SUPPLEMENTAL BOARD BOOK
OF
November 10, 2021

Leo Vasquez III, Chair

Paul Braden, Vice-Chair

Sharon Thomason, Member

Ajay Thomas, Member

Brandon Batch, Member

Kenny Marchant, Member

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
GOVERNING BOARD MEETING

A G E N D A
9:00 AM
November 10, 2021

John H. Regan Building, JHR 140
1400 Congress Ave
Austin, Texas 78701

CALL TO ORDER
ROLL CALL **Leo Vasquez, Chair**
CERTIFICATION OF QUORUM

Pledge of Allegiance - ***I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.***

Texas Allegiance - ***Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.***

CONSENT AGENDA

Items on the Consent Agenda may be removed at the request of any Board member and considered at another appropriate time on this agenda. Placement on the Consent Agenda does not limit the possibility of any presentation, discussion or approval at this meeting. Under no circumstances does the Consent Agenda alter any requirements under Chapter 551 of the Tex. Gov't Code, Texas Open Meetings Act. Action may be taken on any item on this agenda, regardless of how designated.

ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:

EXECUTIVE

a) Presentation, discussion, and possible action on Board meeting minutes summary for October 14, 2021 — **Beau Eccles**, Board Secretary

ASSET MANAGEMENT

b) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement — **Rosalio Banuelos**, Director of Asset Management

93040	Garden Gate Apartments-Fort Worth	Fort Worth
93041	Garden Gate Apartments-Plano	Plano
93101	The Meadows	Garland
94067	Canterbury Crossing Apartments	Abilene

BOND FINANCE

c) Presentation, discussion, and possible action on Inducement Resolution No. 22-008 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing an Application for Private Activity Bond Authority for The Standard at Royal Lane (#21631) in Dallas — **Teresa Morales**, Director of Multifamily Bonds

RULES

This will be an open, public meeting conducted under Tex. Gov't Code, chapter 551, without COVID-19 emergency waivers. There will not be a remote online or telephone option for public participation. The meeting, however, will be streamed online for public viewing. Masks will be available for members of the public who wish to attend this public meeting.

d) Presentation, discussion, and possible action on an order adopting the repeal, and new rule, for 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee, §1.301 Previous Participation Reviews for Multifamily Awards and Ownership Transfers, §1.302 Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter, and §1.303 Executive Award and Review Advisory Committee (EARAC), and an order directing their adoption for submission to the Texas Register — **Brooke Boston**, Deputy Director of Programs

e) Presentation, discussion, and possible action on an order adopting the repeal, and new rule, for 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds; §1.401 Definitions; §1.402 Cost Principles and Administrative Requirements; §1.403 Single Audit Requirements; §1.404 Purchase and Procurement Standards; §1.407 Inventory Report; and §1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code and an order directing their adoption for submission to the Texas Register

f) Presentation, discussion, and possible action on an order adopting amendments to 10 TAC, Chapter 10, Subchapter G, §10.801, Affirmative Marketing Requirements, and directing their submission for adoption to the Texas Register

g) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 6, Community Affairs Programs; an order adopting new 10 TAC Chapter 6, Community Affairs Programs; and directing that they be published for adoption in the Texas Register — **Michael De Young**, Director of Community Affairs

h) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 12, concerning the Multifamily Housing Revenue Bond Rules, and an order adopting new 10 TAC Chapter 12 concerning the Multifamily Housing Revenue Bond Rules, and directing its publication in the Texas Register — **Teresa Morales**, Director of Multifamily Bonds

HOUSING STABILIZATION SERVICES

i) Presentation, Discussion and Possible Approval of an Award of Emergency Rental Assistance Funds to the Texas Homeless Network for Housing Stabilization Services — **Brooke Boston**, Deputy Director of Programs

MULTIFAMILY FINANCE

j) Presentation, discussion, and possible action to revise prior Board action related to requests for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Applications Awarded Competitive (9%) Housing Tax Credits in Prior Application Rounds — **Cody Campbell**, Director of Multifamily Programs

COMMUNITY AFFAIRS

k) Presentation, Discussion, and Possible Action on the 2022 Section 8 Payment Standards for the Housing Choice Voucher Program (HCVP) — **Michael De Young**, Director of Community Affairs

LEGAL

l) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Harmon Elliott Senior Citizens Complex (HTF 355007 / CMTS 2642) — **Jeff Pender**, Deputy General Counsel

m) Presentation, discussion, and possible action regarding the adoption of Agreed Final Orders concerning related properties Second North Apartments (HTC 94001 / CMTS 1201) and Second Adams Apartments (HTC 94018 / CMTS 1217)

n) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning South Texas Development Council (CSBG Contract 61190003061)

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

a) Media Analysis and Outreach Report (September 2021) — **Michael Lyttle**

b) Report on Activities Related to the Department's Response to COVID-19 Pandemic — Director of External Affairs **Brooke Boston**

c) Report on the Department's 4th Quarter Investment Report in accordance with the Public Funds Investment Act — Deputy Director of Programs **Joe Guevara**

d) Report on the Department's 4th Quarter Investment Report relating to funds held under Bond Trust Indentures — Director of Financial Administration **Monica Galuski**

ACTION ITEMS

Executive Session: the Chair may call an Executive Session at this point in the agenda in accordance with the below-cited provisions[1] — Director of Bond Finance **Leo Vasquez** Chair

ITEM 3: EXECUTIVE

Executive Director's Report — **Bobby Wilkinson** Executive Director, TDHCA

ITEM 4: BOND FINANCE

a) Presentation, discussion, and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (Meadowbrook Apartments) Series 2021 Resolution No. 22-009 and a Determination Notice of Housing Tax Credits — **Teresa Morales** Director of Multifamily Bonds

b) Presentation, discussion, and possible action regarding the Issuance of a Governmental Note (Fiji Lofts) Resolution No. 22-010 and a Determination Notice of Housing Tax Credits

ITEM 5: RULES

Presentation, discussion, and possible action on an order approving and recommending to the Governor the repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and an order approving and recommending to the Governor in accordance with Tex. Gov't Code §2306.6724(b) the new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and, upon action by the Governor, directing its publication in the Texas Register — **Brooke Boston** Deputy Director of Programs

ITEM 6: MULTIFAMILY FINANCE

a) Presentation, discussion, and possible action on Awards of Multifamily Direct Loan Funds from the 2021-3 Multifamily Direct Loan Notice of Funding Availability — **Charlotte Flickinger** Multifamily Direct Loan Manager

b) Presentation, discussion and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Application 18235 Memorial Apartments in McAllen — **Cody Campbell** Director of Multifamily Programs

c) Presentation, discussion, and possible action regarding the issuance of a Determination Notice for Torrey Chase Apartments (#21463) in the Houston ETJ — **Teresa Morales** Director of Multifamily Bonds

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

The Board may go into Executive Session Pursuant to Tex. Gov't Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee;

Pursuant to Tex. Gov't Code §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer;

[1] Note: the Chair is not restricted by this item, and may call for an Executive Session at any time during the posted meeting.

Pursuant to Tex. Gov't Code §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't Code Chapter 551; including seeking legal advice in connection with a posted agenda item;

Pursuant to Tex. Gov't Code §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or

Pursuant to Tex. Gov't Code §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

OPEN SESSION

If there is an Executive Session, the Board will reconvene in Open Session. Except as specifically authorized by applicable law, the Board may not take any actions in Executive Session.

ADJOURN

To access this agenda and details on each agenda item in the board book, please visit our website at www.tdhca.state.tx.us or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11th Street, Austin, Texas 78701, and request the information. If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on Twitter.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Nancy Dennis, at 512-475-3959 or Relay Texas at 1-800-735-2989, at least five days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for this meeting should contact Kathleen Vale Castillo, 512-475-4144, at least five days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Kathleen Vale Castillo, al siguiente número 512-475-4144 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

1k

BOARD ACTION REQUEST

COMMUNITY AFFAIRS DIVISION

NOVEMBER 10, 2021

Presentation, Discussion, and Possible Action on the 2022 Section 8 Payment Standards for the Housing Choice Voucher Program (HCVP)

RECOMMENDED ACTION

WHEREAS, the Department is designated as a Public Housing Authority (PHA) and operates a HCVP; and

WHEREAS, 24 CFR §982.503 requires PHAs to establish Payment Standards annually for areas served by its vouchers;

NOW, therefore, it is hereby,

RESOLVED, that the 2022 HCVP Payment Standards for the Department in its role as a PHA, and in accordance with 24 CFR §982.505, are hereby approved in the form presented to this meeting.

BACKGROUND

The U.S. Department of Housing and Urban Development (HUD) requires PHAs to adopt a payment standard schedule annually that establishes voucher payment standard amounts for each Fair Market Rent (FMR) area in the PHA jurisdiction. The PHA must establish payment standard amounts for each "unit size," defined as the number of bedrooms (one-bedroom, two-bedrooms, etc.) in each housing unit.

The Department, operating as a PHA, may establish the payment standard amount at any level between 90% and 110% of the published FMR for that unit size. The establishment of the standard is important because it essentially determines whether a household will be able to find a unit they can afford with the voucher. In areas where market rents are high and there is high demand for rental units it can be a challenge for voucher holders to find a unit. Increased FMRs will aid in areas where voucher holders have had difficulty in finding acceptable units or affording units in more desirable areas. Higher FMRs provide additional choices and opportunities to tenants in highly competitive rental markets.

The importance of trying to ensure that a household's voucher provides enough assistance to house them is balanced with the importance of beneficiaries of vouchers not being over-subsidized. Providing more assistance per household than is truly needed to find a decent, safe affordable housing unit means fewer total households can be assisted. It is through these payment standards that the balance is established.

The approach the Department has taken in setting the payment standards is by evaluating the HUD released FMRs against HUD's Small Area FMRs (SAFMRs). SAFMRs were created by HUD, in response to increasing demand for more localized measures of rents, and are published at the ZIP code level for all metro areas; it should be noted that not all areas served by TDHCA have published SAFMRs. HUD suggests that PHAs can use the SAFMRs as a guide to setting their payment standards so long as the payment standards remain within the basic range (90%-110%) of the HUD published FMRs. By using the SAFMRs as a benchmark, clients are provided with access to a broader range of neighborhoods, thus allowing them the choice to move into areas with more employment, transportation and educational opportunities. HUD also considers the impact that the use of Small Area FMRs may have when payment standards can be reduced (to below 100% of the FMR) to prevent undue subsidy in lower-rent neighborhoods.

The Department has authority in 34 counties where it is required to set the payment standard for Housing Choice Vouchers. Staff has compared the counties in its jurisdiction to SAFMRs, when available, to generate recommended payment standards. Additionally, HUD requires that PHAs managing programs in the Dallas, TX HUD Metropolitan Fair Market Rent Area (FMR Area), which the Department does, utilize its published SAFMR instead of FMRs. HUD also requires PHAs managing programs in the San Antonio-New Braunfels, TX FMR Area and Fort Worth-Arlington, TX FMR Area to adopt SAFMR, and the Department is proposing to do so.

It should be noted that some ZIP codes cross county lines; HUD generates one SAFMR for that ZIP code, but because the FMRs for each county may vary, the resulting payment standard may be different in one part of the ZIP code than another, based on the following analysis being applied.

For 2022, staff recommends establishing the payment standard as follows:

- For ZIP codes in which the FMR falls below the SAFMR by more than 10%, staff adjusted the payment standard to 105% of FMR. These standards are identified in green.

- For ZIP codes in which the FMR falls above the SAFMR by more than 10%, staff adjusted the payment standard to 95% of FMR. These standards are identified in red.

- For ZIP codes in which the FMR falls between 90% to 110% of the SAFMR, staff set the payment standard at 97% of the FMR. These areas are identified in white.

- For ZIP codes in which no SAFMR is available by HUD, the HUD FMR was utilized at 100% of FMR. These areas are identified in gray.

- For counties within HUD's Dallas Metro FMR Area, Fort Worth-Arlington FMR Area or the San Antonio-New Braunfels Metro FMR Area, the Small Area FMRs are used at 100% of the SAFMR. These are identified in blue.

