or county would provide development funding but has no development funding available due to budgetary or fiscal constraints and despite reasonable efforts, has been unable to identify and secure any such funding. The resolution must be submitted with the Application and dated prior to February 28, 2014. A general letter of support does not qualify.

We recommend the reduction in funding levels referenced above because we are working in an environment in which the funds available to local political subdivisions for housing have been reduced significantly.

RECOMMENDATION #12
§11.9(d)(4)(C) Point Value for Quantifiable Community Participation.

TAAHP recommends the following adjustment in points that an application may qualify for under subparagraph (C)(iv) of this paragraph, which reduces the total points received from five (5) points to four (4) points, but allows those applications that qualify for the points under this subparagraph to earn additional points under §11.9(d)(6)(A) – Input from Community Organizations:

(iv) four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection:

RECOMMENDATION #13
§11.9(d)(6)(A) Input from Community Organizations.

TAAHP recommends the following adjustments in points that an application may qualify for under subparagraphs (A), (B) or (C) of this paragraph, and to allow applicants to receive the points if (i) if they received points under §11.9(d)(4)(C) for the equivalent of neutrality or lack of objection from a Neighborhood Organization, or (ii) if the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization:

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located.....

(B) An Application may receive four (4) points for a letter of support from a property owners association...

(C) An Application may receive four (4) points for a letter of support from a Special Management District...

TAAHP believe that the point adjustment in subparagraph (A) will put smaller Urban and Rural areas where there are less community and civic organizations on a level playing field with larger metropolitan market areas. The adjustment in points under subparagraphs (B) and (C) is recognition that property owners associations and Special Management Districts serve very similar functions as a Neighborhood Organization and therefore should be given equal or similar weight in points.

RECOMMENDATION #14
§11.9(d)(7)(C)(I)(II) and (III) For Developments Located in a Rural Area.
TAAHP recommends the following revisions:

(I) New paved roadway (may include paving an existing non-paved road but excludes overlays or other limited improvements) or expansion of existing paved roadways by at least one lane (excluding very limited improvements such as new turn lanes or restriping), in which a portion of the new road or expansion is within one ~~quarter~~ (1/4) mile of the Development Site;

(II) New water service line (or new extension) of at least 500 feet, in which a portion of the new line is within one ~~quarter~~ (1/4) mile of the Development Site;

(III) New wastewater service line (or new extension) of at least 500 feet, in which a portion of the new line is within one ~~quarter~~ (1/4) mile of the Development Site;

RECOMMENDATION #15
§11.9(d)(8) Transit Oriented Development Developments.
TAAHP recommends adding the following section and point category:

(8) Transit Oriented Development. An Application may qualify to receive one (1) point if the proposed site of the Development is within 1/2 mile of light rail transit, commuter rail, rapid bus transit or other high capacity transit. The distance will be measured from the development to the nearest transit station.

RECOMMENDATION #16
§11.9(e)(2)(B-F) Cost of Development per Square Foot.
Due to the significant and continuing increase in construction costs in Urban and Rural areas, TAAHP recommends the following revisions:

(A) A high cost development is a Development that meets one of the following conditions:

(iv) The Development Site qualifies for five (5) or seven (7) points under subsection (c)(4) of this section, related to Opportunity Index ~~and is located in an Urban Area~~.

(B) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

(i) The Building Cost per square foot is less than $~~6~~70 per square foot;
(ii) The Building Cost per square foot is less than $~~6~~75 per square foot, and the Development is a meets the definition of a high cost development;
(iii) The Hard Cost per square foot is less than $~~8~~90 per square foot; or
(iv) The Hard Cost per square foot is less than $~~9~~100 per square foot, and the Development meets the definition of high cost development.

(C) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:

(i) The Building Cost per square foot is less than $~~6~~75 per square foot;
(ii) The Building Cost per square foot is less than $~~7~~80 per square foot, and the Development meets the definition of a high cost development;
(iii) The Hard Cost per square foot is less than $~~8~~95 per square foot; or
(iv) The Hard Cost per square foot is less than $~~9~~105 per square foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for nine (9) points if one of the following conditions is met:

(i) The Building Cost is less than $890 per square foot; or

(ii) The Hard Cost is less than $1100 per square foot.

(E) Applications proposing Rehabilitation (excluding Reconstruction) will be eligible for points if oneof the following conditions is met:

(i) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $1010 per square foot;

(ii) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $1430 per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than $1430 per square foot.

AND delete (F) because it appears that this additional one (1) point rewards luck rather than merit.

~~*(F) Applications proposing New Construction or Reconstruction will be eligible for one (1) point, in addition to those under subparagraph (B) or (C) of this paragraph, if the Hard Cost per square foot is within 5 percent of the mean cost per square foot. The mean will be calculated separately for high cost developments.*~~

RECOMMENDATION #17
§11.9(e)(3)(A) Pre-application Participation.
TAAHP recommends the following revisions:

(A) The total number of Units does not ~~change~~ increase by more than ten (10) percent from pre-application to Application;

RECOMMENDATION #18
§11.9(e)(4)(A)(ii-iv) Leveraging of Private, State, and Federal Resources.
TAAHP recommends the following revisions:

(ii) If the Housing Tax Credit funding request is less than ~~7~~8 percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than ~~8~~9 percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than ~~9~~10 percent of the Total Housing Development Cost (1 point).

Chapter 10. Subchapter B – Site and Development Requirements and Restrictions:

RECOMMENDATION #19
§10.101(b)(5)(C)(xxxi)(I) Limited Green Amenities.
Some of the items listed in this section will be difficult to verify at cost certification and during compliance without expensive third party reports by environmental experts. For example, 20% of the water required for irrigation will vary from year to year depending on rainfall, temperature and other factors. Using rainwater for potable uses is very problematic from a health and safety standpoint and probably prohibited by most municipalities. Native trees and plants in Texarkana are different than native trees in El Paso and this option is very vague in scope of landscaping. Are two trees sufficient? What if the site is fully forested before development? How will urban infill or rehabilitation properties meet these requirements?

TAAHP suggests that the variable requirements hard to measure should be removed and replaced with simple requirements that can be verified.

Additionally, Developments that consist of 41 units or more must include at least 2 points "worth" of Green Building Features and to obtain these mandatory 2 points, 6 of 9 items under Limited Green Amenities must be chosen (or an applicant must commit to Enterprise Green Communities, LEED, or National Green Building Standards). Either fewer Limited Green Amenities items should be required or more items should be made available. Rehabilitation projects should have fewer items required (for example, buildings cannot be reoriented).

TAAHP suggest the following changes to the current Limited Green Amenities items:

(-a-) Site irrigation – change to "Rain water harvesting collection system provided for irrigation." Leave the details to the design team.
(-b-) Native trees and plants – remove this option as it is too vague. Replace with "Native landscaping that reduces irrigation requirements as certified by design team at cost certification."
(-c-) verifiable as currently written
(-d-) "... as certified by the design team at cost certification".
(-e-) verifiable as as currently written
(-f-) verifiable as as currently written
(-g-) verifiable as as currently written
(-h-) verifiable as as currently written
(-i-) Add – "... if the local trash provider offers recycling service." This isn't available in some rural areas.

TAAHP also suggests adding additional Limited Green Amenities items, such as:

(-j-) construction waste management system provided by contractor that meets LEEDs minimum standards
(-k-) at least 25% by cost FSC certified salvaged wood products
(-l-) Energy Star rated bath exhaust fans vented to the outside
(-m-) Energy Star rated kitchen exhaust fans vented to the outside
(-n-) clothes dryers vented to the outside
(-o-) maintain a no-smoking policy within 20 feet of all buildings

RECOMMENDATION #20
§10.101(b)(6)(B)(xi) Unit Requirements.
TAAHP recommends the following revision:

(xi) Greater than 30% percent masonry on all building exteriors (includes stone, cultured stone, stucco, and brick but excludes cementitious siding); the percentage calculation may exclude exterior glass entirely (2 points);

Chapter 10. Subchapter C – Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rues or Pre-clearance for Applications:

RECOMMENDATION #21
§10.203 (11)(C) Requesting a Zoning Change.

(C) Requesting a Zoning Change. The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate is in the process of seeking a zoning change and must~~(may~~ include an acknowledgement that a zoning application was received by the political subdivision~~)~~ and that the jurisdiction received a release agreeing to hold the political subdivision and all other parties harmless in the event the

appropriate zoning is denied. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice.

Thank you for your service to Texas.

Sincerely,

Debra Guerrero by Frank Jackson
Debra Guerrero
Co-Chair TAAHP QAP Committee

David Koogler by Frank Jackson
David Koogler
Co-Chair TAAHP QAP Committee

cc: Tim Irvine – TDHCA Executive Director
Cameron Dorsey – TDHCA Staff
Jean Latsha – TDHCA Staff
TAAHP Membership

(17) Joy Horak-Brown
New Hope Housing

NEW HOPE
HOUSING, INC.

October 21, 2013

Mr. Cameron Dorsey
Texas Department of Housing and Community Affairs
P. O. Box 13941
Austin, Texas 78711-3941
Sent via email

Dear Cameron,

I am writing to comment on the 2014 Housing Tax Credit Draft Qualified Allocation Plan and Multifamily Rules. Please know that this letter brings with it my appreciation to you and the entire TDHCA staff for your openness to supportive housing and green building.

Let me begin by saying that I have conferred with Walter Moreau and Jennifer Hicks in developing my thoughts, and I am completely supportive of the letter sent to you by Walter on October 7.

1. Section 11.9(e)(2) – Cost of Development per Square Foot –

Typically the costs to build in Houston are higher than in any other city in the State of Texas. Today, this is driven in part by large developments such as those in the medical center and the extensive campus being built by Exxon Mobil just north of the city. The demand for workers and concrete and steel, etc. is simply very high and driving up costs.

Additionally, I am quite concerned about the far reaching implications of a policy that would result in the cheapening of affordable housing developments. My concern is that this 'cheapening' will result in increased neighborhood push back; in properties that are not sustainable over the affordability period due to poor quality systems and construction; in little or nothing in the way of green features; and in community spaces that are wholly inadequate for supportive housing service delivery.

Also, I encourage you to consider a plan that will lead to solid cost per square foot application numbers—numbers that are as close to 'real' as possible.

Proposed Solution - Alter Section 11.9(e)(2) to read as follows:

(B) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

(i) The Building Cost per square foot is less than **$80** per square foot;
(ii) The Building Cost per square foot is less than **$85** per square foot, and the development meets the definition of a high cost development;
(iii) The Hard Cost per square foot is less than **$100** per square foot; or
(iv) The Hard Cost per square foot is less than **$105** per square foot, and the Development meets the definition of high cost development.

I believe that $85 per square foot is an absolute minimum for urban areas. Also note that the figure $100 is underlined and differs from the figure stated in the October 7 letter from Foundation Communities. My suggested figures are consistent, i.e. within $5 in each instance.

2. **Section 11.9(e)(4) – Leveraging of Private, State and Federal Resources –**

New Hope recommends raising the leveraging percentages by one (1) percent for supportive housing and nonprofit housing that carries no permanent debt (or that limits debt). A nonprofit developer such as New Hope Housing must rely heavily on funding from private sources. State and federal resources simple are insufficient to eliminate or limit debt and public/private partnerships are required.

This key factor of zero or very limited debt is what allows New Hope and other nonprofits to executive our mission and serve the most challenged citizens. The leveraging section as presented undermines the definition of supportive housing as debt-free.

Proposed Solution – Alter Section 11.9(e)(4) to read as presented in the letter sent to you by Walter Moreau on October 7.

3. Section 10.204(7)(C) - Owner Contributions –

The addition of any "owner contribution" to the fifty percent (50%) limit of deferred developer fee for purposes of scoring places what I believe to be an unfair restriction on supportive housing and nonprofit housing in general. Once again, this mechanism is key to allowing us to serve those on the lowest rung. A gap closed by fundraising result in zero or very low mortgages.

At the time of application it is *impossible* to have all private fundraising completed/committed. For that reason, a gap must be closed through an owner contribution as a guaranty of those funds. This is usual and customary and the gap is almost always replaced with fundraising by the time a deal closes.

Proposed Solution – Alter Section 11.9(e)(4) to add the following:

…..or where scoring is concerned *with the exception of Section 11.9(e)(4) in the case a development is Supportive Housing or the development has a Non-Profit guarantor who meets the qualification in Section 11.9(e)(4)(B).*

4. Section 11.9(c)(2) – Rent Levels of Tenants

As a nonprofit developer of supportive housing, we appreciate the concept and availability of an additional scoring item for offering to restrict additional units to the lower rent limit, and the greater point value for the most restrictive rent level selection.

However, supportive housing developments typically do not generate robust positive cash flow and creating a significantly higher percentage of 30% units makes an already tight pro-forma, all that more difficult to perform. This additional tightening could result in a reduced developer fee, which further restricts the nonprofit's capacity to develop additional supportive housing units. That seems counterintuitive to the goal of creating a small incentive for supportive and nonprofit housing providers.

In addition, this very steep rent restriction as measured against the available points seems to deter otherwise qualified nonprofits from developing housing that might, in fact, be supportive.

Proposed Solution – Alter 11.9(c)(2) to read:

(A) At least *15 percent* of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments qualifying under the Nonprofit Set-Aside only (13 points);

Thank you in advance for carefully considering my comments. Should you wish to discuss, I welcome hearing from you at 713.628.9113 or at joy@newhopehousing.com

Sincerely,

Joy Horak-Brown
Executive Director

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October 21, 2013

Cameron Dorsey
TDHCA
VIA e-mail

RE: COMMENTS ON PROPOSED 2014 QAP AND PROPOSED 2014 UNDERWRITNG RULES

Dear Cameron,

We offer the following comment on the Draft 2014 QAP.

1. **Neighborhood Organizations—10.203(1), 10.203(2), 11.8(b)(2)(A) and 11.9(d)(4):** The language in the various rules regarding Neighborhood Organizations is confusing and we believe in need of much clarification at this point. First, even though the term is capitalized, there is no definition for the term in **10.1 Subchapter A—General Information and Definitions.** We believe a definition is in order and we propose the following:

   > *Neighborhood Organization: An organization, on record with the state or county in which the Development Site is located, which is current with all required filings, and in good standing with either the Comptroller of the State of Texas or the Secretary of State of Texas or both, as applicable. The organization's boundaries must contain the Development Site that organization seeks to provide comment on and the boundaries must contain a specific neighborhood. The boundary shall not constitute an entire area of a city, county or place such as "the east side". Further, the boundary cannot encompass more than 1 square mile, as anything larger would not constitute a "neighborhood" as intended in statute.*

   Without clarifying language, we oppose the additional sentence added at the end of **11.8(b)(2)(A)** which makes a developer "responsible to identify all such Neighborhood Organizations" without actually knowing what or who the developer is supposed to identify. There have been many anecdotal instances before the Board over the years that identifies what a "neighborhood" constitutes, however, the rules do not actually codify what the specific requirements are.

   We support the language proposed in **10.203(1)(B)**. Removal of the former language from the 2013 QAP of the requirement of developers to notify

Neighborhood Organizations "… *that the applicant has knowledge of (regardless of whether the organization is on record with the county or state)"* will better address the issue of having competing developers accuse one another of having "*knowledge of*" an organization that is not on record with the county or state in needless and wasteful challenges to applications. The proposed staff draft language currently proposed better defines the exact responsibility of the developer for notifications.

2. **Economically Distressed Area (EDA)—10.3(a)(43):** While we welcome the attempt to broaden this definition, we believe it is too limiting and may lead to the type of discrimination in communities that the recent court remedy seeks to address. The current language being proposed addresses a very RELATIVE level of poverty within an MSA, rather than a more GENERAL level of poverty. We believe that the Legislature intended to address a general measure of poverty, rather than a relative measure of poverty with this section of statute, as the inclusion of "*colonias"* in this section of statute further demonstrates the intent to address as many "*colonias"* or "*EDAs"* throughout the state as possible, regardless of whether an MSA contains zero of these areas or 5,000. We propose a change in the language that removes the term:

> *"…in a census tract that is in the fourth quartile of median household income for the MSA, if located in an MSA, or county, if not located in an MSA…."*

And replaces that language with something that measures general poverty in a census tract such as the "200% of poverty level" (a measure the Department already tracks for the Regional Allocation Formula methodology) or a measure of 80% of the statewide median family income for the state (which is tracked by the Federal Government at www.ers.usda.gov/data-products/food-access-research-atlas/).

3. **Commitment of Funding by Local Political Subdivision—11.9(d)(2):** We strongly support the language in the draft QAP regarding this item, as without it, an unfair advantage would be realized by local Public Housing Authorities (PHAs). Any item that would allow for an unfair advantage to be realized by a public entity over a private entity goes against the original intent of the Section 42 program—a program Congress always intended to be used by private developers—and is innately unfair. We believe Cameron Dorsey stated it best at the October 9, 2012 TDHCA Board Meeting when he stated, "…staff can't really come up with a really great policy reason why we would say a PHA deserves to be able to get more points inherently under this item than another

development type. We just didn't see a reason to distinguish between types of owners." We agree entirely with this statement, as decades of evidence have shown that the private sector is much more efficient in every aspect of delivering products to the market place than a governmental entity, and if anything, the reverse should occur (tax-paying, private entities should get a point advantage over governmental entities). Also, as Mr. Dorsey stated in further testimony at the October 9, 2012 Board Meeting, there are other areas of the QAP and other aspects of the program where PHAs still have a decided advantage over private sector applicants—the ability to exercise their tax-exempt status on both sales and property taxes, as well as re-distribute Section 8 vouchers to themselves on their own tax credit properties are built-in advantages that are quite enough without any expressed QAP point advantages. The Attorney General upheld your authority on this item in 2013, and the Texas Legislature, who weighed-in on several QAP and rules items regarding TDHCA in the 83rd Legislative Session, was conspicuously silent on this item entirely. There is no reason to change the course of action for 2014 regarding this item as it leveled the playing field for all developers (regardless of what type of organization they are) in 2013.

4. **Tenant Populations with Special Housing Needs—11.9(c)(7)(B):** To the extent that the Department wishes to pursue the Section 811 Program we support the last sentence of this paragraph which states:

> *"Should an Applicant receive a Housing Tax Credit award, the Department may allow Applicants to identify an alternate existing Development in the Applicant's or an Affiliate's portfolio, consistent with Department Section 811 Program criteria, to participate in the Section 811 Program."*

   This added language (not in the original draft online) will enable the Department to meet the goals of the program much faster than if it was relying solely on proposed developments with completion deadlines 3 years from now. We have suggested that this alternative be available throughout the discussions with TDHCA at roundtable workshops since the introduction of this item for points and we appreciate the Department's willingness to listen to input from the development community.

5. **Challenges of Competitive HTC Applications—11.10(1):** We are confused as to what is meant by:

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> *"The challenge must be received by the Department no later than seven (7) days after the Application Challenges Deadline as identified in 11.2 of this chapter…."*

Why would this deadline differ from any other deadline in the QAP? We believe that the stated deadline in 11.2 should constitute a "drop dead" deadline, just as all the other deadlines in the program.

We also submit the following comment on the proposed 2013 Draft Real Estate Analysis Rules and Guidelines:

1. **10.302(i)(6)(B) Exceptions:** This section of the rules allow for the TDHCA underwriting feasibility rules to be ignored in their entirety if a PHA dedicates its own Section 8 Project-Based vouchers to at least 50% its development or characterizes at least 50% of its development as "public housing." The supposition in this language (dating back several years) is that the Federal Government will "bail-out" a deal that becomes infeasible—a supposition that we believe is in error and at the very least bad public policy. We believe that this section should be stricken from the rules as it holds private developers to a much stricter standard than for PHAs. The tax credit program has been the most successful affordable housing program ever created by the federal government and in Texas mainly due to the fact that **PRIVATE SECTOR DEVELOPERS** have been the major players in the program, especially in Texas. If it is the Department's wish to allow public sector PHA's to compete with private developers, then at least a level playing field should be established and **ALL DEVELOPERS SHOULD HAVE TO FOLLOW THE SAME UNDERWRITING RULES.** Further, in this economic and fiscal climate, the Federal Government is likely to lessen support of or eliminate entirely both the Section 8 program and the Public Housing program, leaving TDHCA to deal with infeasible projects over the long-term if this rule is not changed. PHAs have repeatedly testified to TDHCA at public hearings that funding from the Federal Government continues to be cut back each year, and HUD funding to PHAs is, at the very least, questionable in the future.

This concludes our comments for the 2014 draft rules regarding the LIHTC program. Thank you in advance for considering our comments.

Sincerely,

R. L. "Bobby" Bowling IV, President

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October 21, 2013

Texas Department of Housing
And Community Affairs
221 East 11th Street
Austin, Texas 78701

RE: Comments on Draft 2014 Qualified Allocation Plan and Draft 2014 Uniform Multifamily Rules.

Ladies and Gentlemen:

Thank you for providing this opportunity to provide our comments on the draft versions of the 2014 Qualified Allocation Plan ("QAP") and the 2014 Uniform Multifamily Rules ("Rules") which were released September 20, 2013 and posted on the TDHCA Website.

GENERALLY:

1. Support for TAAHP Consensus Recommendations

Initially, we wish to indicate our support for the recommendations discussed in the TAAHP letter to the TDHCA Board of Directors dated October 10, 2013.

QAP:

2. Subsection 11.3(f)

Subsection 11.3(f) requires that a subsequent phase of a development be deferred until a prior, adjacent or contiguous phase or third party development serving the same Target Population has reached 90% occupancy for a minimum of six months. While this would appear to be a logical requirement for a new development, it does not make as much sense when applied to the redevelopment of an existing project through multiple phases, since the new phase will be drawing its tenants from existing tax credit units that are being replaced. Accordingly, we recommend that Subsection 11.3(f) be revised by adding as a final sentence:

> **This Subsection does not apply to applications where the Development or phases of the Development replaces in part or in whole an existing tax credit Development.**

3. **Subsection 11.4(c)(1)**

A. Eliminate exception for New Construction and Adaptive Reuse. Draft language would deny the 30% boost to a New Construction or Adaptive Reuse Development located in a QCT with more than 20 percent Housing Tax Credit Units per total households. We believe that 42(d)(5)(B)(i)(I) and (II) of the Internal Revenue Code makes the boost mandatory in a QCT (regardless of the percentage of tax credit units in place) for a new building and for rehabilitation expenditures for an existing building. We further conclude that the State housing credit agency's ability to designate what developments will qualify for the boost under 42(d)(5)(B)(v) of the Code is a right granted to the housing credit agency **in addition to, and not replacing or mitigating** the Code's specification in 42(d)(5)(B)(i). **Accordingly, we recommend that the boost be made available for any Development in a QCT.**

B. Clarify that resolution will qualify any Development in a QCT. In the event that the TDHCA disagrees with us on this point, then we recommend that 11.4(c)(1) be revised in the following manner, to (i) clarify that any development, even if it is New Construction or Adaptive Reuse, can qualify for the 30% increase in Eligible Basis if the Governing Body of the appropriate municipality or county resolved by a vote to support the Development's qualification for a boost; and (ii) clarify that the pertinent sentence only applies to QCTs and not to any census tract with a tax credit units in excess of 20% of the total households. This can be accomplished by replacing the fourth sentence in 11.4(c)(1) with the following:

> **For any Development, including New Construction and Adaptive Reuse Developments, located in a QCT with 20 percent or greater Housing Tax Credit Units per total households, the Development is eligible for the boost if a resolution is submitted.**

4. **Subsection11.5(3)(A)**

The final sentence in 11.5(3)(A) should be harmonized with Subsection 11.5(2) by revising it to clarify that New Construction USDA applications awarded in the sub-region are aggregated with the At-Risk USDA applications in order to meet the USDA Set-Aside. We suggest the following modification:

> **Up to 5 percent of the State Housing Credit Ceiling associated with this set-aside may be given priority to Rehabilitation Developments under the USDA Set-Aside, to the extent necessary to meet the USDA Set-Aside, taking into consideration allocations made to both At-Risk and New Construction applications financed through USDA.**

5. **Subsection 11.5(3)(D)**

This subsection has been revised in such a way that it no longer makes sense, insofar as it requires that no less than 25% of the proposed Units be public housing units. The difficulty is that 2306.6702(a)(5)(B) of the Government Code does not describe public housing projects that are owned and operated by public housing authorities. It describes projects with HOME funds, or 221(d)(3) or (d)(4) financing. Public housing projects do not "terminate". Projects that are described under 2306.6702(a)(5)(B) are unlikely to have public housing units (even though their units may be subsidized). **Accordingly, we recommend that you go back to the 2013**

language, which does reference public housing units, but not in a way that creates problems with non-public housing subsidized units.