- For counties within the Houston Metropolitan Statistical Area (MSA), Austin, Chambers, Fort Bend, and Galveston counties, the highest of the SAFMR or FMR are used. The Department will be submitting an email to HUD notifying our local field office that it has adopted an exception

to the payment standard based on the SAFMR. These are identified in orange.

These new payment standards will become effective on January 1, 2022, and will be applied at the first annual reexamination following the effective date of the increase in the payment standard. This will affect the tenant upon a subsequent change to the Housing Assistance Payment (HAP) contract such as relocating to a new unit or a change in the family's household composition. The FMRs for unit sizes larger than four bedrooms are calculated by adding 15% of for each extra bedroom to the four-bedroom FMR. If a zip code is not reflected in the attached list, but is within the Department's jurisdiction, the payment standard will be 97% of the FMR. Household and property owners are being given notice at the date of this posting, approximately 30 days prior to the change.

Staff recommends adopting these Payment Standards because they allow current tenants continued affordability in the units they have selected and help new tenants find decent, safe, sanitary, and affordable units.

For areas outside of these 34 counties, the Department serves a Project Access program. The Department will adopt the regular Section 8 payment standards in use by the applicable PHA for its Section 8 program, except that if the PHA has received a waiver from HUD to use a higher or lower Payment Standard the Department will apply the Payment Standard within its authority that is closest to the Payment Standard used by the applicable PHA. If there is no applicable PHA in the area, the Department will use 100% of the FMR or SAFMR (in an area that is required to use SAFMR).

The Department operates a Veterans Assistance Supportive Housing program. For the Project-Based VASH program administered at Freedom’s Path in Kerrville, the Department will utilize FMR at 100% for Kerr County. The Departments also operates a Tenant-Based VASH program administered in the Fort-Bend/ Galveston County area, and will utilize a payment standard at 120% of the SAFMR for HUD-VASH families.

The Department operates an Emergency Housing Voucher program statewide for persons experiencing homelessness; persons at risk of homelessness; persons fleeing, or attempting to f lee, domestic violence, dating violence, sexual assault, stalking or human trafficking; or those w ho are recently homeless and for whom providing rental assistance will prevent the family’s ho melessness or those having high risk of housing instability. The Department will utilize a payment standard at 120% of the HUD FMR or SAFMR (as applicable) for ZIP codes within our jurisdiction.

These Payment Standards are proposed based on HUD's publication of FMRs and SAFMRs in the Federal Register. If any FMR or SAFMR changes in the final version adopted by HUD, the Department will adopt HUD’s final adopted FMR or SAFMR, but will leave the payment standard rate as that adopted in this board action. If needed, a utility allowance will be established.
Payment Standards for TDHCA’s 34 County Area Regular Housing Choice Vouchers

Legend
0 = Gray = Zip Codes with no SAFMR available. 100% FMR

1 = Red = FMR < 90% SAFMR. 105% FMR
2 = Green = FMR > 110% SAFMR. 95% FMR
3 = White = SAFMR between 90% and 110% FMR. 97% FMR
4 = Blue = San Antonio, Dallas MSA. 100% SAFMR
5 = Orange = Houston MSA, Highest of SAFMR or FMR

Atascosa					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$640	$801	$913	$1,129	$1,505
78002	$660	$780	$950	$1,220	$1,510
78005	$550	$700	$800	$990	$1,280
78008	$640	$800	$910	$1,120	$1,500
78011	$550	$700	$800	$990	$1,280
78012	$720	$900	$1,030	$1,270	$1,700
78026	$720	$900	$1,030	$1,270	$1,700
78050	$680	$850	$980	$1,200	$1,610
78052	$560	$680	$800	$1,000	$1,280
78064	$720	$900	$1,030	$1,270	$1,700
78065	$550	$700	$800	$990	$1,280
78069	$530	$650	$760	$950	$1,230
78073	$610	$730	$880	$1,120	$1,400
78113	$800	$950	$1,140	$1,460	$1,820
78114	$730	$870	$1,050	$1,350	$1,670
78118	$640	$800	$910	$1,120	$1,500
78264	$760	$900	$1,080	$1,390	$1,720

Austin					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$606	$778	$912	$1,258	$1,561
77418	$778	$912	$1,258	$1,561	$1,480
77426	$778	$912	$1,258	$1,561	$1,570
77452	$606	$778	$912	$1,258	$1,561
77473	$778	$912	$1,258	$1,561	$1,730
77474	$778	$912	$1,258	$1,561	$1,730
77485	$820	$912	$1,258	$1,561	$1,810
77833	$778	$912	$1,258	$1,561	$1,570
77835	$778	$912	$1,258	$1,561	$1,520
78931	$778	$912	$1,258	$1,561	$1,520
78933	$778	$912	$1,258	$1,561	$1,560
78940	$778	$912	$1,258	$1,561	$1,520

78944	$778	$912	$1,258	$1,561	$1,570
78950	$778	$912	$1,258	$1,561	$1,560
78954	$778	$912	$1,258	$1,561	$1,560

Bandera					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$815	$961	$1,165	$1,500	$1,849
78003	$740	$870	$1,060	$1,360	$1,680
78010	$720	$850	$1,030	$1,330	$1,630
78023	$1,220	$1,440	$1,740	$2,250	$2,760
78055	$590	$690	$840	$1,080	$1,330
78063	$760	$900	$1,090	$1,400	$1,730
78883	$640	$760	$930	$1,210	$1,500
78884	$720	$850	$1,030	$1,330	$1,630
78885	$720	$850	$1,030	$1,330	$1,630

Bosque					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$574	$590	$776	$1,007	$1,052
76043	$574	$590	$776	$1,007	$1,052
76457	$574	$590	$776	$1,007	$1,052
76528	$557	$573	$753	$977	$1,105
76633	$603	$620	$815	$1,058	$1,105
76634	$603	$620	$753	$1,058	$1,105
76637	$574	$590	$776	$1,007	$1,052
76649	$574	$590	$776	$1,007	$1,052
76652	$574	$590	$776	$1,007	$1,052
76665	$574	$590	$776	$1,007	$1,052
76671	$574	$590	$776	$1,007	$1,052
76689	$603	$620	$815	$1,058	$1,105
76690	$574	$590	$776	$1,007	$1,052

Caldwell					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$1,092	$1,236	$1,451	$1,867	$2,194
78610	$1,060	$1,199	$1,408	$1,811	$2,129

78616	$1,038	$1,175	$1,379	$1,774	$2,085
78622	$1,038	$1,175	$1,379	$1,774	$2,085
78632	$1,038	$1,175	$1,379	$1,774	$2,085
78640	$1,147	$1,298	$1,524	$1,961	$2,304
78644	$1,038	$1,175	$1,379	$1,774	$2,085
78648	$1,038	$1,175	$1,379	$1,774	$2,085
78655	$1,038	$1,175	$1,379	$1,774	$2,085
78656	$1,038	$1,175	$1,379	$1,774	$2,085
78661	$1,038	$1,175	$1,379	$1,774	$2,085
78662	$1,038	$1,175	$1,379	$1,774	$2,085
78666	$1,038	$1,175	$1,379	$1,774	$2,085
78953	$1,147	$1,298	$1,524	$1,961	$2,304
78959	$1,038	$1,175	$1,379	$1,774	$2,085

Chambers					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$944	$1,014	$1,208	$1,603	$2,058
77514	$1,014	$1,208	$1,603	$2,058	$1,810
77521	$1,014	$1,208	$1,603	$2,058	$1,840
77523	$1,014	$1,208	$1,603	$2,058	$2,030
77535	$1,014	$1,208	$1,603	$2,058	$1,810
77560	$1,014	$1,208	$1,603	$2,058	$1,810
77575	$1,014	$1,208	$1,603	$2,058	$1,810
77580	$1,014	$1,208	$1,603	$2,058	$1,910
77597	$1,014	$1,208	$1,603	$2,058	$1,810
77661	$1,014	$1,208	$1,603	$2,058	$1,810
77665	$1,014	$1,208	$1,603	$2,058	$1,810

Colorado					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$602	$618	$813	$1,081	$1,187
77412	$602	$618	$813	$1,081	$1,187
77434	$602	$618	$813	$1,081	$1,187
77435	$633	$649	$854	$1,136	$1,247
77442	$602	$618	$813	$1,081	$1,187
77460	$602	$618	$813	$1,081	$1,187
77470	$602	$618	$813	$1,081	$1,187
77474	$633	$649	$854	$1,136	$1,247

77475	$602	$618	$813	$1,081	$1,187
77964	$602	$618	$813	$1,081	$1,187
78933	$584	$649	$854	$1,136	$1,247
78934	$602	$618	$813	$1,081	$1,187
78935	$602	$618	$813	$1,081	$1,187
78940	$584	$649	$789	$1,136	$1,247
78943	$602	$618	$813	$1,081	$1,187
78950	$584	$649	$854	$1,136	$1,247
78951	$602	$618	$813	$1,081	$1,187
78956	$602	$618	$813	$1,081	$1,187
78962	$602	$618	$813	$1,081	$1,187

Comal

	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$815	$961	$1,165	$1,500	$1,849
78006	$910	$1,090	$1,360	$1,680	$2,130
78015	$1,230	$1,470	$1,800	$2,280	$2,850
78070	$1,010	$1,200	$1,450	$1,870	$2,300
78108	$1,220	$1,440	$1,750	$2,250	$2,780
78130	$900	$1,060	$1,290	$1,660	$2,050
78131	$920	$1,080	$1,310	$1,690	$2,080
78132	$940	$1,110	$1,340	$1,730	$2,130
78133	$820	$960	$1,170	$1,510	$1,860
78135	$815	$961	$1,165	$1,500	$1,849
78154	$1,020	$1,200	$1,460	$1,880	$2,320
78163	$900	$1,060	$1,290	$1,660	$2,050
78266	$1,220	$1,440	$1,750	$2,250	$2,780
78606	$650	$770	$950	$1,200	$1,500
78623	$930	$1,080	$1,290	$1,660	$2,010
78666	$860	$980	$1,150	$1,480	$1,750
78676	$1,110	$1,260	$1,480	$1,900	$2,240

Comanche

	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$560	$664	$757	$1,075	$1,148
76432	$560	$664	$757	$1,075	$1,148
76436	$560	$664	$757	$1,075	$1,148
76442	$560	$664	$757	$1,075	$1,148
76444	$560	$664	$757	$1,075	$1,148

76445	$560	$664	$757	$1,075	$1,148
76446	$560	$664	$757	$1,075	$1,148
76452	$560	$664	$757	$1,075	$1,148
76454	$560	$664	$757	$1,075	$1,148
76455	$560	$664	$757	$1,075	$1,148
76468	$560	$664	$757	$1,075	$1,148
76471	$560	$664	$757	$1,075	$1,148
76474	$560	$664	$757	$1,075	$1,148
76857	$560	$664	$757	$1,075	$1,148
76890	$560	$664	$757	$1,075	$1,148

Crockett

	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$560	$600	$757	$998	$1,105
76943	$560	$600	$757	$998	$1,105

Denton

	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$1,076	$1,150	$1,362	$1,736	$2,280
75007	$1,140	$1,220	$1,440	$1,840	$2,410
75009	$1,450	$1,540	$1,830	$2,330	$3,060
75010	$1,240	$1,330	$1,570	$2,000	$2,630
75011	$1,060	$1,130	$1,340	$1,710	$2,240
75019	$1,320	$1,410	$1,670	$2,130	$2,800
75022	$1,610	$1,720	$2,040	$2,600	$3,410
75024	$1,570	$1,680	$1,990	$2,540	$3,330
75027	$1,130	$1,210	$1,430	$1,820	$2,390
75028	$1,610	$1,720	$2,040	$2,600	$3,420
75029	$1,130	$1,210	$1,430	$1,820	$2,390
75033	$1,160	$1,240	$1,470	$1,880	$2,460
75034	$1,400	$1,490	$1,770	$2,260	$2,960
75035	$1,610	$1,720	$2,040	$2,600	$3,420
75036	$1,130	$1,210	$1,430	$1,820	$2,390
75056	$1,320	$1,410	$1,670	$2,130	$2,800
75057	$1,160	$1,240	$1,470	$1,870	$2,460
75065	$1,170	$1,250	$1,480	$1,890	$2,480
75067	$1,180	$1,270	$1,500	$1,910	$2,510
75068	$1,560	$1,670	$1,980	$2,520	$3,310
75077	$1,380	$1,480	$1,750	$2,230	$2,930
75078	$1,390	$1,490	$1,760	$2,240	$2,950

75093	$1,450	$1,550	$1,840	$2,350	$3,080
75287	$1,210	$1,290	$1,530	$1,950	$2,560
76052	$1,350	$1,510	$1,800	$2,380	$2,970
76078	$1,050	$1,070	$1,220	$1,630	$1,760
76092	$1,310	$1,480	$1,760	$2,330	$2,910
76177	$1,220	$1,370	$1,630	$2,150	$2,700
76201	$970	$1,040	$1,230	$1,570	$2,060
76202	$1,130	$1,210	$1,430	$1,820	$2,390
76203	$1,076	$1,150	$1,362	$1,736	$2,280
76204	$1,130	$1,210	$1,430	$1,820	$2,390
76205	$1,030	$1,110	$1,310	$1,670	$2,190
76206	$1,130	$1,210	$1,430	$1,820	$2,390
76207	$1,110	$1,180	$1,400	$1,780	$2,340
76208	$1,150	$1,220	$1,450	$1,850	$2,430
76209	$980	$1,050	$1,240	$1,580	$2,080
76210	$1,310	$1,400	$1,660	$2,120	$2,780
76226	$1,610	$1,720	$2,040	$2,600	$3,420
76227	$1,600	$1,710	$2,020	$2,570	$3,380
76234	$910	$920	$1,050	$1,410	$1,490
76247	$1,280	$1,370	$1,620	$2,060	$2,710
76249	$1,150	$1,230	$1,460	$1,860	$2,440
76258	$990	$1,060	$1,260	$1,610	$2,110
76259	$1,140	$1,220	$1,450	$1,850	$2,420
76262	$1,150	$1,260	$1,490	$1,930	$2,490
76266	$1,130	$1,210	$1,430	$1,820	$2,390
76272	$1,130	$1,210	$1,430	$1,820	$2,390

Ellis					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$1,076	$1,150	$1,362	$1,736	$2,280
75101	$860	$920	$1,090	$1,390	$1,820
75104	$1,280	$1,370	$1,620	$2,060	$2,710
75119	$870	$930	$1,100	$1,400	$1,840
75125	$990	$1,060	$1,250	$1,590	$2,090
75146	$1,020	$1,090	$1,290	$1,640	$2,160
75152	$1,050	$1,120	$1,330	$1,700	$2,230
75154	$1,120	$1,200	$1,420	$1,810	$2,380
75165	$940	$1,000	$1,190	$1,520	$1,990
75167	$1,380	$1,480	$1,750	$2,230	$2,930
75168	$990	$1,060	$1,250	$1,590	$2,090
76041	$960	$1,030	$1,220	$1,550	$2,040
76050	$800	$910	$1,080	$1,430	$1,790
76055	$990	$1,060	$1,250	$1,590	$2,090

76063	$1,190	$1,350	$1,610	$2,140	$2,660
76064	$930	$1,000	$1,180	$1,500	$1,980
76065	$1,110	$1,190	$1,410	$1,800	$2,360
76084	$850	$960	$1,140	$1,510	$1,890
76623	$820	$880	$1,040	$1,330	$1,740
76626	$990	$1,060	$1,250	$1,590	$2,090
76641	$990	$1,060	$1,250	$1,590	$2,090
76651	$790	$840	$1,000	$1,270	$1,670
76670	$930	$1,000	$1,180	$1,500	$1,980
Erath					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$717	$722	$875	$1,182	$1,187
76401	$717	$722	$875	$1,182	$1,187
76402	$717	$722	$875	$1,182	$1,187
76433	$717	$722	$875	$1,182	$1,187
76436	$717	$722	$875	$1,182	$1,187
76444	$717	$722	$875	$1,182	$1,187
76445	$717	$722	$875	$1,182	$1,187
76446	$717	$722	$875	$1,182	$1,187
76453	$717	$722	$875	$1,182	$1,187
76457	$717	$722	$875	$1,182	$1,187
76461	$717	$722	$875	$1,182	$1,187
76462	$753	$759	$919	$1,242	$1,247
76463	$717	$722	$875	$1,182	$1,187
76465	$717	$722	$875	$1,182	$1,187
76470	$717	$722	$875	$1,182	$1,187
76649	$717	$722	$875	$1,182	$1,187
76690	$717	$722	$875	$1,182	$1,187
Falls					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$556	$633	$757	$1,075	$1,296
76519	$584	$615	$735	$1,043	$1,258
76524	$584	$665	$795	$1,129	$1,361
76570	$584	$665	$795	$1,129	$1,361
76579	$584	$615	$795	$1,129	$1,361
76629	$584	$615	$735	$1,043	$1,258
76630	$584	$665	$795	$1,129	$1,258
76632	$584	$665	$795	$1,129	$1,361
76642	$540	$615	$735	$1,043	$1,258
76653	$584	$665	$795	$1,129	$1,361
76655	$584	$665	$795	$1,129	$1,361

76656	$540	$615	$735	$1,043	$1,258
76661	$540	$615	$735	$1,043	$1,258
76664	$584	$615	$795	$1,043	$1,258
76680	$540	$615	$735	$1,043	$1,258
76682	$584	$665	$795	$1,129	$1,361
76685	$584	$665	$795	$1,129	$1,361
76706	$584	$665	$795	$1,129	$1,258
Fort Bend					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$944	$1,014	$1,208	$1,603	$2,058
77031	$1,014	$1,208	$1,603	$2,058	$1,810
77053	$1,050	$1,208	$1,603	$2,058	$2,280
77082	$1,070	$1,208	$1,603	$2,058	$2,330
77083	$1,014	$1,208	$1,603	$2,058	$2,040
77085	$1,014	$1,208	$1,603	$2,058	$2,150
77099	$1,014	$1,208	$1,603	$2,058	$1,940
77406	$1,160	$1,250	$1,603	$2,058	$2,540
77407	$1,330	$1,430	$1,700	$2,260	$2,900
77417	$1,014	$1,208	$1,603	$2,058	$1,860
77420	$1,210	$1,300	$1,603	$2,060	$2,640
77423	$1,014	$1,208	$1,603	$2,058	$1,810
77430	$1,014	$1,208	$1,603	$2,058	$1,810
77435	$1,014	$1,208	$1,603	$2,058	$1,810
77441	$1,014	$1,208	$1,603	$2,058	$2,120
77444	$1,014	$1,208	$1,603	$2,058	$1,810
77450	$1,210	$1,300	$1,603	$2,060	$2,640
77451	$1,014	$1,208	$1,603	$2,058	$1,820
77459	$1,420	$1,520	$1,810	$2,400	$3,080
77461	$1,014	$1,208	$1,603	$2,058	$1,820
77464	$1,014	$1,208	$1,603	$2,058	$1,810
77469	$1,014	$1,208	$1,603	$2,058	$2,130
77471	$1,014	$1,208	$1,603	$2,058	$1,980
77476	$1,014	$1,208	$1,603	$2,058	$1,810
77477	$1,150	$1,230	$1,603	$2,058	$2,500
77478	$1,310	$1,400	$1,670	$2,220	$2,850
77479	$1,420	$1,520	$1,810	$2,400	$3,080
77481	$1,014	$1,208	$1,603	$2,058	$2,240
77485	$1,014	$1,208	$1,603	$2,058	$1,810
77487	$1,210	$1,300	$1,603	$2,060	$2,640
77489	$1,200	$1,280	$1,603	$2,058	$2,610
77493	$1,240	$1,340	$1,603	$2,110	$2,710
77494	$1,420	$1,520	$1,810	$2,400	$3,080
77496	$1,210	$1,300	$1,603	$2,060	$2,640
77497	$1,210	$1,300	$1,603	$2,060	$2,640
77498	$1,340	$1,440	$1,710	$2,270	$2,910

77545	$1,280	$1,380	$1,640	$2,180	$2,790
77583	$1,014	$1,208	$1,603	$2,058	$1,810
77584	$1,040	$1,360	$1,603	$2,058	$2,660

Freestone					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$560	$575	$757	$1,024	$1,144
75831	$560	$575	$757	$1,024	$1,144
75838	$560	$575	$757	$1,024	$1,144
75840	$560	$575	$757	$1,024	$1,144
75848	$560	$575	$757	$1,024	$1,144
75855	$560	$575	$757	$1,024	$1,144
75859	$560	$575	$757	$1,024	$1,144
75860	$560	$575	$757	$1,024	$1,144
76667	$560	$575	$757	$1,024	$1,144
76693	$560	$575	$757	$1,024	$1,144

Frio					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$636	$754	$859	$1,153	$1,254
78005	$605	$732	$834	$1,096	$1,217
78016	$605	$717	$817	$1,096	$1,217
78017	$636	$754	$859	$1,153	$1,254
78057	$617	$732	$834	$1,119	$1,217
78061	$636	$754	$859	$1,153	$1,254

Galveston					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$944	$1,014	$1,208	$1,603	$2,058
77510	$1,014	$1,208	$1,603	$2,058	$1,810
77511	$1,014	$1,208	$1,603	$2,058	$1,870
77517	$1,014	$1,208	$1,603	$2,058	$2,130
77518	$1,014	$1,208	$1,603	$2,058	$1,810
77539	$1,014	$1,208	$1,603	$2,058	$1,960
77546	$1,160	$1,240	$1,603	$2,058	$2,520
77549	$1,014	$1,208	$1,603	$2,058	$2,010

77550	$1,014	$1,208	$1,603	$2,058	$1,840
77551	$1,014	$1,208	$1,603	$2,058	$1,990
77552	$1,014	$1,208	$1,603	$2,058	$2,010
77553	$1,014	$1,208	$1,603	$2,058	$2,010
77554	$1,014	$1,208	$1,603	$2,058	$2,080
77555	$944	$1,014	$1,208	$1,603	$2,058
77563	$1,014	$1,208	$1,603	$2,058	$1,810
77565	$1,110	$1,208	$1,603	$2,058	$2,420
77568	$1,014	$1,208	$1,603	$2,058	$1,810
77573	$1,200	$1,290	$1,603	$2,058	$2,620
77574	$1,014	$1,208	$1,603	$2,058	$2,010
77581	$1,014	$1,208	$1,603	$2,058	$2,180
77590	$1,014	$1,208	$1,603	$2,058	$1,810
77591	$1,014	$1,208	$1,603	$2,058	$1,870
77623	$1,014	$1,208	$1,603	$2,058	$1,810
77650	$1,014	$1,208	$1,603	$2,058	$2,010

Gillespie

	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$760	$765	$1,007	$1,430	$1,559
76856	$760	$765	$1,007	$1,430	$1,559
78028	$760	$765	$1,007	$1,430	$1,559
78058	$760	$765	$1,007	$1,430	$1,559
78618	$760	$765	$1,007	$1,430	$1,559
78624	$738	$804	$1,058	$1,388	$1,637
78631	$760	$765	$1,007	$1,430	$1,559
78635	$760	$765	$1,007	$1,430	$1,559
78671	$760	$765	$1,007	$1,430	$1,559
78675	$760	$765	$1,007	$1,430	$1,559

Grimes

	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$603	$619	$815	$1,007	$1,105
77316	$634	$650	$856	$1,058	$1,161
77356	$634	$650	$856	$1,058	$1,161
77363	$634	$650	$856	$1,058	$1,161
77484	$634	$650	$856	$1,058	$1,161
77830	$603	$619	$815	$1,007	$1,105
77831	$603	$619	$815	$1,007	$1,105
77861	$603	$619	$815	$1,007	$1,105
77868	$634	$650	$856	$1,058	$1,161
77872	$603	$619	$815	$1,007	$1,105

77873	$634	$650	$856	$1,058	$1,161
77875	$603	$619	$815	$1,007	$1,105
77876	$603	$619	$815	$1,007	$1,105