6. **New Subsection 11.5(3)(G)**

TAAHP has recommended that developments participating in HUD's Rental Assistance Demonstration (RAD) Program be qualified for the At-Risk Set-Aside, which we support. We recommend that this be implemented by the following new language:

> **(G) A public housing development that has applied to be included in HUD's Rental Assistance Demonstration (RAD) Program is qualified for the At-Risk Set-Aside, provided that the public housing development does actually convert its rental assistance to long term project-based Section 8 rental assistance contract.**

RULES:

7. **Subsection 10.207(a)**

This subsection deals with the general waiver process, and in particular, the requirement that a waiver may only be requested at or prior to submission of the pre-application or the application. Sometimes it is unknown whether a waiver will be required until the TDHCA Staff has evaluated an application because the question in point will turn on an interpretation of the QAP or the Rules. We think that it is unfair to deny an applicant the opportunity to request a waiver under such circumstances, and request that this restriction be eliminated. **This can be done most readily by deleting the second and third sentences in the subsection.**

8. **Subsection 10.207(d)**

This subsection confirms the Board's right to waive any one or more of the rules in Subchapters B, C, E and G, at its discretion. **The Board's right to waive any one or more of the rules in Chapter 11 and Chapter 12, which are also covered by the General Waiver Process set out in Subsection 10.207(a), should be added to this provision.**

Thank you for the opportunity to comment on the draft 2014 QAP and Rules. If you have any questions concerning our comments, please do not hesitate to call.

Very truly yours,

Barry J. Palmer

(22) Sarah Anderson
S. Anderson Consulting

S. Anderson Consulting, LLC 2014 QAP Comments

Section 10.3 Definitions (43) Economically Distressed Area
Currently, the Rules require that an economically distressed area have an income that is 75 percent or less of the statewide median household income as well as be located "in a census tract is in the fourth quartile of median household income for the MSA, if located in an MSA, or county, if not located in an MSA." I propose that the requirement that the area be in a census tract that is in the fourth quartile be removed. The Texas Water Development Board (TWDB) requires an income that is 75 percent of less of the statewide median income for the EDA program and makes no reference to the quartile of an area. Because of this, some areas that have been assisted through the EDA program at 75 percent of less than the median could be considered third quartile according to TDHCA's data. In such a case, it could be an inconsistency for TDHCA to not recognize such an area as an EDA when in fact it met the TWDB requirement of being 75 percent or less than the statewide median income. I propose that the income of the census tract only require that it is 75 percent or less of the statewide median household income with no regard to TDHCA quartile in order to mirror TWDB's requirements and not inadvertently exclude any areas that would be EDAs under the TWDB program.

Section 11.9(d)(2) Commitment of Development Funding by Local Political Subdivision
I propose that the funding amount multipliers based on population be lowered. A city such as Frisco will not have the same financial resources as a city such as Dallas; however, they would need the same amount of funding under this point item as currently proposed. A multiplier of 0.075 would require a city of 200,000 to contribute $15,000 per unit, which would make more sense than a city of 100,000 at a multiplier of 0.15. See proposed multipliers below:

- 11 points: .075
- 10 points: .05
- 9 points: .025
- 8 points: .0125
- 7 points: .005

Section 11.3(f) Additional Phase
I propose that an additional phase or adjacent development to an existing tax credit development or award serving the same population be permitted if (a) the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development and (b) the additional units are supported by a market study.

If this is not acceptable, then I propose that it be limited to an additional phase that is being done to replace units that had previously been demolished, with the second phase adding the same number or less than what was originally there. This circumstance might occur because of the credit limitations in some regions where there simply are not enough credits in a particular year to replace all of the demolished units.

Section 11.9(e)(3) Pre-Application Participation
The current draft states that "The total number of Units does not change by more than ten (10) percent from pre-application to Application." I propose that this reverts back to the previous years' language that the total number of units cannot increase by more than 10 percent

Section 11.10 Challenges to Competitive HTC Applications
I propose that if a challenge is not reviewed by staff for any reason or if, as stated in this section, "A matter, even if raised as a challenge, that staff determines should be treated as an Administrative Deficiency will be treated and handled as an Administrative Deficiency, not as a challenge," then the challenge fee should be refunded to the challenger.

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October 21, 2013

Teresa Morales
Texas Department of Housing and Community Affairs
221 E 11th St
Austin, TX 78701

RE: Comments on Proposed 2014 Multifamily Rules and QAP

Dear Ms. Morales:

Thank you for the opportunity to provide comment on the proposed 2014 TDHCA Multifamily Rules and QAP. Please see my comments and suggestions below.

Section 10.3 Definitions (43) Economically Distressed Area
Currently, the Rules require that an economically distressed area have an income that is 75 percent or less of the statewide median household income as well as be located "in a census tract is in the fourth quartile of median household income for the MSA, if located in an MSA, or county, if not located in an MSA." I propose that the requirement that the area be in a census tract that is in the fourth quartile be removed. The Texas Water Development Board (TWDB) requires an income that is 75 percent of less of the statewide median income for the EDA program and makes no reference to the quartile of an area. Because of this, some areas that have been assisted through the EDA program at 75 percent of less than the median could be considered third quartile according to TDHCA's data. In such a case, it could be an inconsistency for TDHCA to not recognize such an area as an EDA when in fact it met the TWDB requirement of being 75 percent or less than the statewide median income. I propose that the income of the census tract only require that it is 75 percent or less of the statewide median household income with no regard to TDHCA quartile in order to mirror TWDB's requirements and not inadvertently exclude any areas that would be EDAs under the TWDB program.

Section 10.101(a)(2)(T) Designated Public Transportation Stop
Currently, under the Mandatory Community Assets item, the Rules allow a designated public transportation stop on a regular, scheduled basis to qualify as a community asset. Across the state in smaller urban areas, there are public transportation providers that have regular scheduled bus routes, but instead of having designated bus stops along the routes, passengers are instructed to find a convenient place along the route and wave to the bus driver to stop. These are mapped and schedule routes that have published times for intersections along the route, but there are no designated stops; instead, the passenger determines where he or she would like to board the bus and waves to the bus driver. I believe that such a transportation route meets the intent of this section in that the transportation service is on a regular and scheduled basis and the bus driver makes stops along the route for passengers. I propose that the Rules include this type of bus route to qualify as a community asset as long as the development site is located within 1 mile of the route.

Section 10.101(b)(1) Ineligible Developments
I propose that any development that has the characteristics of a senior development be categorized as a Qualified Elderly Development or the application be deemed ineligible. For example, an application that is 70 percent one-bedroom units and 30 percent two-bedroom units is unable to serve family households. In addition, amenity choices such as bocce ball courts and putting greens are typically associated with seniors and are not amenities for children. I understand that the bedroom unit requirements were removed to accommodate central business district developments that would not necessarily have a high percentage of families with children; however, I urge staff to develop language that would prohibit developments that have a unit mix and site plan that looks like a senior development from being called "general"

developments. I believe that this is especially important considering the proposed prohibitions on elderly developments in several regions and counties.

Section 10.201(1)(C) General Requirements
Currently, this section requires that the application be "in a single file and individually bookmarked in the order as required by the Multifamily Programs Procedures Manual." I propose that this section also includes the requirement that the file be a searchable PDF, which is stated in the Manual.

Section 10.204(6) Experience Requirement
Currently, this section states that experience documentation must be provided in the application; however, an experience certificate issued in the past two years is no longer an option to establish experience. I propose that a past experience certificate that confirms the development or placement in service of 150 units or more be accepted in the application to establish the required experience. If an experience certification was issued previously, I do not see any reason why staff time needs to be spent to re-review the same documentation every year.

Section 10.204(8)(E)(ii) Off-Site Costs
This section requires that off-site costs be included on the Off-Site Cost Breakdown form and then also requires that "The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes." Could staff provide an area on the Off-Site Cost Breakdown form where the engineer can describe the necessity of the improvements and the requirements of the local jurisdiction?

Section 10.204(11)(C) Requesting a Zoning Change
Currently, this section states that, "The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate is in the process of seeking a zoning change (may include an acknowledgement that a zoning application was received by the political subdivision)." This is not clear as to whether the applicant must have already submitted an application for a zoning change to the local jurisdiction. "In the process of seeking a zoning change" could include simply inquiring about the process or requesting an application. I propose that the application require proof that the application has submitted a zoning change application and that the zoning change application be included with the Application.

Section 11.3(f) Additional Phase
I propose that an additional phase or adjacent development to an existing tax credit development or award serving the same population be permitted if (a) the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development and (b) the additional units are supported by a market study.

Section 11.8(b)(2)(A) Notifications Certification
This section currently states that, "The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the local elected officials, or that the Applicant has knowledge of as of the date of pre-application submission." Should the statement "as provided by the local elected officials" be included here now that the requirement to request a list of neighborhood groups from the local elected officials has been removed?

Section 11.9(c)(4)(B) Rural Opportunity Index
I have a few comments on this item. First, I think that option (i) that awards 3 points for being within one liner mile of an elementary school with a Met Standard rating should not be expanded to include middle

and high schools. Children in middle and high schools are typically more independent and would not need to rely on a parent for transportation to a school that is more than 1 mile away. For school districts that split elementary grades into different campuses, I propose that any school that serves elementary grades (typically K-5 or K-6) with a Met Standard rating should qualify regardless of the number of grades served at the campus (for example, some school districts may have a separate kindergarten or fifth-grade campus).

Second, items (ii) and (iv) pertaining to childcare should be clarified. For example, item (ii) requires that the program meet the minimum standards while item (iv) requires that the center be licensed. From my research, it would appear that licensed facilities meet the minimum standards, so I wonder if item (ii) should use the same language as item (iv). In addition, according to the Department of Family and Protective Services search for Child Care Centers, there appear to be licensed centers, licensed childcare homes, and registered childcare homes. I propose that items (ii) and (iv) allow for licensed centers and licensed childcare homes to qualify for this item, as the difference in those appears to be the number of children at total capacity. I am not sure that registered childcare homes have the same requirements and therefore am not sure that they should be included.

Finally, items (ii) and (iv) pertaining to childcare should be available to General Developments only and not to Qualified Elderly Developments.