Guadalupe					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$815	$961	$1,165	$1,500	$1,849
78108	$1,220	$1,440	$1,750	$2,250	$2,780
78115	$900	$1,060	$1,280	$1,650	$2,030
78121	$860	$1,010	$1,230	$1,580	$1,950
78123	$710	$830	$1,010	$1,300	$1,600
78124	$760	$890	$1,080	$1,390	$1,710
78130	$900	$1,060	$1,290	$1,660	$2,050
78132	$940	$1,110	$1,340	$1,730	$2,130
78140	$710	$830	$1,010	$1,300	$1,600
78150	$790	$930	$1,130	$1,460	$1,790
78154	$1,020	$1,200	$1,460	$1,880	$2,320
78155	$720	$850	$1,030	$1,330	$1,630
78156	$900	$1,060	$1,280	$1,650	$2,030
78638	$750	$860	$1,030	$1,320	$1,590
78648	$700	$790	$930	$1,200	$1,410
78655	$740	$850	$1,000	$1,290	$1,540
78666	$860	$980	$1,150	$1,480	$1,750
78670	$770	$880	$1,030	$1,330	$1,580

Johnson					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$939	$1,064	$1,269	$1,685	$2,098
76009	$911	$1,033	$1,231	$1,635	$2,036
76028	$911	$1,033	$1,231	$1,635	$2,036
76031	$893	$1,011	$1,206	$1,601	$1,994
76033	$893	$1,011	$1,206	$1,601	$1,994
76035	$911	$1,033	$1,231	$1,635	$2,036
76036	$986	$1,118	$1,333	$1,770	$2,203
76044	$911	$1,033	$1,231	$1,635	$2,036
76049	$911	$1,033	$1,231	$1,635	$2,036
76050	$893	$1,011	$1,206	$1,601	$1,994
76058	$893	$1,011	$1,206	$1,601	$1,994
76059	$893	$1,011	$1,206	$1,601	$1,994

76061	$911	$1,033	$1,231	$1,635	$2,036
76063	$986	$1,118	$1,333	$1,770	$2,203
76070	$911	$1,033	$1,231	$1,635	$2,036
76084	$893	$1,011	$1,206	$1,601	$1,994
76093	$893	$1,011	$1,206	$1,601	$1,994
76097	$911	$1,033	$1,231	$1,635	$2,036

Karnes					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$559	$633	$799	$1,084	$1,167
78062	$559	$633	$799	$1,084	$1,167
78111	$559	$633	$799	$1,084	$1,167
78113	$587	$665	$839	$1,139	$1,226
78116	$559	$633	$799	$1,084	$1,167
78117	$559	$633	$799	$1,084	$1,167
78118	$587	$665	$839	$1,052	$1,226
78119	$587	$665	$839	$1,052	$1,226
78141	$559	$633	$799	$1,084	$1,167
78144	$559	$633	$799	$1,084	$1,167
78151	$559	$633	$799	$1,084	$1,167

Kendall					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$902	$1,087	$1,358	$1,679	$2,130
78004	$940	$1,130	$1,390	$1,740	$2,190
78006	$910	$1,090	$1,360	$1,680	$2,130
78013	$800	$960	$1,170	$1,450	$1,860
78015	$1,230	$1,470	$1,800	$2,280	$2,850
78027	$830	$990	$1,220	$1,540	$1,920
78070	$1,010	$1,200	$1,450	$1,870	$2,300
78074	$900	$1,090	$1,360	$1,680	$2,130
78606	$650	$770	$950	$1,200	$1,500
78624	$800	$960	$1,170	$1,450	$1,860

Kerr					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom

HUD FMR	$670	$766	$906	$1,253	$1,338
76849	$670	$766	$906	$1,253	$1,338
78003	$650	$805	$952	$1,216	$1,405
78010	$650	$744	$952	$1,216	$1,405
78013	$704	$805	$952	$1,316	$1,405
78024	$670	$766	$906	$1,253	$1,338
78025	$670	$766	$906	$1,253	$1,338
78028	$670	$766	$906	$1,253	$1,338
78029	$670	$766	$906	$1,253	$1,338
78055	$637	$728	$879	$1,191	$1,298
78058	$670	$766	$906	$1,253	$1,338
78063	$704	$805	$952	$1,316	$1,405
78624	$704	$805	$952	$1,316	$1,405
78631	$670	$766	$906	$1,253	$1,338

Lee

	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$729	$828	$985	$1,218	$1,438
76567	$693	$787	$936	$1,182	$1,395
76578	$766	$870	$1,035	$1,279	$1,510
77853	$729	$828	$985	$1,218	$1,438
78621	$766	$870	$1,035	$1,279	$1,510
78650	$766	$870	$1,035	$1,279	$1,510
78659	$766	$870	$1,035	$1,279	$1,510
78942	$766	$870	$1,035	$1,279	$1,510
78945	$766	$870	$1,035	$1,279	$1,510
78946	$729	$828	$985	$1,218	$1,438
78947	$729	$828	$985	$1,218	$1,438
78948	$729	$828	$985	$1,218	$1,438

Llano

	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$718	$737	$970	$1,199	$1,449
76831	$718	$737	$970	$1,199	$1,449
76869	$718	$737	$970	$1,199	$1,449
76885	$718	$737	$970	$1,199	$1,449
78607	$718	$737	$970	$1,199	$1,449
78609	$718	$737	$970	$1,199	$1,449
78611	$718	$737	$970	$1,199	$1,449

78624	$754	$774	$1,019	$1,259	$1,522
78639	$718	$737	$970	$1,199	$1,449
78643	$718	$737	$970	$1,199	$1,449
78657	$718	$737	$970	$1,199	$1,449
78672	$718	$737	$970	$1,199	$1,449

McLennan					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$673	$716	$915	$1,215	$1,300
76524	$653	$752	$888	$1,179	$1,365
76557	$653	$681	$888	$1,179	$1,261
76561	$653	$681	$888	$1,179	$1,261
76621	$653	$695	$888	$1,179	$1,261
76622	$653	$695	$888	$1,179	$1,261
76624	$653	$695	$888	$1,179	$1,261
76630	$653	$695	$888	$1,179	$1,261
76633	$707	$752	$961	$1,179	$1,365
76638	$707	$752	$961	$1,276	$1,365
76640	$653	$695	$888	$1,179	$1,261
76643	$707	$752	$961	$1,276	$1,365
76654	$653	$695	$888	$1,179	$1,261
76655	$707	$752	$961	$1,276	$1,365
76657	$707	$752	$961	$1,276	$1,365
76664	$653	$695	$888	$1,179	$1,261
76673	$653	$681	$888	$1,179	$1,261
76678	$673	$716	$915	$1,215	$1,300
76682	$653	$695	$888	$1,179	$1,365
76684	$673	$716	$915	$1,215	$1,300
76689	$653	$695	$888	$1,179	$1,261
76691	$653	$695	$888	$1,179	$1,261
76701	$707	$752	$961	$1,276	$1,365
76702	$653	$695	$888	$1,179	$1,261
76703	$653	$695	$888	$1,179	$1,261
76704	$653	$681	$888	$1,179	$1,261
76705	$653	$681	$888	$1,179	$1,261
76706	$653	$695	$888	$1,179	$1,261
76707	$653	$695	$888	$1,179	$1,261
76708	$653	$695	$888	$1,179	$1,261
76710	$653	$695	$888	$1,179	$1,261
76711	$707	$752	$961	$1,276	$1,365
76712	$707	$752	$961	$1,276	$1,365
76714	$653	$695	$888	$1,179	$1,261

76716	$653	$695	$888	$1,179	$1,261
76797	$673	$716	$915	$1,215	$1,300
76798	$653	$695	$888	$1,179	$1,261
76799	$673	$716	$915	$1,215	$1,300

McMullen					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$608	$652	$822	$1,084	$1,200
78007	$608	$652	$822	$1,084	$1,200
78026	$639	$685	$864	$1,139	$1,260
78071	$608	$652	$822	$1,084	$1,200
78072	$608	$652	$822	$1,084	$1,200

Medina					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$637	$692	$910	$1,170	$1,309
78003	$740	$870	$1,060	$1,360	$1,680
78009	$740	$810	$1,060	$1,360	$1,530
78016	$550	$600	$780	$1,020	$1,200
78023	$1,220	$1,440	$1,740	$2,250	$2,760
78039	$530	$580	$760	$970	$1,090
78052	$560	$680	$800	$1,000	$1,280
78056	$810	$940	$1,160	$1,500	$1,800
78057	$640	$690	$910	$1,170	$1,310
78059	$570	$620	$810	$1,040	$1,200
78063	$760	$900	$1,090	$1,400	$1,730
78066	$870	$990	$1,240	$1,600	$1,880
78253	$1,120	$1,310	$1,600	$2,060	$2,530
78254	$1,040	$1,220	$1,480	$1,910	$2,350
78850	$640	$690	$910	$1,170	$1,310
78861	$620	$680	$890	$1,140	$1,280
78884	$720	$850	$1,030	$1,330	$1,630
78886	$640	$690	$910	$1,170	$1,310

Waller					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$944	$1,014	$1,208	$1,603	$2,058
77355	$1,014	$1,208	$1,603	$2,058	$2,130
77363	$1,014	$1,208	$1,603	$2,058	$2,040
77423	$1,014	$1,208	$1,603	$2,058	$1,810
77445	$1,014	$1,208	$1,603	$2,058	$1,810

77446	$1,014	$1,208	$1,603	$2,058	$2,100
77447	$1,080	$1,208	$1,603	$2,058	$2,350
77466	$1,014	$1,208	$1,603	$2,058	$1,860
77484	$1,014	$1,208	$1,603	$2,058	$1,810
77493	$1,240	$1,340	$1,603	$2,110	$2,710
77494	$1,420	$1,520	$1,810	$2,400	$3,080
77868	$1,014	$1,208	$1,603	$2,058	$1,810

Wharton

	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$598	$676	$808	$1,141	$1,383
77420	$628	$710	$849	$1,199	$1,453
77432	$598	$676	$808	$1,141	$1,383
77434	$598	$676	$808	$1,141	$1,383
77435	$628	$710	$849	$1,199	$1,453
77436	$598	$676	$808	$1,141	$1,383
77437	$598	$676	$808	$1,141	$1,383
77443	$598	$676	$808	$1,141	$1,383
77448	$598	$676	$808	$1,141	$1,383
77453	$598	$676	$808	$1,141	$1,383
77454	$598	$676	$808	$1,141	$1,383
77455	$598	$676	$808	$1,141	$1,383
77467	$598	$676	$808	$1,141	$1,383
77485	$628	$710	$849	$1,199	$1,453
77488	$598	$676	$808	$1,141	$1,383

Wilson

	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$815	$961	$1,165	$1,500	$1,849
78064	$720	$900	$1,030	$1,270	$1,700
78101	$790	$940	$1,140	$1,460	$1,800
78112	$730	$860	$1,040	$1,340	$1,650
78113	$800	$950	$1,140	$1,460	$1,820
78114	$730	$870	$1,050	$1,350	$1,670
78121	$860	$1,010	$1,230	$1,580	$1,950
78140	$710	$830	$1,010	$1,300	$1,600
78143	$730	$860	$1,040	$1,340	$1,650
78147	$640	$750	$910	$1,170	$1,440
78152	$830	$980	$1,190	$1,530	$1,890

78160	$730	$870	$1,050	$1,350	$1,670
78161	$800	$950	$1,150	$1,480	$1,830
78223	$710	$830	$1,010	$1,300	$1,600

Wise					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	$857	$872	$994	$1,335	$1,399
76020	$790	$890	$1,070	$1,420	$1,760
76023	$910	$920	$1,060	$1,420	$1,490
76052	$1,350	$1,510	$1,800	$2,380	$2,970
76071	$830	$860	$990	$1,270	$1,380
76073	$850	$870	$990	$1,330	$1,390
76078	$1,050	$1,070	$1,220	$1,630	$1,760
76082	$880	$980	$1,170	$1,550	$1,900
76225	$840	$860	$980	$1,270	$1,350
76234	$910	$920	$1,050	$1,410	$1,490
76246	$850	$870	$990	$1,330	$1,390
76247	$1,280	$1,370	$1,620	$2,060	$2,710
76249	$1,150	$1,230	$1,460	$1,860	$2,440
76259	$1,140	$1,220	$1,450	$1,850	$2,420
76267	$850	$870	$990	$1,330	$1,390
76270	$840	$860	$980	$1,270	$1,370
76426	$840	$860	$980	$1,270	$1,350
76431	$840	$860	$980	$1,300	$1,370
76458	$850	$870	$990	$1,330	$1,390
76487	$960	$1,060	$1,260	$1,670	$2,020

2b

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Update on TDHCA Programs Addressing COVID-19 Pandemic Response
Report for November 10, 2021

This report provides an update on the programs TDHCA has targeted to assist with Texas' response to COVID-19 through reprogramming of existing funds, and through the administration of CARES Act, Coronavirus Relief Bill funds, and the American Rescue Plan Act.