Section 11.9(c)(5) Educational Excellence
I have encountered some school districts that have a dedicated sixth grade campus. Could staff please clarify whether a sixth grade campus should be included with the elementary rating or with the middle school rating? Otherwise, I believe that the 3-point and 1-point language should remain as written.

Section 11.9(c)(6) Underserved Area
There are a limited number of places and census tracts with tax credit developments that have only 1 or 2 units. I propose that items (C) and (D) exclude existing tax credit development that have less than 4 units.

Section 11.9(c)(8) Location Outside of Food Deserts
The current draft includes a point for applications located outside of "Food Deserts." I believe that this item should be deleted. The USDA website appears to use data that is different than the newest 5-year ACS data that TDHCA is using for application purposes, and in some cases this data is contradictory between years. For example, census tract 48085031657 in Plano is a USDA Food Desert for being low income and low access; however, according to the newest ACS data, this tract has an income of $60,313 and a poverty of 6.7%, which would not make it a Food Desert based on this lower poverty rate. In addition, there is a Walmart Supercenter grocery store that is located 1600 feet from the boundary of this census tract. Another example is census tract 48389950400 in Pecos. This tract is also considered a USDA Food Desert; however, the tract is a First Quartile tract with the highest income in the county at $49,286 and the lowest poverty rate in the county at 23.8 percent. Furthermore, the town's main grocery store, La Tienda, is located 600 feet from the boundary of the census tract and all residents of the census tract would be within the USDA's 10-mile rural distance of the grocery store. I do not believe it would be appropriate for TDHCA to effectively penalize a census tract in a county with the highest income and the lowest poverty, especially when the grocery store is less than 1 mile of most of its residents. I propose that this scoring item be deleted due to inconsistencies in the data. If staff proposes to keep this item, then I would propose that an applicant be able to elect a point for this item if it can show that (a) the census tract is not "low income" per the newest census data that is used by TDHCA or (b) that the development site is within 1 mile of a grocery store for urban developments or 2 miles of a grocery store for rural developments.

Section 11.9(d)(2) Commitment of Development Funding by Local Political Subdivision
I propose that the funding amount multipliers based on population be lowered. A city such as Frisco will not have the same financial resources as a city such as Dallas; however, they would need the same amount of funding under this point item as currently proposed. A multiplier of 0.06 would require a city of 250,000 to contribute $15,000 per unit, which would make more sense than a city of 100,000 at a multiplier of 0.15.

Section 11.9(d)(5) Community Support from State Representative
In the prior application round, there was at least one instance where a state legislator was allowed to withdraw a letter of support even though the QAP stated that "Once a letter is submitted to the Department it may not be changed or withdrawn." If staff is going to allow a representative to withdraw a letter for any reason, then this language should be deleted from the 2014 QAP.

Section 11.9(e)(3) Pre-Application Participation
The current draft states that "The total number of Units does not change by more than ten (10) percent from pre-application to Application." I propose that this reverts back to the previous years' language that the total number of units cannot increase by more than 10 percent.

Section 11.10 Challenges to Competitive HTC Applications
I understand that a fee is associated with a challenge. I propose that if a challenge is not reviewed by staff for any reason or if, as stated in this section, "A matter, even if raised as a challenge, that staff determines should be treated as an Administrative Deficiency will be treated and handled as an Administrative Deficiency, not as a challenge," then the challenge fee should be refunded to the challenger.

Thank you for your consideration. Please contact me with any questions.

Regards,

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(29) Neal Rackleff
City of Houston
Housing and Community
Development Department

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Mr. Cameron Dorsey
Director, Multifamily Programs
Texas Department of Housing & Community Affairs
PO Box 13941
Austin, Texas 78701

RE: City of Houston Public Comment for the TDHCA 2014 Qualified Allocation Plan

Dear Mr. Dorsey:

Thank you for the opportunity to provide public comment on the TDHCA 2014 Qualified Allocation Plan (QAP). The recommendations outlined in this letter establish the City of Houston Housing and Community Development Department's (HCDD) official public comment for the QAP. As you may know, HCDD has been one of the State's strongest tax credit development partners over the last several years, leveraging approximately $41,500,000 of the City's HOME Investment Partnership (HOME) program funds since 2009. Currently, the Department is preparing to leverage approximately $55,000,000 in Ike Disaster Recovery Round 2 funds for multifamily rental in targeted areas around the City, and approximately $23,000,000 in local and HOME funds for Permanent Supportive Housing projects to end chronic homelessness by 2016.

The City would like to offer the following public comments regarding the QAP.

Recommendation #1: The City is not in support of the complete elimination of funding for Elderly developments, and recommends an incremental cap to the number of Elderly projects in the region.

According to the proposed rule:

> *§11.3. Housing De-Concentration Factors.*
>
> *(e) Developments in Certain Sub-Regions and Counties. In the 2014 Application Round the following Counties are ineligible for Qualified Elderly Developments: Wichita; Collin; Denton; Ellis; Johnson; Henderson; Hays; Lamar; Gillespie; Guadalupe; Kendall; and Starr, unless the Application is made in a Rural Area. In the 2014 Application Round Regions five (5); six (6); and eight (8) are ineligible for Qualified Elderly Developments, unless the Application is made in a Rural Area. These limitations will be reassessed prior to the 2015 Application Round and are based on the fact that data evaluated by the Department has shown that in the ineligible areas identified above, the percentage of qualified elderly households residing in rent restricted tax credit assisted units exceeds the percentage of the total Qualified Elderly-eligible low income population for that area.*

Justification: Neither the methodology nor the data sets used to support the statement, "the percentage of qualified elderly households residing in rent restricted tax credit assisted units exceeds the percentage of the total Qualified Elderly-eligible low income population for that area", was made publicly available for review and comment. Since the City of Houston (in Region 6) is approximately 625 square miles, we utilize and review market studies to determine whether the housing type is appropriate for the neighborhood. A substantial number of elderly residents in the community are not being served by quality affordable housing, and a moratorium on development would further hinder our ability to serve vulnerable seniors in needed areas of the City. If there is a problem regarding the amount of Qualified

Elderly Housing development, the City recommends partnering with the Texas Department of Housing & Community Affairs on a solution and suggests an incremental cap to the number of Qualified Elderly Developments rather than complete elimination.

Recommendation #2: The City recommends that Houston-designated Permanent Supportive Housing Program proposals receive equivalent points to the TDHCA Supportive Housing program in the Qualified Allocation Plan.

Justification: The City of Houston has partnered with surrounding jurisdictions and Housing Authorities in an unprecedented regional initiative to end chronic homelessness by 2016. Over the past year, our Department, Harris County, Houston Housing Authority, Harris County Housing Authority, the City's Department of Health and Human Services, U.S. Department of Veterans Affairs, and the U.S. Interagency Council on Homelessness have worked closely to develop a plan and collaborate on leveraging resources to meet this challenge. The program is well underway with the recent award of a Medicaid waiver from the U.S. Department of Health and Human Services to cover costs of supportive services for the first three years of the program. Additionally, over 1,237 units of Permanent Supportive Housing are in the pipeline. Given the progress to date, it is most appropriate that the State support and leverage tax credit investment toward this initiative.

Recommended changes to QAP:

Of note, for consistency, the City is requesting a definitions change to the term "Supportive Housing" in the Administrative Rule established in Title 10 of the Texas Administrative Code:

> ***§10.3. Definitions.(a)(124) Supportive Housing**--Residential rental developments intended for occupancy by individuals or households in need of specialized and specific medical or non-medical services in order to maintain independent living. Supportive housing developments generally require established funding sources outside of project cash flow and are proposed and expected to be debt free or have no foreclosable or noncash flow debt unless the development is a Tax Exempt Bond Development with a project based rental assistance contract that assures a contract rent for a majority of the Units, in which case the Development is treated as Supportive Housing under all subchapters of this chapter, except Subchapter D of this chapter (relating to Underwriting and Loan Policy). The services offered generally address special attributes of such populations requiring Permanent Supportive Housing and/or, Transitional Housing for persons who are homeless and/or at risk of homelessness, persons who have experienced domestic violence or single parents or guardians with minor children.*

§11.9. Competitive HTC Selection Criteria.

> ***(c) Criteria to serve and support Texans most in need.***
>
> > ***(2) Rent Levels of Tenants.***
> >
> > > *(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments qualifying under the Nonprofit Set-Aside or qualifying for a Permanent Supportive Housing designation from the City of Houston only (13 points);*
> >
> > ***(3) Tenant Services.***
> >
> > *A Supportive Housing Development qualifying under the Nonprofit Set-Aside or qualifying for a Permanent Supportive Housing designation from the City of Houston may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points. By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA or documented as required by the City of Houston Permanent Supportive Housing program. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application will remain the minimum. No fees may be charged to the tenants for any of the services. Services must be provided on-site*

or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

(7) Tenant Populations with Special Housing Needs.
An Application may qualify to receive two (2) points to meet the Special Housing Needs of the State if the Applicant agrees to participate in the Department's Section 811 Project Rental Assistance Demonstration Program (Section 811 Program) or qualify for Supportive Housing vouchers in partnership with the City of Houston Permanent Supporting Housing program and the Development Site meets the requirements in subparagraph (A) of this paragraph. Development Sites not meeting the requirements in subparagraph (A) of this paragraph may qualify under subparagraph (C) of this paragraph.

(A) Applications meeting the following requirements are eligible to receive two (2) points if they agree to commit at least 10 units (or the maximum allowed) for participation in the Section 811 Program or qualifying for a Permanent Supportive Housing designation from the City of Houston, as described in subparagraph (B) of this paragraph. The maximum number of units allowed will be restricted by the Department's Integrated Housing Rule, §1.15 of this title, and the Section 811 Program integration requirements, (the total number of units set-aside for persons with disabilities, including Section 811 units, cannot exceed 18 percent of Units for Developments of 50 Units or more or exceed 25 percent for Developments with less than 50 Units).

Recommendation #3: The City of Houston requests recognition of Disaster Recovery Areas as equivalent in points to Revitalization Areas in the Qualified Allocation Plan scoring mechanism.

Justification: The City of Houston has invested over eighteen (18) months working with community groups, stakeholder partners, City officials, and fair housing advocates to develop a Revitalization Plan which will leverage the City's Disaster Recovery award as investment in targeted areas of the City. Thirteen (13) community meetings with over five hundred (500) Houstonians facilitated by private consultants yielded a comprehensive report that defined the methodology and geography for revitalization, and the plan meets all of the criteria (I) to (IV) as cited below. However, the City is concerned the approach, which had a special and specific purpose, may not be approved as meeting the new Revitalization Plan requirements as established in the 2014 QAP.

Recommended changes to QAP:

(7) Community Revitalization Plan.
(B) For Developments located in Urban Areas outside of Region 3.

(ii) An Application will qualify for six (6) ~~four (4)~~ points if the city or county has an existing plan for Community Development Block Grant -Disaster Relief Program (CDBG-DR) funds that meets the requirements of subclauses (I) -(IV) of this clause. To qualify for points, the Development Site must be located in the target area defined by the plan~~, and the Application must have a commitment of CDBG-DR funds~~. The plan (in its entirety) and a letter from a local government official with specific knowledge and oversight of implementing the plan are included in the Application and must:

(I) define specific target areas for redevelopment of housing that do not encompass the entire jurisdiction;

(II) affirmatively address Fair Housing demonstrated through an approved Fair Housing Activity Statement-Texas (FHAST);

(III) be subject to administration in a manner consistent with the findings of an Analysis of Impediments approved or accepted by HUD within the last three (3) calendar years or an approved Fair Housing Activity Statement-Texas (FHAST), approved by the Texas General Land Office; and

(IV) be in place prior to the Pre-Application Final Delivery Date.