Shaded rows reflect completed programs for which assistance is no longer available.

Program	Timelines / Contract Periods	Planned Activities	Waivers and Initial Approvals Needed	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Drawn (%)	Other Notes
EARLY REPROGRAMMING OF EXISTING TDHCA PROGRAM FUNDS								
HOME Program Tenant Based Rental Assistance (TBRA) for COVID-19 DR	NA: Reservation Agreements	3-6 months of rental assistance made available through existing or new HOME subrecipients *Geography:* Was available where subrecipients applied. 23 administrators covered 120 counties *Income Eligibility:* Households at or below 80% AMFI based on current circumstances	All necessary waivers for this activity were authorized by the OOG and HUD via HUD's mega-waiver of April 10, 2020. The HUD waivers were extended by HUD in December 2020 to expire September 30, 2021.	Amount obligated exceeds original program funding because other previously deob-ligated available HOME funds have been used to allow eligible households to access a full 6 months of assistance.	No added TDHCA staffing No added admin funds	2,612 Includes active, pending PCR, and closed activ-ities	Up to $11,290,076 $11,368,399* 100.69% $10,899,082 96.53%	All originally programmed funds are obligated 2,749 (households) activities submitted, including total served * Amount Reserved
Reprogram 2019 and 2020 CSBG Discretionary and Admin. Funds	• Board approval March 2020 • Recipients contracts were effective March 26, 2020 • Expenditure Deadline was August 31, 2020	Used the existing network of Community Action Agencies to provide direct client assistance to low income households economically impacted by COVID-19 *Geography*: Available statewide (excluding CWCCP and CSI) *Income Eligibility*: 200% poverty (normally is 125%)	None	**COMPLETED** 100% expended	No added TDHCA staffing No added admin funds	9,468 persons	$1,434,352 1,434,352 **100%** $1,434,352 **100%**	38 CAA subs

Program	Timelines / Contract Periods	Planned Activities	Waivers and Initial Approvals Needed	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
Recaptured 2018/2019 HHSP	• Board approval March 2020 • 2018 had to be spent by August 31, 2020; 2019 had to be spent by December 31, 2020	Allow subrecipients to perform HHSP eligible activities in addressing homelessness and those at risk of homelessness *Geography*: Available 9 largest metro areas *Income Eligibility*: Generally 30% AMFI if applicable	Approval from Comptroller granted	**COMPLETED** 100% expended	No added TDHCA staffing No added admin funds	462 persons	$191,939.53 $191,939.53 **100%** $191,939.53 **100%**	9 subs
CARES ACT FUNDS								
CSBG CARES	• Board approved April 2020 • Must expend 90% by August 31, 2022 • 45 day closeout period	90% to CAAs using regular CSBG formula for households affected by COVID-19; 2% ($949,120) to Texas Homeless Network[1]; 7% for an eviction diversion pilot program; 1% for state admin *Geography*: Available statewide *Income Eligibility*: 200% of poverty (normally is 125%)	The flexibilities allowed by USHHS have been accepted	All contracts are in progress. The Eviction Diversion program has been completed	1 Art. IX FTE for CSBG reporting 1% admin ($474,560)	124,935 persons	$48,102,282 $48,102,282 **100%** $40,585,384 84%	40 CAA subs CSBG-CV Discretionary has various deadlines
LIHEAP CARES	• Board approved April 2020 • Must expend by September 30, 2021 • 45 day closeout period	99% to CEAP subs for households affected by COVID-19; 1% for state admin (no weatherization) *Geography*: Available statewide *Income Eligibility*: 150% of poverty	The flexibilities allowed by USHHS have been accepted	Program close out period ends on October 30, 2021. At that time staff will be able to report on the amount of funds having to be returned to HHS.	1 Art. IX FTE for CEAP TA/capacity (1 Filled) 1% admin ($892,670)	174,723 persons	$94,023,896 $93,483,658 99% $62,943,301 67%	37 subs with all contracts executed. No subs declined funds. Added program flexibilities to improve assistance to households impacted by Winter Storm Uri.

[1] The award to THN is to address homelessness and those at risk of homelessness as a result of COVID-19.

Program	Timelines / Contract Periods	Planned Activities	Waivers and Initial Approvals Needed	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
CDBG CARES – Phases I, II and III	Board approved general use of the funds for CDBG Phase I in April 2020 and Plan Amendments in October 2020, January 2021, and July 2021 80% of funds must be expended by November 3, 2023; remaining 20% by November 3, 2026 90-day closeout period	Planned Usage: rental assistance in 40 cities/counties; mortgage payment assistance in 40 counties; legal services; assistance for providers of persons with disabilities; food expenses; community resiliency activities; and possible HMIS data warehouse funds. *See Also Attached Report.* *Geography:* Varies by activity type.	HUD agreement executed November 3, 2020. All Plan Amendments approved.	*See Attached Report.*	CDBG Director position filled. 7 other positions filled. May still hire other positions. All FTES are Art. IX Up to 7% admin and TA budget ($9,929,238)	5,270 house-holds	1st allocation: $40,000,886 2nd Allocation: $63,546,200 3rd Allocation: $38,299,172 Total: $141,846,258 $102,799,295* 72% $21,076,806* 14.86%	*Income Eligibility:* For households at or below 80% of AMI. * Figure includes TDHCA admin funds.
ESG CARES – Phase I	• Board approved programming plan on April 2020, and conditional awards on July 23, 2020 • Expend by September 30, 2022 • 90 day closeout period	• Four streams: • Existing subs were offered 100% to 200% of current contract amount (~$12.5M) • ESG Coordinators decided via local process for their CoC, and awards made in three areas without ESG Coordinators by offering funds to CoC awardees (~$17.2M) • Legal/HMIS ($1.9M) • *Geography:* Locations of all funded grantees • *Income Eligibility*: 50% AMI for homeless prevention	• HUD mega-waivers accepted • One-Year Plan/ Con Plan amendment to HUD on May 8, 2021 • Additional OYAP/Con Plan amendment to HUD on September 16, 2021 to accept additional flexibilities (CPD notice 21-08)	• Signed grant agreement May 2020 • 101 contracts executed • 3 legal service providers • Actively evaluating providers for contract performance	4 Art. IX FTE (for all phases of ESG) 5 % admin ($1,682,448)	46,646 persons	$33,254,679 $32,126,923 96.61% $24,228,254 72.86%* *Does not include TDHCA admin drawn as this is not separated from ESG CARES II admin in HUD systems	This is the first $1B of national ESG. HMIS/Coordination funds totaling $417,949 was awarded to the 8 ESG Coordinators.

Program	Timelines / Contract Periods	Planned Activities	Waivers and Initial Approvals Needed	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
ESG CARES – Phase II	• Board approved awards January 14, 2021. • Expend by September 30, 2022 • 90 Day closeout period	Two streams: • $61,031,041 for Homelessness Prevention and Rapid Rehousing. • $274,649 for ESG CARES and HMIS Coordination through each Continuum of Care. Amendment processed allowing greater flexibility upon request on eligible uses.	ESG Guidance issued by HUD on September 1, 2020. Plan Amendment submitted to HUD October 21, 2020. HUD signed grant agreement on October 27, 2020.	All contracts are in effect. Actively evaluating providers for contract performance.	FTEs noted under ESG CARES Phase I will be utilized for both phases. 5% admin ($3,232,247)	9,001 persons	$64,537,937 $64,537,937 **100%** $10,677,713 16.54%* *Does not include TDHCA admin drawn as this is not separated from ESG CARES II admin in HUD systems	This is the state's share of the second (final) allocation of $2.96 billion.
Housing Choice Voucher Program Admin	Expend by December 31, 2021 1st Award: $117,268 2nd Award: $140,871 (8/10/2020)	• Software upgrades with Housing Pro to allow more efficient remote interface • Landlord incentive payments • Ordered 3 tablets for inspections • October 2020 Board approved use of funds for retention payments to existing owners to ensure their ongoing participation in the program	Received HUD interpretation that using funds for software upgrades are acceptable. $11,620 was paid for the system purchase.	Only active use of funds currently is new landlord incentives and landlord retention reported in the following columns. It is unlikely that the full amount of these admin funds will be utilized.	No added TDHCA staffing.	149 Land-lord renewals; 27 new landlords added	$258,139 $74,500 28.86% $37,012 (Landlord Payments) 14.3%	$380M nationally. Purchases of Housing Pro upgrades complete. Training underway. Materials for landlord incentives completed.
Housing Choice Voucher Program MVP	Have to issue vouchers by December 31, 2021. Orig. Alloc.: $105,034*	15 additional MVP vouchers consistent with our award of MVP, which for TDHCA is for Project Access households. * A supplemental allocation from HUD is provided each quarter to support the 15 vouchers (amounts vary by quarter).	None needed.	Received award from HUD. Issued the 15 vouchers on May 22, 2020. While 9 have leased up, there have been challenges with households being able to use them (health or housing search reasons) in which case they are returned and offered to another household.	No added TDHCA staffing. No added admin funds.	9 families in current leases.	$110,302 <u>HAP Paid</u> $23,789 21.56%	6 vouchers outstanding; all are searching for units.

Program	Timelines / Contract Periods	Planned Activities	Waivers and Initial Approvals Needed	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
CORONAVIRUS RELIEF BILL – PART OF THE CONSOLIDATED APPROPRIATIONS ACT OF 2021								
Texas Rent Relief Program (ERA1)	The program dedicates funds through Treasury specifically for rental and utility assistance. Called ERA1. Were required to obligate 65% of funds by September 30, 2021, which was exceeded. Are required to expend all funds by September 30, 2022 (extended by American Rescue Bill).	Program provides up to 15 months of rental and utility assistance including arrears. Households must reapply every 3 months. Program run by the state directly with no subrecipients. 10% of funds for Housing Stability services (see following row). Established a 10% set-aside for eviction diversion; applications and households facing utility disconnections are processed first. *Geography:* Statewide. *Income Eligibility:* For households at or <80% AMI.	Treasury has provided periodic updated FAQs as informal guidance – most recently August 25, 2021. As they are released, TRR policies are adjusted.	Staff is working on vendor contract amendments. Assistance payments are now being paid from ERA2 funds. Program successfully obligated more than 65% of its funds before September 30, 2021 making the state eligible to receive additional funds recaptured from other ERA grantees. Treasury has not yet released its reallocation decisions.	Positions filled include Director and 18 positions filled. Two position posted for 3-4 FTEs. Staffing now includes a team for the Stability Services activity. All FTES are Art. IX Up to 10% budget for admin ($130,811,062)	186,826	Total Allocation $1,308,110,629 Available for Rent/Utility Payments* $1,111,841,711 Expended** $1,083,827,483 97.5% Admin. Expended*** $31,532,938 24.1%	* Amount is total allocation less funds for HSS and Adm. **Expended and Served to Date per Internal Report Nov. 4, reflect all payments made, plus payments in process. *** Figure is per Internal Report as of 9/30/21.
Housing Stability Services (HSS) Program (funded by ERA1 and 2)	These funds are a subset of the ERA funds in the row above. Up to 10% of the funds from ERA1 and ERA2 are authorized for housing stability. ERA1: Expend funds by September 30, 2022 ERA2: Must expend funds by September 30, 2025	Program provides funds to local communities or nonprofits for them to provide eligible Texans with a variety of services that help household maintain or obtain stable housing including legal services, outreach services, shelter services, community services, and services offered at permanent supportive housing properties *Geography:* Available where Subrecipients are located. *Income Eligibility:* For households at or below 80% AMI.	Treasury has provided periodic updated FAQs as informal guidance – most recently August 25, 2021. As they are released, HSS policies are adjusted.	Contracts executed with Texas Access to Justice Foundation and 27 Subrecipient service providers. MOU with TVC to support two Homeless Veterans Coordinator positions pending execution. NOFA for ERA2 HSS will be released in early November 2021, making $84,000,000 available to Statewide, Regional, and Local organizations Applications are due December 17, 2021.	See above	1,983 house-holds	Total (est) $163,552,903 HSS ERA1 Avail: $71,552,903 Obligated: $71,363,823 99.7% Expended: $2,008,829 2.8% HSS ERA2 Avail: $105,328,160 Obligated: $0 0% Expended: $0 0	