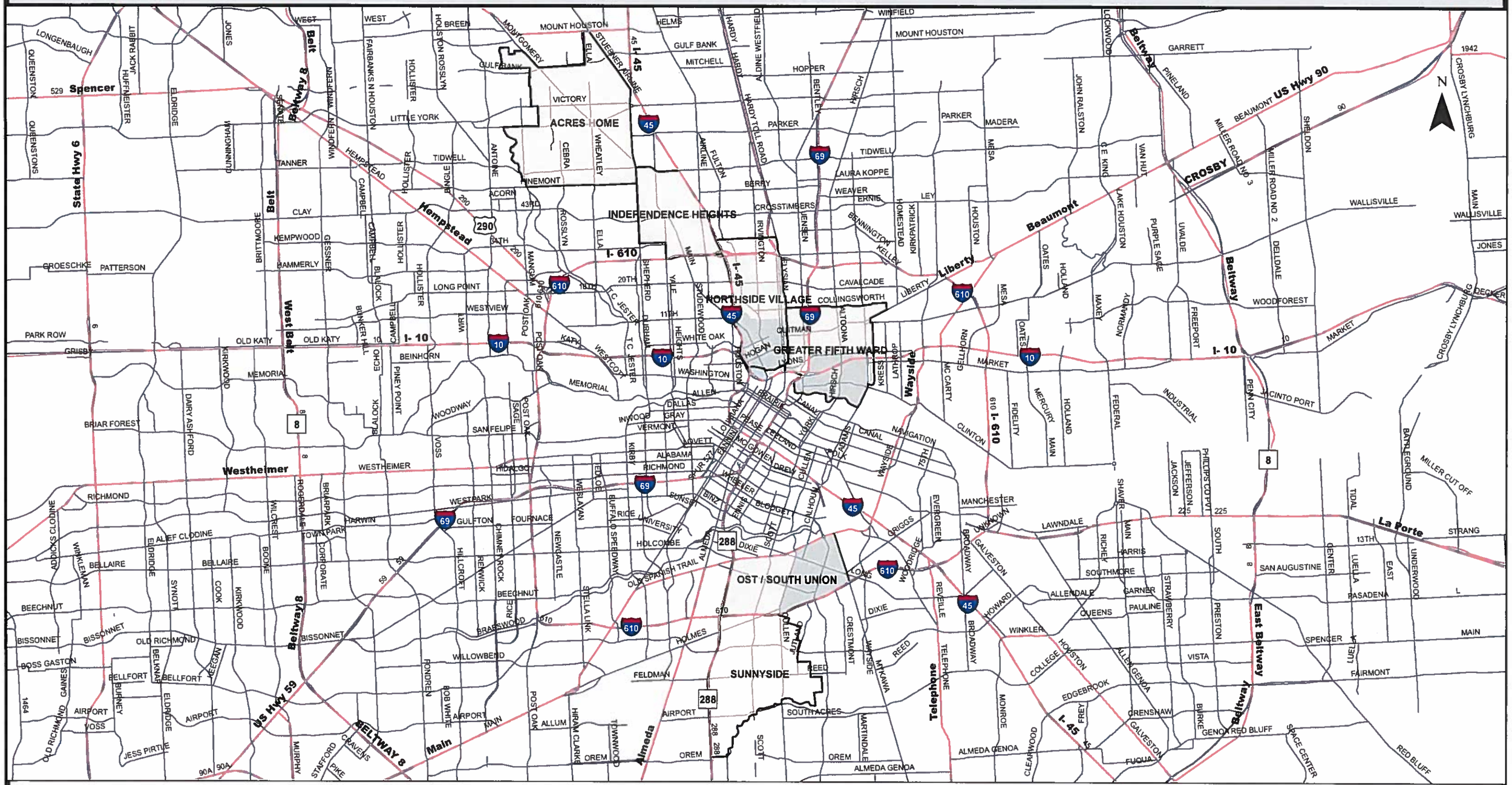
We look forward to continuing our successful partnership with TDHCA in developing quatity, affordable housing for Houstonians. If you have additional questions, please contact Ms. Eta Paransky, Director of Multifamily Programs, by phone at 713-868-8449 or via email at eta.paransky@houstontx.gov.

Sincerely,

Neal Rackleff

Attachment 1: Map of Community Revitalization Areas (CRAs) and CRA Outreach Areas

Community Revitalization Areas (CRAs) and CRA Outreach Areas



Disclaimer: COHGIS data is prepared and made available for general reference purposes only and should not be used or relied upon for specific applications, without independent verification. The City of Houston neither represents, nor warrants COHGIS data accuracy, or completeness, nor will the City of Houston accept liability of any kind in conjunction with its use.

Data Sources: City of Houston GIS and City of Houston Housing and Community Development Department

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October 7, 2013

Cameron Dorsey
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

Dear Cameron:

Thank you for the opportunity to comment on the 2014 Housing Tax Credit Draft Qualified Allocation Plan and Multifamily Rules. We would like to commend TDHCA staff for the creative expansion of programs and systems that promote supportive housing, green building, targeting of lower incomes, and developments located in urban areas.

We have three main comments on the QAP that we feel would have a detrimental impact on the 9% LIHTC Program. Please find our comments below:

1. **Section 11.9(e)(2) – Cost of Development per Square Foot –** While we appreciate the Department's consideration of "high cost developments", we feel that the cost thresholds required to be competitive are not feasible in Austin. Last year, our Homestead application was right at the limit of cost per square foot ($79/sf for building costs.) We were able to get to this cost only because the impervious cover limited the building footprint size and therefore we had smaller units and a smaller learning center than we would otherwise propose. I would urge the Department to consider the unintended consequences of keeping the costs per square foot at their current level. The only way any developer in Austin can realistically achieve these limits is to build CHEAP. In order for Foundation Communities to develop a deal in Austin that met the current cost per square foot thresholds the units would be of stripped down quality, at their minimum allowed size, no learning center and no green building methods even when paybacks are immediate.

   In our numerous conversations with contractors and market rate developers, our numbers are very much in line with what they are seeing. Below are examples of three market rate developments located in the Austin area and their "all-in" construction costs per net rentable square foot. It should be noted that these are 2012 construction cost with little or no green construction practices incorporated. Per our conversations with contractors and market rate developers, construction costs in the Austin area increased 10%. Our current construction cost estimates for Capital Studios are well above our expectations due to the market change in construction costs.

   This category is very worrisome not merely because of points, but for the policy that is being mandated – build it cheap. Unfortunately, our experience in Austin is that a building cost of $65 per square foot would not result in a quality product.

Building Cost Comparison						
Structure Materials	5 Story Stick/Partial Podium		3 - 5 Story Stick		4 Story Stick	
Parking Configuration	Structured Parking		Structured Parking		Surface Parking	
Number of Units	202 Units		180 Units		222 Units	
All-In Construction Costs *(per NRSF)*	$26,926,640*	($130/SF)	$25,665,360*	($112/SF)	$15,308,804	($75/SF)

* Estimated Per Zoning Application Square Footage

PROPOSED SOLUTION: Change Section 11.9(e)(2)(B)to read as follows:

(B) Applications proposing New Construction or Reconstruction will be eligible for (11) points if one of the following conditions is met:

- ***(i) The Building Cost per square foot is less than $80 per square foot;***
- ***(ii) The Building Cost per square foot is less than $85 per square foot, and the Development meets the definition of a high cost development;***
- ***(iii) The Hard Cost per square foot is less than $95 per square foot; or***
- ***(iv) The Hard Cost per square foot is less than $105 per square foot, and the Development meets the definition of high cost development.***

2. **Section 11.9(e)(4) – Leveraging of Private, State and Federal Resources** – We would recommend raising the leveraging percentages by 1 percent for non-profit housing deals and supportive housing deals with no permanent debt. As a non-profit, Foundation Communities relies heavily on funding from state and federal resources as well as private fundraising; however, we purposefully choose to limit the amount of permanent debt on a property as to maximize cash flow for our supportive service programming. This category also has a major impact on supportive housing that is presented with no permanent debt. A nonprofit or supportive housing applicant is going to apply for the maximum amount of credits and therefore will almost always have a larger percentage of tax credits to total development costs. The funds that are being leveraged against will be a combination of local, state, federal soft loans/grants as well as private foundation grants and owner contributions. The leveraging section undermines the definition of supportive housing as debt-free.

PROPESED SOLUTION: ***PROPOSED SOLUTION: Change Section 11.9(e)(4) to read as follows:***

(A)(i) the Development leverages CDBG Disaster Recovery, Hope VI or Choice Neighborhoods funding OR the Development is Supportive Housing OR the Development has a Non-Profit guarantor who meets qualification in (B) below and the Housing Tax Credit Funding Request is less than 8 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of the CDBG Disaster Recovery, HOPE VI, Choice Neighborhoods or Non-Profit Owner Contribution with application; or

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred. In this section, an owner contribution that is a part of a supportive housing or Non-Profit guaranteed application will not count as part of the deferred developer fee per Section 10.204(7)(C) of the Uniform Multifamily Rules. In subparagraph (A), a Non-Profit guarantor is a guarantor whose annual budget for the past three years is comprised of revenue from grants from private sources in an at least the amount of the owner contribution determined for the application. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

3. **Section 10.204(7)(C) – Owner Contributions** - Also problematic for nonprofit and supportive housing, is the addition of any "owner contribution" to the 50 percent limit of deferred developer fee for purposes of scoring. At the time of application, a nonprofit or supportive housing deal is not going to have all of the private fundraising committed so in order to be feasible, they must commit an "owner contribution" as a guaranty of those funds. This is customary in the underwriting of both our nonprofit family and supportive housing deals and is most always replaced with fundraising by the time the deal closes. We would recommend striking the requirement for the owner contribution to be added to Deferred Developer Fee in scoring under Section 10.204(7)(C) for its unintentional, but very real disadvantage to nonprofit and supportive housing projects.

   Change Section 10.204(7)(C) to read as follows:

   (C) Owner Contributions. If the Development will be financed in part by a capital contribution by the General Partner, Managing General Partner, any other partners that is not a partner providing the syndication equity, a guarantor or a Principal in an amount that exceeds 5 percent of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's banks(s)or repository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds remain readily available at Commitment. Regardless of the amount, all capital contributions other than syndication equity will be added to the Deferred Developer Fee for feasibility purposes under §10.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned with the exception of Section 11.9(e)(4) in the case a development is Supportive Housing or the development has a Non-Profit guarantor who meets the qualification in Section 11.9(e)(4)(B).

Thanks so much for your time and consideration of our comments. Please do not hesitate to contact our team with any questions.

Sincerely,

Walter Moreau
Executive Director

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October 19, 2013

Mr. J. Paul Oxer, Chairman and
Board Members of the
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Draft 2014 QAP and Uniform Multifamily Rules (9.12.13 Release Date)

Dear Chairman Oxer and Members of the TDHCA Governing Board:

Please accept the following as our formal comments and recommended changes to the Draft of the 2014 QAP and Uniform Multifamily Rules (Rules) approved by the TDHCA Governing Board on September 12, 2013.

A. Draft 2014 QAP:

1. ***§11.2 Program Calendar for Competitive Housing Tax Credits.*** If the Department is going to allow 4/1/14 to be the deadline for delivery of Resolutions for Local Government Support as is currently drafted, then we recommend that the deadline for delivery of all other Resolutions be moved from 2/28/14 to 4/1/14, including those necessary under §11.3 relating to Housing De-Concentration Factors. Municipalities will not want to piece meal these resolutions and will want to consider all resolutions at the same time in their deliberation of a particular project.

2. ***§11.9(c)(5) Educational Excellence.*** We recommend that this scoring item be amended as follows:

(i) 3 points if all 3 school types (elementary, middle, and high school) qualify;
(ii) 2 points if elementary plus one (middle or high school) school types qualify; and
(iii) 1 point if only the elementary school type qualifies.

As currently drafted, a site located in an attendance zone with 2 out of 3 good schools will only receive 1 point. The above described point adjustment will enhance the remedial plan objectives by incentivizing Developments targeting the general population that are located in the attendance zones of 2 out of 3 schools with the appropriate rating. This adjustment will also give better treatment to Developments targeting the general population that may not qualify for HOA points but are located in areas that are successfully working to improve the quality of their schools.

3. ***§11.9(c)(6) Underserved Area.*** We recommend that this scoring item be amended as follows:

> "(C) A Place, or if outside the boundaries of a Place, a county that has never received a competitive tax credit application or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population."

This scoring category provides points to general population and Supportive Housing Developments if located in what is defined as an ***Underserved Area***. The intent of the change is to recognize that a Place in an Urban Area is underserved if an age restricted elderly development is the only active tax credit development in such area. This recommendation is already available to Rural Area developments under subparagraph (D) of this scoring item.

We also recommend that the Department define what is required to be submitted in the Application to evidence whether a Development Site is located in a Colonia or an Economically Distressed Area under Subparagraph (A) or (B) respectively, in order to qualify for Underserved Area points.

4. ***§11.9(c)(7) Tenant Population with Special Housing Needs.*** We recommend that an applicant have the option of qualifying for points under this scoring category if meeting the requirements of either subparagraph (A) or (C). The Section 811 Program (Subparagraph (A)) is currently a pilot program with undefined guidelines and requirements. It would be unfair to impose the uncertainty of this program on general population and Supportive Housing developments located in focused MSA areas of our State.

5. ***§11.9(d)(2) Commitment of Development Funding by Local Political Subdivision.*** Please clarify when the firm commitment of funds in the form of a resolution from the LPS is to be submitted to the Department.

6. ***§11.9(d)(4) Quantifiable Community Participation.*** We recommend that the points that an application may qualify for under subparagraphs (C)(iii) and (iv) be reduced to 4 points but allow those applications that qualify for points under these subparagraphs be eligible to earn additional points under *§11.9(d)(6)(A) – Input from Community Organizations*. As currently drafted, subparagraphs (C)(iii) and (iv) allow an Application to receive points for statements of neutrality or the equivalent from a Neighborhood Organization whose boundaries include the Development Site. The intent of the change is to provide applications that receive statements of neutrality or the equivalent from a Neighborhood Organization the opportunity to achieve the same points as an Application that is located in an area where no Neighborhood Organization is in existence when combined with points under *§11.9(d)(6)(A) – Input from Community Organizations*.

7. ***§11.9(d)(6) Input from Community Organizations.*** We recommend that Developments that do not fall within the boundaries of any qualified Neighborhood Organization, or that

qualify for points under subparagraphs (C)(iii) and (iv) of *§11.9(d)(4) Quantifiable Community Participation* be eligible for points under this scoring item, and that the points in the following subparagraphs be adjusted as follows:

(A) 2 points for each letter of support submitted from a community or civic organization that serves the community;
(B) 4 points for a letter of support from a property owners association whose boundaries include the Development Site; and
(C) 4 points for a letter of support from a Special Management District whose boundaries include the Development Site.

Property Owners Associations and Special Management Districts serve very similar functions as Neighborhood Organizations in terms of supporting and controlling development uses within their boundaries and therefore should be given equal or similar weight in points.

8. ***§11.9(e)(2) Cost of a Development per Square Foot.*** We recommend the following changes to this scoring item:

(i) a high cost development should include Development Sites located in Rural Area under subparagraph (A)(iv) of this scoring item;

(ii) Building Costs and Hard Costs in each of subparagraphs (B) (i)-(iv) should be increased by $10, and applicable adjustments should be made to subparagraphs (C) and (D) accordingly;

(iii) Applications proposing Adaptive Reuse should be eligible for points under subparagraph (E); and

(iv) Subparagraph (F) should be deleted. Applicants are already limited by the amount of tax credits that can be awarded to a project at a time when construction costs have reached and are exceeding pre-recession levels.

9. ***§11.9(e)(4) Levering of Private, State and Federal Resources.*** We recommend that the percentages in clauses (ii)-(iv) of this scoring category be increased by 1 percent, such that 3 points be awarded if the Housing Tax Credit funding request is less than 8 percent of the Total Housing Development Costs; 2 points be awarded if the Housing Tax Credit funding request is less than 9 percent of the Total Housing Development Costs; and 1 points be awarded if the Housing Tax Credit funding request is less than 9 percent of the Total Housing Development Costs. We feel that these levels will create more viable projects while still recognizing the Department's intent to encourage Applicants to leverage their transactions with non-tax credit subsidies.

10. ***§11.9(e)(5) Extended Affordability or Historic Preservation.*** We recommend that points under subparagraph (A) of this scoring category for an Application that extends the 15-year compliance period for an additional 15-year extended use period be reduced to 1 point, and that points under subparagraph (B) that are applicable to an Application proposing the use of historic (rehabilitation) tax credits be eligible to receive the maximum 2 points in this scoring item. In light of recent legislative action intended to stimulate historic preservation projects through the granting of state historic tax credits, we recommend that those Applicants proposing historic preservation projects receive additional points under this scoring category. In most instances these types of projects are located in urban core areas that would not in most instances be eligible for HOA points.

11. ***§11.9(e)(7) Development Size.*** This scoring item provides a point to those Applications that propose no more than 50 HTC units and request no more than $500,000 in tax credits. We recommend that this scoring category be deleted. We question whether those Applications that selected this point in 2013 and were awarded tax credits as a result will prove to be quality and financially viable developments over the life of the compliance period especially in light of escalating building and other construction costs not contemplated in their application.

Also, this scoring item causes sub-regions to lose tax credits that were meant to be used in such sub-region especially in sub-regions where only one transaction will be funded if an Applicant seeks the point and request no more than $500,000.

12. ***§11.9(e)(8) Transit Oriented Developments***. We support TAAHP's recommendation that an Application be eligible for 1 point if the Development Site is located within ½ mile of light rail, commuter rail, raid bus transit or other high capacity transit. This scoring item would not be a new concept since the Multifamily Rules already provides for and encourage the location of Developments near public transportation, including §10.101(a)(2) Mandatory Community Assets and (7) Tenant Supportive Services of the Rules.

B. **Draft 2014 Rules.**

Subchapter B - §10.101. Site and Development Requirements and Restrictions. We recommend the following changes to Subchapter B:

(i) ***§10.101(a)(3) – Undesirable Site Features.*** We recommend that Adaptive Re-Use Developments be allowed to request an exemption from the Board if located within applicable distances from an Undesirable Site Features in the same manner as is currently allowed for Rehabilitation Developments.

(ii) ***§10.101(b)(4) – Mandatory Development Amenities.*** We recommend that Adaptive Re-Use Developments be exempt from the same amenities as Rehabilitation Developments.

(iii) ***§10.101(b)(5)(A) - Common Amenities.*** We recommend that Developments with more than 80-units (instead of 41-units as currently drafted) be required to meet at least 2

of the threshold points under subparagraph (C)(xxxi) relating to providing Limited Green Amenities, and that a Development satisfies the threshold requirement if it meets at least 3 (instead of the required 6) items. We agree with the Department's efforts to promote energy and water conservation but given the cost consequences to the proposed development believe that this threshold requirement should be limited to providing 3 of the listed green amenities and should be only applicable to Developments in Urban areas.

(iv) ***§10.101(b)(6) - Unit Requirements.*** We recommend that Adaptive Re-Use developments receive the same treatment under this Paragraph with respect to unit sizes (subparagraph (A)) and unit and development features (subparagraph (B)).

We appreciate the Board's consideration of these comments and recommended changes to the draft of the 2014 QAP and Rules. Thank you very much for all of the hard work that you do for the affordable housing program in Texas.

Sincerely,

Donna Rickenbacker

Donna Rickenbacker

cc: Tim Irvine, Executive Director
Cameron Dorsey, Director of Housing Tax Credits
Jean Latsha, Competitive HTC Program Manager

(37) Toni Jackson
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October 14, 2013

VIA ELECTRONIC TRANSMITTAL and U.S. Mail
Mr. Timothy Irvine
Texas Department of Housing and Community Development
221 East 11th Street
Austin, Texas 78701

RE: 2014 Draft Qualified Allocation Plan

Dear Mr. Irvine:

Please find attached comments to the Draft 2014 Qualified Allocation Plan which I am submitting in behalf of United Public Housing Authorities throughout the State of Texas. I have am also attaching for you certain support letters from various elected officials which are also being provided in support of these consensus comments.

Thank you for your attention to these comments.

Very truly yours,

Antoinette M. Jackson

AMJ:

Public Housing Authority Consensus Comments

Qualified Allocation Plan – Draft 2014

Submitted October 14, 2013

Public housing authorities ("PHAs") have seen a decrease in federal funding in recent years as public housing stock becomes older and obsolete. In an effort to change the face of public housing, PHAs have begun to revitalize its housing stock with mixed income inventory which integrates more seamlessly into neighboring communities. Utilizing the low income housing tax credit ("LIHTC") program has been one of the tools used by PHAs to revitalize its stock. However, recent changes to the Qualified Allocation Plan ("QAP") have reduced the competitive viability of PHA sponsored applications. As a result, a united collaboration of PHAs ("UPHA") has come together to put forth the recommended revisions to the QAP in an effort to provide a more level playing field in the competitive 9% application process.

§10.3 Definitions: The UPHA would like to see housing authorities added to the definition of Unit of General Local Government. This would be consistent with the §392.006 of the Local Government Code which defines housing authorities as a unit of government.

- Unit of General Local Government--A city, town, county, village, housing authority (or its related entity), tribal reservation or other general purpose political subdivision of the State.

§10.101 Site and Development Requirements and Restrictions: The UPHA would like to see certain undesirable site features addressed in the QAP. Often these features are near existing properties that PHAs seek to reconstruct and redevelop.

- Undesirable site features that have been mitigated through the U.S. Department of Housing and Urban Development (HUD) should be exempted.
- Remove language: Developments located adjacent to or within 300 feet of an active railroad track
- Areas that have been designated as a part of a city or county's revitalization area and have a resolution or letter of support from the city or county shall be exempt

§11.3 Housing Deconcentration Factors: In subsection (d) maintain the requirement that new construction and adaptive reuse developments be located in a census tract of more than 30% HTC units. If the project is within a census tract with 30% or more HTC units, a local governmental resolution of support should automatically allow the 130% basis boost.

§11.4 Tax Credit Request and Award Limits: In subsection (c)(1) maintain the requirement that the development is located in a QCT that has less than 30% HTC units. This reduction further widens the funding gap for these transactions. If the project is within a census tract with 30% or more HTC units, a local governmental resolution of support should automatically allow the 130% basis boost.

§11.5 Competitive HTC Set-Asides

- Public Housing developments converting their assistance to long term project based Section 8 rental assistance contracts under HUD's Rental Assistance Demonstration (RAD) Program should be included to qualify to apply in the at-risk set aside. Pursuant to the legislation, the at-risk set aside is intended for public housing units deposed of or demolished by a housing authority and retaining operating subsidy for the development. Therefore, developments under the RAD program should qualify for the HTC At-Risk Set Aside.

  The Rental Assistance Demonstration program was enacted by H.R. 2112 (the "RAD Act"). In accordance to the RAD Act, several criteria was set out for the funding and implementation of RAD.

  1. Funding for RAD is transferred from the Public Housing Capital Fund and Public Housing Operating Fund to cover the cost of operating the units. The rental adjustments for the units are determined by using the public housing operating cost factor and may only be equal to the amount transferred from the Capital Fund or Operating Fund.

  2. The RAD Act indicates that the tenants of the properties converted under Section 9 shall maintain the same rights under the conversion and the public housing authorities must offer units to those same tenants. The program is intended to recapitalize and operate public housing properties by leveraging additional sources to fund the properties.