Program	Timelines / Contract Periods	Planned Activities	Waivers and Initial Approvals Needed	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
Low-Income Household Water Assistance Program (LIHWAP1)	Part of the appropriation bill; provides dedicated funds through HHS for the Low-Income Household Drinking Water and Wastewater Emergency Assistance Program Must obligate and expend funds by: September 30, 2023	Program provides funds to assist low-income households by providing funds to owners/operators of public water and treatment systems to reduce arrearages charged. HHS has encouraged that grantees model the LIHEAP program and utilize their LIHEAP networks of subrecipients. *Geography:* Statewide *Income Eligibility:* TBD	Executed agreement for funds on April 22, 2021. HHS approved TDHCA's LIHWAP Plan on October 22, 2021.	With plan approval from HHS received on October 22, 2021, staff is now initiating contracts with providers, which were approved by the Board in June 2021.	3 Art. IX FTEs Admin 15% Any FTES will be Art. IX	0	$51,801,876 $0 0% $0 0%	$638M Nationally
AMERICAN RESCUE PLAN (ARPA) – Public Law 117-2								
Emergency Rental Assistance 2.0	Passed as Section 3201 of the American Rescue Plan. While a separate federal allocation, Treasury considers this to be the same program as ERA 1.0 with a few statutory differences. As early as March 31, 2022 may reallocate funds to other grantees if not used. Must expend funds by September 30, 2025	Program limits assistance up to 18 month (including any assistance under ERA 1.0) for rental and utility assistance including arrears. Will use the same system of delivery as ERA 1.0. Up to 10% may be used for Housing Stability services. *Geography:* Available statewide. *Income Eligibility:* For households at or below 80% of AMI.	No waivers needed.	Texas Rent Relief Program began using funds from ERA2 in mid-October 2021; reported expenditures and performance will begin being reflected in the November Board report.	FTEs noted under ERA 1.0 are being utilized for both phases of ERA. Up to 15% budget for admin (TBD)	39,204	Total Allocation $1,079,786,857 Available for Rent/Utility Payments* $826,036,945 Expended** $207,613,560 25.1% Admin. Expended*** $0 0%	* Amount is total allocation less funds for HSS and Adm. **Expended and Served to Date per Internal Report Nov. 4, reflect all payments made, plus payments in process.
HOME ARP Program	Passed as Section 3205 of the American Rescue Plan, the program dedicates funds through HUD allowing flexible uses that can include typical HOME activities as well as homeless services and non-congregate shelter Must expend funds by September 30, 2030	Funds can be used for tenant based rental assistance, development of supportive rental housing, supportive services, non-congregate shelter, and operating costs/capacity building for eligible nonprofit organizations. *Geography:* Available where Subrecipients are located *Households Eligibility: (See Other Notes)*	The existing waiver from the Governor relating to limits on using the funds in rural areas will be utilized to allow the funds to assist homeless persons in urban and rural areas.	HUD released guidance on September 13, 2021. TDHCA signed its grant agreement on September 23, 2021 and now has access to an initial 5% of funds. Consultations were held October 7 to 22 to be followed by preparation of a draft plan for the Board.	A HOME-ARP Division has been established and Director named. More positions to be filled. All FTES are Art. IX Up to 15% for admin/planning ($19,945,372)	0	$132,969,147 $0 0% $0 0%	$5B nationally Eligibility: homeless, at risk of homelessness with incomes up to 50% AMI, those fleeing Domestic Violence

Program	Timelines / Contract Periods	Planned Activities	Waivers and Initial Approvals Needed	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
Homeowner Assistance Fund (HAF)	Passed as section 3206 of the American Rescue Plan, dedicates funds through Treasury specifically for preventing mortgage delinquencies, defaults, foreclosures, loss of utilities and displacement. Must expend funds by September 30, 2026	The HAF Plan to be submitted to Treasury includes 1) a Reinstatement Program to reinstate delinquent mortgage loans, including principal and interest, as well as amounts advanced by the servicer for property charges (taxes, insurance, condo and homeowner association fees, and other related expenses advanced to protect lien position, and 2) a Property Charge Default Resolution Program, to bring current delinquent property charges, including past due property taxes, insurance premiums, condo and homeowner association fees, and cooperative maintenance or common charges, including up to 90 days of upcoming property charges. (*Cont. under Waivers)*	TDHCA submitted a grant agreement to Treasury by the April 23 deadline. TDHCA submitted its HAF plan to Treasury September 30, 2021. *(Continued from Planned Activities)* Additional programs may be submitted to Treasury in the future. *Geography:* Statewide *Income Eligibility:* Household income at or below greater of 100% AMI or 100% of national median income.	To receive funds beyond the initial 10%, the state must submit the HAF Plan. Staff obtained public comment on a draft plan. The Plan includes needs assessment, evidence of public engagement, program design, method for targeting, goals, readiness, and a budget.	4 positions filled including the Director, 2 program managers, and the outreach manager. All FTES are Art. IX Up to 15% ($126,332,101) for admin, planning, community engagement and needs assessment	0	$842,214,006 $0 0% $0 0%	$9.9B nationally. Treasury encourages states to use initial disbursement of 10% of funds for creating or funding pilot programs to serve targeted populations, and focus on rapid assistance options such as mortgage reinstatement programs.
LIHEAP	Passed as Section 2911 of the American Rescue Plan, dedicates funds through HHS for home energy costs. Must expend funds by: September 30, 2022	99% of funds were programmed in April 2021 to CEAP subs using a modified formula; 1% for state admin. *Geography*: Available statewide *Income Eligibility*: 150% of poverty	Not yet known.	Contracts have now been executed.	FTEs noted under CARES LIHEAP will be utilized for both allocations. 1% admin (TBD)	0	$134,407,308 $134,407,308 **100%** $0 0%	$4.5B nationally.

Program	Timelines / Contract Periods	Planned Activities	Waivers and Initial Approvals Needed	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
LIHWAP2	Passed as Section 2912 of the American Rescue Plan, dedicates funds through HHS for home water costs Must obligate and expend funds by: September 30, 2023	See LIHWAP1 above. HHS will administer LIHWAP1 and 2 under one LIHWAP Plan. Because of the different funding sources, separate contracts will be required *Geography:* Statewide *Income Eligibility:* TBD	Executed agreement for funds on April 22, 2021. HHS approved TDHCA's LIHWAP Plan on October 22, 2021	With plan approval from HHS received on October 22, 2021, staff is now initiating contracts with providers, which were approved by the Board in June 2021.	FTEs noted under Appropriation Act LIHWAP will be utilized for both allocations. Admin % not yet known	0	$40,597,082 $0 0% $0 0%	$500M Nationally
Emergency Housing Vouchers (EHV)	Passed as Section 3202 of the American Rescue Plan, dedicates vouchers through HUD for emergency rental assistance. HUD Authority to Recapture May Occur as Early As: 1 Year from Funding (if vouchers are unissued) Initial Funding Term Expires: Dec. 31, 2022 Can Reissue EHV until: Sept. 30, 2023 Renewal Funds Available for 'Occupied Units' through: Sept. 30, 2030	TDHCA is receiving 798 vouchers. The award includes funds for the vouchers ($7,933,560) plus funds to provide services ($2,793,000) and funds for admin ($763,788). Vouchers are for households who are: (1) homeless, (2) at risk of homelessness, (3) fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking, or (4) recently homeless. *Geography*: TENTATIVE/ SUBJECT TO CHANGE: 34 county PHA Jurisdiction plus some counties in the Balance of State Continuum of Care. *Income Eligibility*: Not to exceed 50% of AMI	Significant waivers have been authorized by HUD. TDHCA will seek to maximize its use of these waivers, however the waivers are time-limited so TDHCA will be cautious not to authorize households based on waivers that, when expired, would make the household ineligible at renewal. TDHCA is required to update its PHA Admin Plan to reflect our plan for the service fee (see last column) and other program elements.	Contracts for Continuums of Care (CoCs) to provide referrals and services were approved at the July 8 Board meeting. The contract with the Waco CoC has been executed. Collaboration with the Balance of State (BoS) CoC is underway.	Program is being administered jointly by the Section 8 and Section 811 areas due to the unique nature of the program. 2 Positions to be filled. To be paid for by EHV Admin and CSBG Admin. FTES are Art. IX Admin fee structure is complex, variable and tied to timing of household having found a unit, hence the use of CSBG Admin to support the positions.	0	Total $11,490,348 <u>Rent Payments</u> Avail: $7,933,560 Obligated: $0 0% Expended: $0 0% <u>Service Contracts</u> Avail: $2,793,000 Obligated: $175,000 6.3% Expended: $0 0%	$5 billion Nationally A service fee of $3,500 per unit is authorized separate from the rental assistance payment. The fee total is not tied to each voucher, but is a combined total of funds for services. Services may include: housing search assistance; deposits, holding fees, and application fees; owner-related uses; and other eligible uses.

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BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

NOVEMBER 10, 2021

Presentation, discussion, and possible action on an order approving and recommending to the Governor the repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and an order approving and recommending to the Governor in accordance with Tex. Gov't Code §2306.6724(b) the new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and, upon action by the Governor, directing its publication in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the Department) is authorized by Tex. Gov't Code Ch. 2306, Subchapter DD, to make Housing Tax Credit allocations for the State of Texas;

WHEREAS, pursuant to Tex. Gov't Code §2306.053 the Department is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, pursuant to Tex. Gov't Code §§2306.67022 and .6724 and Internal Revenue Code §42(m)(1), the Department is required to adopt a qualified allocation plan (QAP) to establish the procedures and requirements relating to an allocation of Housing Tax Credits;

WHEREAS, after approval with modifications by the Department's Board on September 2, 2021, the rule was made available for public comment in the *Texas Register* and on the Department's website through October 8, 2021;

WHEREAS, public comment was received from 41 commenters, staff has prepared a reasoned response to those comments summarized in the preambles attached, and where applicable, has proposed responsive revisions for adoption;

WHEREAS, pursuant to Tex. Gov't Code §2306.6724, the Board shall adopt the QAP and, on or before November 15, submit it to the Governor to approve, reject, or modify and approve not later than December 1;

WHEREAS, should HR 5376, the federal Build Back Better Act, be enacted, certain provisions of that bill may be required to be made applicable to tax credits allocated in 2022, and several conforming revisions to the QAP may still be warranted to ensure compliance with federal law; and

WHEREAS, upon action by the Governor**,** the Department will submit the QAP for its publication in the *Texas Register;*

NOW, therefore, it is hereby

RESOLVED, that the repeal of 10 TAC Chapter 11, and a new 10 TAC Chapter 11 concerning the Housing Tax Credit Qualified Allocation Plan together with the preambles presented to this meeting, are hereby approved and recommended to the Governor; and

FURTHER RESOLVED, should HR 5376, the federal Build Back Better Act, be enacted, the Executive Director and his designees are authorized and directed to make conforming revisions to the QAP to ensure compliance with federal law;

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 changes, if any, made at this meeting and the preambles, in the form presented to this meeting, to be delivered to the Governor, not later than November 15, 2021, for his review and approval, and to cause the Qualified Allocation Plan, as approved, approved with changes, or rejected by the Governor, to thereafter be published in the *Texas Register* for adoption and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

Comment Period: The Board approved the proposed 10 TAC Chapter 11, the QAP, on September 2, 2021. The draft QAP was made available on the Department's website on September 3, 2021, and was published in the September 17, 2021 edition of the *Texas Register.* Staff also hosted an in-person round table on September 20, 2021 in Austin to discuss the Supplement Allocation component of the QAP. The round table was not considered a hearing for accepting comment, but rather served as a forum at which staff could engage with potential commenters to answer questions and brainstorm ideas, with the intent that each attendee could then make informed comment prior to the comment deadline.