  3. Additionally, HUD requires that ownership must be maintained by a public or nonprofit entity except when using tax credits. If tax credits are used a for-profit entity may be the owner if the public housing authority preserves its interest in the property in a manner approved by HUD.

  Based upon the provisions of the RAD Act, HUD intended RAD to not replace Section 9 units but to serve as a way to recapitalize those units. The funding for RAD comes directly from Section 9 and the tenant requirements remain in place. Therefore, it is our opinion that RAD qualifies to meet the set-aside requirements of the state legislation.

- Much of the older public housing stock is located near site features identified as undesirable under the rules of the QAP. The UPHA would like to see Reconstruction sites to be relocated away from undesirable site features, i.e. higher opportunity neighborhood, away from flood plain or railroad tracks, and retain its eligible at-risk set aside status.

§11.7 Tie Breaker Factors: The UPHA proposes the following additional items be considered as alternative tie breakers:

- Lower tax credit request
- Part of completion of an adopted redevelopment plan
- Substantial experience along with good compliance record from previous developments
- General Partner or co-general partner is a non-profit or quasi-governmental entity
- Highest market demand, based on submitted market studies

§11.9 Competitive HTC Selection Criteria: The following is proposed by the UPHA as set forth below:

- Section (c)(4) Opportunity Index
    - Census tracts with a poverty rate below 15% criteria excludes much of the area of the City where we currently work – consider adjusting to a higher percentage

- Section (d)(3) Commitment of Development Funding by Unit of General Local Government
    - Add language: "An Application may receive up to (13 points) for a commitment of Development funding from the city, county, ***a unit of government or its instrumentality*** in which the Development is proposed to be located."
    - Remove language: "The government instrumentality providing Development funding under this scoring item may not be a Related Party to the Applicant."
    - Remove language: "Funds cannot have been provided to the Unit of General Local Government by .... a Related Party".
    - (d)(3)(A): Required funding levels per Low Income Units are too high and should be reduced or set on a sliding scale based upon amount of funds received by the participating jurisdiction
    - Provide an incentive point(s) to projects that don't need additional funds but receive resolution or letter of support from unit of general local government
    - Public housing funds and Section 8 vouchers should qualify as potential sources

- Section (d)(6) Community Revitalization Plan
    - Add language: A plan adopted for a Choice Neighborhoods Planning Grant or a Public Housing plan approved by a local government may qualify as a Community Revitalization Plan under this section.

- Section (e)(4) Leveraging of Private, State and Federal Resources
    - Add language: the Development leverages CDBG Disaster Recovery, HOPE VI, Choice Neighborhoods, Public Housing Capital Funds, Section 8 vouchers ***or RAD*** funding and the Housing Tax Credit Funding Request is less than 8 percent of the Total Housing Development Cost (3 points);

Miscellaneous Items for consideration:

- Currently require 1 washer and dryer per 25 units
    - Recommend 1:40 or 1:50
    - Provide exception if laundry hook-ups are provided
- Allow community rooms to be multi-purpose space not specifically labeled
- More common amenities to offer (for example, Wi-Fi in lounge area)
- Unit amenities to include USB connections
- Add capital funds to development funding
- Update 1 mile/3 year rule to include all public housing, except HOPE VI
- Allow appraised value on owned properties, not original purchase price
- Provide two (2) points for Transit Oriented Development: one (1) point for sites located within ½ mile of light rail and one (1) point for transit oriented funding or funding by local transit authority
- Automatically grant the 130% basis boost if a housing authority has 51% or more ownership interest, project contains RAD units or if the project elects to provide 10% or more 30% AMI units.

Submitted by:

UNITED PUBLIC HOUSING AUTHORITIES:

Authorities:
Abilene Housing Authority
Alamo Housing Authority
Central Texas Housing Consortium
City of Longview Housing Authority
Corpus Christi Housing Authority
Denton Housing Authority
Edgewood Housing Authority
Fort Worth Housing Authority
Fruitvale Housing Authority
Harris County Housing Authority
Housing Authority of Bexar County
Housing Authority of the City of El Paso

Housing Authority of Gladewater
Housing Authority of the City of Texarkana, TX
Houston Housing Authority
Kingsville Housing Authority
Laredo Housing Authority
Odessa Housing Authority
Pharr Housing Authority
Port Arthur Housing Authority
Port Isabel Housing Authority
New Boston Housing Authority
Rio Grande Valley Housing Authority
Robstown Housing Authority
San Antonio Housing Authority
South Texas Housing Authority
Temple/Belton Housing Authorities
Victoria Housing Authority
Weslaco Housing Authority

Trade Organizations:
Texas Chapter of National Association of Housing and Redevelopment Officials (TXNAHRO)
Texas Housing Association
Housing Authority Valley Employees (HAVE)

The State of Texas
House of Representatives

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ROLAND GUTIERREZ
STATE REPRESENTATIVE • DISTRICT 119

September 27, 2013

Tim Irvine
Executive Director
Texas Department of Housing and Community Development
221 East 11th Street
Austin, Texas 78701

RE: 2014 Draft Qualified Allocation Plan:
§11.9 Competitive HTC Selection Criteria

Dear Mr. Irvine:

I am writing to submit comments to the 2014 Draft Qualified Allocation Plan (QAP) as it relates to §11.9 Competitive HTC Selection Criteria "Funding by Local Political Subdivision" and the removal of the related party language in this section.

Last year, TDHCA removed the ability for public housing authorities to contribute funding to transactions in which they were involved, using the justification that it was "self-dealing". However, public housing authorities (PHA) are public entities and have unique resources that can only be provided by them, for the purpose of building and operating low-income housing.

It is important to consider that some housing authority funding is limited to transactions where the PHA also participates. This does not make it a transaction of self-dealing nor an unfair advantage; instead, this provides opportunity for the PHA to forward its public mission of providing low-income housing through a public-private partnership. When a PHA participates in a transaction, it procures the services of its development partner and the other private entities that participate in the transaction. This provides an open and equal opportunity for any developer, lender or investor to participate in the transaction.

Additionally, a PHA providing funding in a transaction is not unlike the ability of a developer or private owner providing financial and liquidity guarantees to local political subdivisions in order to receive a loan for those funds. The local political subdivision assures repayment of its funds through the guarantees made by developers. Although it is not self-dealing, it is only through self-interest these guarantees are being provided.

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House of Representatives

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ROLAND GUTIERREZ
STATE REPRESENTATIVE • DISTRICT 119

Therefore, it is for these reasons that I support the removal of "Related Party" from this section and the inclusion of "housing authorities" as a local political subdivision.

I thank you for your consideration of this very important recommended change to the draft 2014 QAP regarding the ability of PHA funds to be used as a Commitment of Development Funding by a Local Political Subdivision.

Sincerely,

Roland Gutierrez

ROLAND.GUTIERREZ@HOUSE.STATE.TX.US

The Senate of The State of Texas

Senator Leticia Van de Putte, R. Ph.

District 26

PRESIDENT PRO TEMPORE, 2013

October 8, 2013

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Dear Mr. Irvine,

Thank you and your staff at the Department of Housing and Community Affairs for working so diligently on the 2014 Draft Qualified Allocation Plan (QAP) for the State. I understand the low income housing tax credits are very competitive and helpful for the development of quality low cost housing.

In the past I have submitted comments on preserving the input by local entities who have developed plans for community revitalization. Public housing authorities should be eligible for points under the commitment of development funding since they typically develop long term strategies to support additional development. Public housing authorities work with neighborhoods to develop comprehensive plans that take into consideration various community needs.

I understand that the intent of the rule on related-party limitation enacted and a part of the 2013 QAP was to prohibit against self-dealing. I believe concerns about self-dealing are justified, however, I believe the changes prevented legitimate and committed public housing authorities from being able to benefit from using their funds as a commitment of development funding by a local political subdivision. I hope they are allowed to benefit under the 2014 QAP.

Thank you for allowing me to share my thoughts and concerns and hope you consider making changes to the 2014 Qualified Allocation Plan.

Sincerely,

Leticia Van de Putte
Senate District 26

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TEXAS HOUSE OF REPRESENTATIVES
RUTH JONES MCCLENDON
State Representative, District 120

COMMITTEES:
Rules and Resolutions - Chair
Appropriations
Transportation

TEXAS LEGISLATIVE ORGANIZATIONS:
Mexican American Legislative Caucus
Texas Legislative Sportsman's Caucus
Texas Tourism Caucus
Texas Legislative Black Caucus

October 8, 2013

Mr. Tim Irvine, Executive Director
Texas Department of
Housing and Community Development
221 East 11th Street
Austin, Texas 78701

RE: 2014 Draft Qualified Allocation Plan comments: §11.9 Competitive HTC Selection Criteria

Dear Mr. Irvine:

Public housing authorities (PHA's) need to be in a position to commit development funding to transactions in which they are involved, whether through formal participation or through collaborating with local political subdivisions to facilitate transactions. Therefore, I support the removal of "Related Party" language from the Section 11.9 Competitive HTC Selection Criteria "Funding by Local Political Subdivision," and recommend including "housing authorities" as a local political subdivision.

Last year, TDHCA removed the ability for public housing authorities to contribute funding to transactions in which they were involved, using the justification that it was "self-dealing." However, public housing authorities (PHA) are public entities and have unique resources that can only be provided by them, for the purpose of building and operating low-income housing. When a PHA provides funding in a transaction, it is similar to the action of a developer or private owner providing financial and liquidity guarantees to local political subdivisions in order to receive a loan for those funds. The loan guarantees made by developers assure the local political subdivision of repayment of its funds. Although it is not self-dealing, these guarantees are being provided as a condition of receiving the funds.

It is important to consider that some housing authority funding is limited to transactions where the PHA also participates. This does not make it a transaction of self-dealing nor an unfair advantage; instead, this provides opportunity for the PHA to advance its public mission of providing low-income housing through a public-private partnership. When a PHA participates in a transaction, it procures the services of its development partner and the other private entities that participate in the transaction. This provides an open and equal opportunity for any developer, lender or investor to participate in the transaction.

Please make my comments part of your official record, explaining my position on the 2014 Draft Qualified Allocation Plan (QAP). I favor the removal of the related party language in Section 11.9. Thank you for considering my recommendation of this important change to the draft 2014 QAP to allow the use of PHA funds as a Commitment of Development Funding by a Local Political Subdivision.

Sincerely,

Ruth Jones McClendon

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CITY OF SAN ANTONIO
JULIÁN CASTRO
MAYOR

September 27, 2013

Tim Irvine
Executive Director
TX Department of Housing & Community Development
221 East 11th Street
Austin, Texas 78701

RE: 2014 Draft Qualified Allocation Plan: §11.9 Competitive HTC Selection Criteria

Dear Mr. Irvine:

On behalf of the City of San Antonio and in support of the San Antonio Housing Authority's position, I am writing to submit comments to the 2014 Draft Qualified Allocation Plan (QAP) as it relates to §11.9 Competitive HTC Selection Criteria "Funding by Local Political Subdivision" and the removal of the related party language in this section.

Last year, TDHCA removed the ability for public housing authorities to contribute funding to transactions in which they were involved, using the justification that it was "self-dealing". However, Public Housing Authorities (PHA) are public entities and have unique resources that can only be provided by them, for the purpose of building and operating low-income housing.

It is important to consider that some housing authority funding is limited to transactions where the PHA also participates. This does not make it a transaction of self-dealing nor an unfair advantage; instead, this provides opportunity for the PHA to forward its public mission of providing low-income housing through a public-private partnership. When a PHA participates in a transaction, it procures the services of its development partner and the other private entities that participate in the transaction. This provides an open and equal opportunity for any developer, lender or investor to participate in the transaction.

Additionally, a PHA providing funding in a transaction is not unlike the ability of a developer or private owner providing financial and liquidity guarantees to local political subdivisions in order to receive a loan for those funds. The local political subdivision assures repayment of its funds through the guarantees made by developers. Although it is not self-dealing, it is only through self-interest these guarantees are being provided.

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Therefore, it is for these reasons that I support the removal of "Related Party" from this section and the inclusion of "housing authorities" as a local political subdivision.

I thank you for your consideration of this very important recommended change to the draft 2014 QAP, regarding the ability of PHA funds to be used as a Commitment of Development Funding by a Local Political Subdivision.

Sincerely,

JULIÁN CASTRO
MAYOR

(38) Belinda Carlton
Texas Council for
Developmental Disabilities

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Mary Durheim, Chair
Andrew D. Crim, Vice Chair
Roger A. Webb, Executive Director

Texas Department of Housing and Community Affairs
Public Comments
2014 Qualified Allocation Plan

The Texas Council for Developmental Disabilities (TCDD) appreciates the opportunity to provide comments on the Draft 2014 State of Texas Qualified Allocation Plan (QAP) to be used by the Texas Department of Housing and Community Affairs (TDHCA) for awarding and allocating Housing Tax Credits and the Draft of the Uniform Multifamily Rules that set general requirements for the development of affordable housing. TCDD is established by federal law in the Developmental Disabilities Assistance and Bill of Rights Act. The Council's mission is to create change so that all people with disabilities are fully included in their communities and exercise control over their own lives.

TCDD comments on the Draft 2014 State of Texas Qualified Allocation Plan:

1. TCDD commends TDHCA on the addition of the new provision found in Sec. 11.4 (c) (2) (D) that provides tax credit developers a 30 percent boost to restrict an additional 10 percent of the low income units for housing for people earning at or below 30 percent area median gross income (AMGI).

   Setting a 30% percent boost for developers to restrict units at or below 30% AMGI is a significant step toward expanding housing opportunities for extremely low income Texans with disabilities. The extremely low income level of 30% AMGI is $12,600 for a household of one, according to the U.S. Department of Housing and Urban Development (HUD). The 30% and below incentive could provide access for many people with disabilities who have until now been priced out of affordable housing.

2. TCDD recommends amending Sec. 11.9 (c) (2) by adding (D) At least 5% of all low-income Units at 15% or less AMGI (7 points).

   If a developer takes the 30% percent boost for restricting units at or below 30% AMGI, the likely outcome is that those units will rent close to the 30% threshold. This will still price out individuals with developmental disabilities who largely rely on Supplemental Security Income (SSI). In the nearly 15 years since the first *Priced Out* study, the housing affordability gap for people with disabilities has almost doubled as the cost of a modestly priced rental unit has increased from 69% of SSI in 1998 to 104% in 2012.[i]

   People with disabilities who rely on SSI continue to be among the nation's poorest citizens. In 2013, the SSI payment for a single individual is only $710 monthly – equal to only 16.2% of the national median income and more than 25% below the 2012 federal poverty level of $11,490. Currently, the only way to qualify for affordable housing at this income level is with subsidies, such as HUD Housing Choice Vouchers or other public housing supports. Because of federal sequestration, Texas has lost $59.3 million in rental assistance and affordable housing programs. Additionally, HUD is preparing to cut 100,000 Section 8 vouchers nationwide. Subsidies are a quickly dwindling option for people with disabilities and the failure to secure or the loss of housing supports results in unnecessary

institutionalization or homelessness. An incentive of 5% of low income units at or below 15% AMGI will avert this risk for many who will still be left out with the 30% AMGI boost.

3. TCDD supports Sec. 11.9 (c) (7) that will provide an additional 2 points in scoring to participate in the Section 811 Project Rental Assistance Demonstration (PRA) if the developer commits at least 10 units for participation in the 811 program.

   Under this incentive, according to TDHCA estimates, 20 to 40 new multi-family developments could offer 10% to 20% of their integrated units to persons with disabilities who will receive project based rental vouchers through the Section 811 PRA grant.

TCDD Comments on the Draft of the Uniform Multifamily Rules:

4. TCDD supports Section 10.101(b)(8) that adds language reinforcing the requirement that two-story or single family units normally exempt from Fair Housing accessibility requirements must provide a minimum of 20% of one bedroom, two bedroom, and three bedroom units with an accessible entry level on multi-level units and all common-use facilities in compliance with the Fair Housing Guidelines.

5. TCDD supports the change also found in Section 10.101 b) (8) that will require all applications proposing Rehabilitation (including Reconstruction) to be treated as Substantial Alteration so that 5% of units will be required to be set-aside to accommodate persons with mobility impairments and 2% set-aside for persons with visual impairments.

   According to *Priced Out 2012*, the lack of accessible housing impedes efforts to expand community-based services and supports through Medicaid optional and waiver services and federal initiatives, such as the U.S. Department of Health and Human Services Money Follows the Person Demonstration program.[ii] Adding this requirement is a praiseworthy approach to breaking down barriers to community living for individuals who need an accessible living environment.

TCDD appreciates the responsiveness of TDCHA to increasing community living options for individuals with disabilities who require deeply affordable, integrated, accessible housing options. Thank you.

Respectfully submitted,

Belinda Carlton, CPM
TCDD Public Policy Specialist
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512 437-5414

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[i] Cooper, E., et al. *Priced Out 2012 - The Housing Crisis for People with Disabilities.* May 2013. Pg. 5 Retrieved October 15, 2013 from http://www.tacinc.org/media/33368/PricedOut2012.pdf

[ii] Ibid.

(49) Mike Daniel
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October 21, 2013
email delivery

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Re: *ICP v. TDHCA*, 3:08-CV-0546-D, TDHCA proposed 2014 Qualified Allocation Plan and Multifamily Rules

These comments on the TDHCA proposed 2014 Qualified Allocation Plan and Multifamily Rules are submitted on behalf of the Inclusive Communities Project, Inc. (ICP). The comments are directed to the draft rules published on September 27, 2013, 38 Tex. Reg, 6358.

ICP supports the proposal to make applications for Qualified Elderly Projects in Collin, Denton, and Ellis counties ineligible under the 9% program. Proposed § 11.3(e).

ICP supports the use of the "Met Standard" accountability standard combined with the 77 or higher score on the student performance index 1 as an element of the Opportunity Index and as the standard for the Educational Excellence points under the 9% program point scoring system. Proposed § 11.9(c)(4)(A); Proposed §11.9(c)(5).

ICP does not object to the proposed changes in the Community Revitalization Plan 9% program point scoring system. Proposed § 11.9(d)(7).

ICP objects to the proposed changes in the Opportunity Index 9% program point scoring system for Rural projects in Region 3. Proposed § 11.9(c)(4)(B). The provision of Opportunity

Index points for basic services such as after school programs, any type of health facility, a grocery store, or a day care center changes the concept of the Opportunity Index from one focusing on higher opportunities to one that merely requires basic services. For example, the proposed changes would make locations in the 47% poverty, 4th quartile income, predominantly minority census tract 510 in Kaufman eligible for Opportunity Index points.

The Local Government Support 9% program element has potential discriminatory impacts.

The 2013 Legislative session added the Local Government Support element to the 9% program point scoring system. Proposed § 11.9(d)(1). This element and the points assigned to the element were not part of the *ICP v. TDHCA* liability or remedial proceedings. The 17, 14, or 0 points that can be awarded under this element have the potential for perpetuating racial segregation in the Dallas area. These 17 new points for municipal or county support can be an insurmountable barrier for projects that do not receive either approval or a resolution of non-objection. Granting credits in non-Caucasian areas because of these local government approval points can perpetuate racial segregation as much as denying credits in Caucasian areas because of objections or failures to act. For example, the City of Dallas could make several projects in non-Caucasian areas eligible for the 17 local government support points. These points would place those projects ahead of Caucasian area projects in suburbs with the local government opposing or not supporting those projects.

The potential for segregative effects is shown by hypothetically applying the 17 points to the 2013 Region 3 applicants. The addition of the 17 points for municipal approval to the 2013 application round would have made a significant difference. Without municipal approval, neither Summit Place nor the Millennium - McKinney would have received an allocation. Patriot's Crossing, a low-income minority area in Oak Cliff would have been given an allocation with the municipal approval points.

These local government approval points, when given, are likely to be combined with the other points for local political support. These points include the local political subdivision funding points, the legislative support points, and the points for neighborhood QCP. Similarly, when the local government refuses to approve an application for an Opportunity area, the other factors for points for local support are likely to be absent. The local government approval points have the potential for multiplying the effect of local political opposition on the point totals for remedial 9% program applications in Region 3.

If the application of the proposed local government support element makes dwellings unavailable because of race by perpetuating racial segregation in the Dallas area, the statute and its application violate the Fair Housing Act.

> . . . but any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing

practice under this subchapter shall to that extent be invalid. 42 U.S.C. § 3615.

The Texas Attorney General has pointed out that TDHCA has the discretion to give determinative effect to the legislative support statutory 9% program point scoring element. Tex. Atty. Gen. Op. GA-0455, page 3. There is nothing in the Attorney General opinion nor in the authorities cited in that opinion to suggest that TDHCA does not have the same discretion whether or not to give determinative effect to the municipal approval points. *ICP v. TDHCA*, 2012 WL 3201401, *8 (N.D. Tex. 2012); 42 U.S.C. § 3613(c)(1); Proposed §10.206. ICP will seek judicial relief if the application of this element makes dwellings unavailable because of race by perpetuating racial segregation in the Dallas area.

The Local Government Support 4% program element has potential discriminatory impacts.

As with the 9% program local government support approval element, the discriminatory impact potential is high for this new statutory element. Proposed § 10.204(4). The potential discriminatory impacts include the deterrent effect on developers considering whether to submit applications in Opportunity Index areas. TDHCA can mitigate the likelihood of discriminatory effects by providing 9% program selection points for any development eligible for Opportunity Index points that was denied the opportunity to apply for the 4% credits because of the statute and rule. TDHCA did just this to mitigate neighborhood opposition points. *ICP v. TDHCA*, 2012 WL 3201401, *12 (N.D. Tex. 2012). ICP will seek judicial relief if the application of this element makes dwellings unavailable because of race by perpetuating racial segregation in the Dallas area.

ICP opposes the new standard for determining whether high crime rates are a disqualification under the undesirable area threshold criteria because the standard will make areas with high crime rates eligible.

The crime disqualification factor in the current approved remedial plan and the 2013 QAP is simple and can prevent the location of housing tax credit projects in high crime areas.

> (D) Locally known presence of gang activity, prostitution, drug trafficking, or other significant criminal activity that rises to the level of frequent police reports . . . .

The standard for this determination and the other undesirable area elements is also objective and can usually be documented.

> The standard to be applied in making a determination under this paragraph is whether the undesirable area feature is of a nature that would not be typical in a neighborhood that would qualify under the Opportunity Index pursuant to §11.9(c)(4) of this title (relating to Competitive HTC selection Criteria).

The proposed substitute in the 2014 Multifamily Rules is complex, subjective, and will be difficult to document. Its use will condone the location of housing tax credit projects in high crime areas. This will perpetuate racial segregation.

> D) Locally known presence of gang activity, prostitution, drug trafficking, or other significant criminal activity that rises to the level of being locally known and regarded within the community as a high crime area and reported as such in the press, substantiated by a significant and regular need for a higher than normal level of police activity and/or emergency response in the area. §10.101(a)(4).

ICP will object to an attempt to substitute the proposed 2014 standard for the provision in the current remedial plan.

Sincerely,

s/Michael M. Daniel

s/Laura B. Beshara

cc: Elizabeth K. Julian
Demetria McCain
Ann Lott