It should be noted that staff of the *Texas Register* has required changes to the QAP – these are purely administrative, syntactical, or grammatical preferences of the Secretary of State and are reflected in the document attached.

The document attached has 'accepted' the changes proposed in the draft QAP and now reflects only a black-line to reflect changes made to the proposed draft.

Staff received written comments from 41 commenters by the deadline. Staff has reviewed all comments and provided a reasoned response to these comments in the following preamble.

Rule-Making Timeline: Upon Board approval, the QAP will be submitted to the Office of the Governor not later than November 15, 2021, for him to approve, approve with changes, or reject. Upon the Governor's approval, approval with modifications, or rejection, which must occur no later than

December 1, 2021, the 2022 QAP will be published in the *Texas Register* and posted to the Department's website.

Revisions Required to Conform to Federal Law: HR 5376, the Build Back Better Act, is pending before Congress at the time of the posting of this BAR. If passed as currently drafted, the Bill has several provisions that require they be made applicable to tax credits allocated in 2022. Of particular note is Section 135103 of the Bill entitled "Buildings Designated to Serve Extremely Low Income" which require that between 8% and 13% of the credits to the state must go to buildings in which 20% or more of the units serve households at 30% of AMI or 100% of poverty. Therefore, several conforming revisions to the QAP, as well as changes to Department applications and materials, may still need to be made to ensure compliance with federal law.

Summary of Changes from Draft: While not inclusive of all changes recommended in response to comment, a brief description of the primary revisions made are described below. A more thorough recounting is provided in the preamble.

- §11.1, General: revisions made to the definitions for Bedroom, Development, and Supportive Housing; added definitions for QCT and Forward Commitment; revised section on Data to address what census data and tracts will be used, and the applicable QCTs to be used
- §11.3, Housing De-concentration Factors: revises subsections (f) and (g) relating to Proximity of Development Sites and One Award per Census Tract Limitation to remove the reference to Supplemental Allocations
- §11.4, Maximum Request Limit: reduces the maximum cap back down to $1.5 million instead of $2 million
- §11.5, Competitive HTC Set-Asides: clarifies within the At-Risk Set-Aside how the USDA Set-Aside will be considered and revises several other At-Risk clauses
- §11.6, Competitive HTC Allocation Process: clarifies applicability relating to Supplemental Credits
- §11.8 Pre-Application Requirements: removes the requirement to provide mailing addresses and adds language relating to reasonable search
- §11.9 – Competitive HTC Selection Criteria:
    - (b)(2), Sponsor Characteristics: provides that more than one HUB can be used to earn points
    - (c)(6), Residents with Special Housing Needs: In point item for proximity to veterans medical providers provides clarification on which VA medical facilities will be used
    - (d)(1), Local Government Support: addresses how the rule will handle a development site that is partially within a municipality and partially within a county or ETJ
    - (d)(5)(B), No Letter from a State Representative: addresses how the rule will handle a development site that is partially within a municipality and partially within a county or ETJ
    - (e)(2), Cost of Development per Square Foot: clarifies that points must be earned in both Opportunity Index subparagraphs for high cost areas
    - (d)(7), Concerted Revitalization Plan: provides ability to earn 7 points for CRP in a non-QCT

- (e)(7), Right of First Refusal: revises to also allow condos and reduces points from 3 to 1

- §11.101(a)(1), Floodplain: clarifies notification requirement
- §11.101(a)(2), Undesirable Site Features: revises the language relating to a Joint Land Use Study
- §11.101(a)(3), Neighborhood Risk Factors: revises subparagraph (C) to make clear that the waiver for mitigation includes any action under subparagraph (B)
- §11.204(10)(A), Site Control: clarification added for site control certification
- §11.204(13)(B), Organizational Charts: clarifies how private equity fund investors that are passive investors should be reflected on the org chart
- §11.302(g)(2), Floodplain: Requirement to provide floodplain insurance on tenant's possessions has been removed
- §11.901(19)(ii), Appraisal Review Fee: provides clarification on how an applicant will submit their Appraisal Review Fee
- Subchapter F, Supplemental Housing Tax Credits
  - §11.1002, Program Calendar for Supplemental HTC: Adds deadline for the Notice of Intent, adds deadline for the Supplemental Request, revises date for Board action, adds specific 10% Test and Placement in Service deadlines
  - §11.1003, Maximum Supplemental HTC Requests and Award Limit: reduces the cap from 15% to 7%, removes the reference to creating a Supplemental Allocation waitlist, adds that Supplemental Allocations are limited to the increase in eligible costs
  - §11.1004, Competitive HTC Set-Asides: adds the At-Risk and USDA Set-asides as part of the allocation process for Supplemental Allocations
  - §11.1005, Supplemental Credit Allocation Process: adds the requirement for a Notice of Intent to Request a Supplemental Allocation; adds the process for submitting an actual Request for Supplemental Allocation including that requested amounts may vary from the amount noted in the Notice of Intent without penalty; adds the ability for the Department to make awards of the Supplemental Allocations conditioned on completion of underwriting to help accelerate the timeline for making such awards; and adds reference to the use of Tie Breaker Factors in the case of a tie.
  - §11.1007, Required Documentation for Supplement Credit Request: adds language requiring documentation from the investor, clarifies that eligible cost increases are not limited to construction costs, but must be substantiated.
  - §11.1009, Supplemental Credit Fee Schedule: removes the clause relating to return of fees.

Attachment 1: Preamble, including required analysis, for adoption of the repeal of 10 TAC Chapter 11, Qualified Allocation Plan

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 11, Qualified Allocation Plan (QAP) including Subchapter A, Pre-Application, Definitions, Threshold Requirements and Competitive Scoring, §§11.1 - 11.10; Subchapter B, Site and Development Requirements and Restrictions, §11.101; Subchapter C, Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules, §§11.201 - 11.207; Subchapter D, Underwriting and Loan Policy, §§11.301 - 11.306 and Subchapter E, Fee Schedule, Appeals, and Other Provisions, §§11.901 - 11.904. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX GOV'T CODE §2001.0221.
1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, concerning the allocation of Low Income Housing Tax Credits (LIHTC).
2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.
3. The repeal does not require additional future legislative appropriations.
4. The repeal does not result in an increase in fees paid to the Department or in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, concerning the allocation of LIHTC.
7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002.
The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043.
The repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX GOV'T CODE §2001.024(a)(6).
The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5).
Mr. Wilkinson has also determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule for administering the allocation of LIHTC. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4).
Mr. Wilkinson has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held September 17, 2021, to October 8, 2021, to receive stakeholder comment on the proposed repealed section. No comments on the repeal were received.

SUBCHAPTER A. PRE-APPLICATION, DEFINITIONS, THRESHOLD REQUIREMENTS AND COMPETITIVE SCORING
10 TAC §§11.1 - 11.10

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed sections affect no other code, article, or statute.

§11.1.General.
§11.2.Program Calendar for Housing Tax Credits.
§11.3.Housing De-Concentration Factors.
§11.4.Tax Credit Request and Award Limits.
§11.5.Competitive HTC Set-Asides. (§2306.111(d)).
§11.6.Competitive HTC Allocation Process.
§11.7.Tie Breaker Factors.
§11.8.Pre-Application Requirements (Competitive HTC Only).
§11.9.Competitive HTC Selection Criteria.
§11.10.Third Party Request for Administrative Deficiency for Competitive HTC Applications.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

SUBCHAPTER B. SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS
10 TAC §11.101

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed sections affect no other code, article, or statute.

§11.101.Site and Development Requirements and Restrictions.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

SUBCHAPTER C. APPLICATION SUBMISSION REQUIREMENTS, INELIGIBILITY CRITERIA, BOARD DECISIONS AND WAIVER OF RULES
10 TAC §§11.201 - 11.207

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed sections affect no other code, article, or statute.

§11.201.Procedural Requirements for Application Submission.
§11.202.Ineligible Applicants and Applications.
§11.203.Public Notifications (§2306.6705(9)).
§11.204.Required Documentation for Application Submission.
§11.205.Required Third Party Reports.
§11.206.Board Decisions (§§2306.6725(c); 2306.6731; and 42(m)(1)(A)(iv)).
§11.207.Waiver of Rules.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

SUBCHAPTER D. UNDERWRITING AND LOAN POLICY
10 TAC §§11.301 - 11.306

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed sections affect no other code, article, or statute.

§11.301.General Provisions.
§11.302.Underwriting Rules and Guidelines.
§11.303.Market Analysis Rules and Guidelines.
§11.304.Appraisal Rules and Guidelines.
§11.305.Environmental Site Assessment Rules and Guidelines.
§11.306.Scope and Cost Review Guidelines.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

SUBCHAPTER E. FEE SCHEDULE, APPEALS, AND OTHER PROVISIONS
10 TAC §§11.901 - 11.904

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed sections affect no other code, article, or statute.

§11.901.Fee Schedule.
§11.902.Appeals Process.
§11.903.Adherence to Obligations. (§2306.6720)
§11.904.Alternative Dispute Resolution (ADR) Policy.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Attachment 2 Preamble, including required analysis, for adoption of new 10 TAC Chapter 11, Qualified Allocation Plan

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 11, Qualified Allocation Plan (QAP), §§11.1 – 11.10, 11.101, 11.201 – 11.207, 11.301 – 11.306, 11.901 – 11.907, and 11.1001 – 11.1009. The purpose of the new chapter is to provide compliance with Tex. Gov't Code §2306.67022 and to update the rule to: clarify multiple definitions; update the Program Calendar; add scoring for Developments comprised of single family homes or condos intended for ownership; remove a scoring item that generally duplicates another and expands the radius for Proximity to Jobs so that more potential Development sites will be competitive; add a scoring item related to proximity to veterans' health care; simplify the requirements for a Concerted Revitalization Plan; allow for increased costs in scoring; revise timelines and requirements associated with Tax-Exempt Bond Developments; add provisions for Commitments, Determination Notices, and Carryover Agreements; provide for the use of 2022 Competitive Housing Tax Credits to assist 2019 and 2020 Competitive Housing Tax Credit Applicants negatively impacted by the COVID-19 pandemic and; specify provisions for termination for Applications seeking Tax-Exempt Bond or Direct Loan funds; and make other changes as reflected.

Tex. Gov't Code §2001.0045(b) does not apply to the rule for two reasons: 1) the state's adoption of the QAP is necessary to comply with IRC §42; and 2) the state's adoption of the QAP is necessary to comply with Tex. Gov't Code §2306.67022. The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, concerning the allocation of Low Income Housing Tax Credits (LIHTC) and other Multifamily Development programs.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The rule changes do not require additional future legislative appropriations.
4. The rule changes will not result in any increases in fees. The rule removes a Determination Notice Reinstatement Fee.
5. The rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The rule will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations on this activity because the rule has sought to clarify Application requirements. Some "expansions" are offset by corresponding "contractions" in the rules, compared to the 2021 QAP. Notably, the Department has sought to remove superfluous language wherever possible and to consolidate rules to reflect current process. A new subchapter is added to provide assistance to 2019 and 2020 Competitive Housing Tax Credit Applications negatively impacted by cost increases associated with the COVID-19 pandemic. These additions, removals, and revisions to the QAP are necessary to ensure compliance with IRC §42 and Tex. Gov't Code §2306.67022.
7. The rule will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The rule will not negatively affect the state's economy, and may be considered to have a positive effect on the state's economy because changes at 10 TAC §11.9(c)(7), Proximity to Job Areas, may help to encourage the development of affordable multifamily housing in robust markets with strong and growing economies.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.67022. Some stakeholders have reported that their average cost of filing an Application is between $50,000 and $60,000, which may vary depending on the specific type of Application, location of the Development Site, and other non-state of Texas funding sources utilized. The rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately 100 to 150 small or micro-businesses subject to the rule for which the economic impact of the rule may range from $480 to many thousands of dollars, just to submit an Application for Competitive or non-Competitive HTCs, or Direct Loans. The Department bases this estimate on the potential number of Applicants and their related parties who may submit applications to TDHCA for LIHTC. The fee for submitting an Application for LIHTC is $30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units. While, in theory, there is no limit to the number of Units that could be proposed in a single Application, practically speaking, the Department sees few proposed Developments larger than 350 Units, which, by way of example, would carry a fee schedule of $10,500. These Application Fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing. Nor does this estimate include fees from the Department for Applications that successfully attain an award.

There are 1,285 rural communities potentially subject to the rule for which the economic impact of the rule is projected to be $0. The rule places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. If anything, a rural community securing a LIHTC Development will experience an economic benefit, not least among which is the potential increased property tax revenue from a large multifamily Development.

3. The Department has determined that because there are rural tax credit awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive LIHTC awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The rule does not contemplate or authorize a takings by the Department. Therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX GOV'T CODE §2001.024(a)(6).
The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the rule may provide a possible positive economic effect on local employment in association with this rule since LIHTC Developments often involve a total input of, typically at a minimum, $5 million in capital, but often an input of $10 million - $30 million. Such a capital investment has concrete direct, indirect, and induced effects on the local and regional economies. However, because the exact location of where program funds and development are directed is not determined in rule, there is no way to determine during rulemaking where the positive effects may occur. Furthermore, while the Department knows that any and all impacts are positive, that impact is not able to be quantified for any given community until a proposed Development is actually awarded LIHTC, given the unique characteristics of each proposed multifamily Development and region in which it is being developed.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that significant construction activity is associated with any LIHTC Development and that each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the new rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive LIHTC awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the new rule will be an updated and more germane rule for administering the allocation of LIHTC with considerations made for applicants as it relates to the impact of the COVID-19 pandemic on the application process. There is no change to the economic cost to any individuals required to comply with the new section because the same processes described by the rule have already been in place through the rule found at this section being repealed. The average cost of filing an application remains between $50,000 and $60,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new rule is in effect, enforcing or administering the new rule does not have any foreseeable implications related to costs or revenues of the state or local governments because the same processes described by the rule have already been in place through the rule found at this section being repealed. If anything, Departmental revenues may increase due to a comparatively higher volume of Applications, which slightly increases the amount of fees TDHCA receives.

Note: the rules adopted herein have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

SUMMARY OF PUBLIC COMMENT. The public comment period was held September 17, 2021, to October 8, 2021, to receive stakeholder comment on the new proposed sections. Comment was received from 41 commenters as listed below:
(1) Arx Advantage, (2) Atlantic Pacific Communities, (3) BETCO Housing Lab, (4) Caritas of Austin, (5) Alyssa Carpenter, (6) DMA Companies, (7) Disability Rights Texas, (8) Marque Real Estate Consultants, (9) Eureka Holdings, (10) Foundation Communities, (11) Home Innovation Research Labs, (12) Housing Trust Group, (13) The Humane Society of the United States, (14) JC Development Consulting, (15) JES Dev Co, (16) Katopody, (17) KCG Development, (18) Locke Lord, (19) Marilyn Hartman, (20) McDowell Housing Partners, (21) MRE Capital, (22) MVAH Partners, (23) National Church Residences, (24) NRP Group, (25) Palladium USA, (26) Prospera Housing Community Services, (27) Purple Martin Real Estate, (28) Rural Rental Housing Association, (29) S. Anderson Consulting, (30) City of San Antonio Neighborhood and Housing Services Department, (31) Sierra Club, (32) Texas Affiliation of Affordable Housing Providers, (33) Texas Housers, (34) The Land Experts, (35) Tim Irvine, (36) Tropicana Building II, (37) True Casa Consulting, (38) Volunteers of America National Services, (39) Zimmerman Properties, (40) New Hope Housing and (41) International Association of Plumbing and Mechanical Officials.

It should be noted that in the interest of brevity some of the more extensive comments received have been summarized significantly. However copies of all comments received, with the commenter's number denoted, are all available on the Department website.

General, Request for No Changes (Commenters 9, 20, 21, 22)

COMMENT SUMMARY: Commenters 9, 20, 21 and 22 request that TDHCA keep the scoring and tie-breaker items in the QAP as currently drafted; they feel it is an onerous burden and punitive to modify the rule now as they have already been pursuing site acquisition and working with cities and contractors.

STAFF RESPONSE: The timeline used for the QAP is not only public, but in the Department's governing statute; accordingly the Board annually potentially makes changes to the QAP at the November Board meeting. The development community is well aware that changes may be made not only by the Department's Board, but potentially by the Governor until December 1 of each year. Staff recommends no changes based on these comments.

General, Comments for 2023 QAP (Commenters 1, 10, 13, 30, 33)

COMMENT SUMMARY: Several commenters specifically suggested topics for the development of the 2023 QAP; these are items that were generally more substantive and would not have been readily integrated into the 2022 QAP without further comment and discussion. Topics included: a revisit of the Request for Administrative Deficiency (RFAD) process to return this item to its original intent of bringing to the Department's attention items that may have been missed in a staff review (Commenter 1); a new Cap on Tax Credits per Unit (Commenters 10 and 33); a reevaluation of the Underserved Census Tracts item with a suggested shift towards focusing on tax credit density per tract, a requirement that Right of First Refusal (ROFR) be a threshold requirement of all 9% and 4% transactions, and continued improvements to the energy and water feature scoring items (Commenter 10); compliance guidance related to the average income set-aside (Commenter 30); incentives to promote deeper income targeting to serve Texans most in need by requiring that any Housing Tax Credit (HTC) developments that use the Income Averaging election, must have their HTC rents set at or below the local voucher payment standard so that no negative impacts occur for Housing Choice Voucher holders in HTC units (Commenter 13); incentives for more 2 and 3 bedroom units, points for affordability periods up to 55 year and/or threshold affordability terms of 50 years, and commitment to a ROFR being a threshold requirement for 4% and 9%

tax credits (Commenter 33).

STAFF RESPONSE: Staff has committed that the 2023 QAP process will start in early 2022 and have significant public engagement. Comments provided above will be included in the planning topics for the 2023 QAP process. Staff recommends no changes based on these comments.

General, Comments on 4% HTC Streamlining (Commenter 14)

COMMENT SUMMARY: Commenter 14 relayed their support for the changes made to streamline the 4% application process including those relating to: documentation required for application submissions, third party reports, underwriting rules and guidelines, scope of work narrative, fee schedule and determination notices.

STAFF RESPONSE: Staff appreciates the positive feedback. Staff recommends no changes based on these comments.

General, Permanent Supportive Housing Set-Aside (Commenter 19)

COMMENT SUMMARY: Commenter 19 requests that the Department establish a set-aside for 10% to 15% of the Housing Tax Credits for Permanent Supportive Housing developments. She notes that this housing with necessary services is in short supply and is essential for homeless persons especially those struggling with their mental illness. Homeless and at-risk of homeless persons with serious mental illness have been left out of the correct housing solutions for decades which has resulted in their cycling through expensive alternatives including jails, hospitals, emergency rooms and homelessness. The commenter likens the need for this set-aside to the Department's successful Project Access set-aside in the Housing Choice Voucher (i.e. Section 8) program for those exiting state hospitals.

STAFF RESPONSE: Additional public comment on this idea is needed as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

General, Pre-Application Notifications (Commenter 3)

COMMENT SUMMARY: Commenter 3 requests that the Pre-Application add an additional drop-down menu option for notifications to be uploaded as attachments like site control documents are.

STAFF RESPONSE: The QAP does not require the actual notification letters to be submitted and the application includes a certification that they were in fact sent to the intended recipient. The QAP does require the applicant retain proof of delivery in the event such information is requested by the Department. Staff recommends no changes based on these comments.

General, Good Cause for Eviction Standard (Commenter 7)

COMMENT SUMMARY: Commenter 7 notes that the 2022 QAP does not include clear language around a good cause for eviction standard; while there is no defined good cause for eviction standard in federal law, states have often created such standards to protect tenants living in housing tax credit properties. Commenter 7 feels this standard is critical to holding landlords accountable to fair housing guidance and ensuring tenants have robust protections. Commenter 7 believes it is necessary for the QAP to define a good cause for eviction standard and to create a process by which TDHCA will ensure that properties meet the standard. They suggest the sample language used for the Section 8 program or the lease guidance for the Project Based Voucher Program.

STAFF RESPONSE: 10 TAC §10.613 identifies Lease Requirements, and good cause is discussed there. When the Department next releases its Compliance rules at 10 TAC Chapter 10, Subchapter F we encourage this commenter to make comment at that time. Staff recommends no changes based on these comments.

General, Eviction Forgiveness for LIHTC Tenant Applicants (Commenter 7)

COMMENT SUMMARY: Commenter 7 provides that the impact of COVID-19 has had far-reaching effects on renters and that persons with disabilities face this acutely; Commenter 7 has provided eviction assistance to persons with disabilities and the number of housing cases their team has received has increased by more than 1,000%. Evictions make it harder to find future housing. Commenter 7 feels that every renter who experiences the threat, risk of, or is evicted, is a person with, even temporarily a disability, because the eviction impacts their health; they suggest that TDHCA require that landlords be disallowed from considering the rental history of tenants (evictions, past debts owned due to evictions, etc.) from March 2020 through October 2022 (they note that this is when the ERAP funds must be spent, which is true of ERA1, but not ERA2).

STAFF RESPONSE: While staff appreciates the relative urgency of this suggestion, additional public comment on this idea would have been needed. Staff recommends no changes based on these comments.

General, Direct Loan Funds (Commenter 28)

COMMENT SUMMARY: Commenter 28 believes that the added requirements brought on by layering an application with Multifamily Direct Loan (MFDL) funds is not worth the additional compliance. They are interested in seeing an incentive system that makes the use of direct loan funds more attractive to applicants.

STAFF RESPONSE: Staff appreciates this input; the Department has made efforts to make the MFDL funds more available and accessible within the confines of the federal regulations, and will continue to do so. One such effort is the Department's continued negotiations with HUD to allow MFDL funds to be layered with the Federal Housing Administration (FHA). Staff has made a change to §11.302(d)(4)(iv) to allow alternative loan terms for Federal Housing Administration loans that will be reflected in a NOFA if such a boilerplate agreement can be negotiated with HUD.

General, Energy Efficiency Threshold (Commenter 31)

COMMENT SUMMARY: Commenter 31 urges that TDHCA adopt minimum energy efficiency standards for overall energy use as well as for installed appliance for all of its multifamily programs as a mandatory threshold requirement. Commenter references to need to adopt multifamily standards as required by Texas Gov't Code 2306.187 and Chapter 388 of the Texas Health and Safety Code. The commenter notes that TDHCA has taken this action already on its single family programs and should adopt the 2015 IECC as a minimum multifamily standard. They further suggest providing points for properties that build to the 2021 IECC standard, since that standard is approximately 10% more energy efficient than prior versions of the code.

STAFF RESPONSE: Additional public comment on this idea is needed as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

General, Threshold for Right of First Refusal (ROFR) (Commenter 33)

COMMENT SUMMARY: Commenter 33 recommends that a commitment to a ROFR be a threshold requirement for 4% and 9% HTC, not a scoring item and suggested specific language in this regard. As part of this threshold concept, they suggest that the ROFR notice period be required to be two years.

STAFF RESPONSE: Tex. Gov't Code §2306.6725(b) requires the Department to "provide appropriate incentives" in the QAP "to reward applicants who agree to" a ROFR. This language is the basis for incentivizing ROFR with points rather than considering ROFR as threshold. Furthermore, §2306.6726 sets out the duration of notice periods of a ROFR. Staff recommends no changes based on these comments.

General, Scoring for Waiving of Qualified Contract (Commenter 33)

COMMENT SUMMARY: Commenter 33 suggests adding a point for developments that waive their right to use the qualified contract process to exit the HTC program and suggested specific language in that regard. They also suggested that the Department should study and share information on projects that exit the program through Qualified Contracts.

STAFF RESPONSE: Additional public comment on this idea is needed as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.1 – General (Commenter 35)

COMMENT SUMMARY: Commenter 35 suggests language be added to this section that would relay that applications are 'substantively entitled' to their best score and that accordingly, staff should use the administrative deficiency process as liberally as possible. They provided suggested language for this item which can be found in their letter on the Department's website.

STAFF RESPONSE: Staff appreciates this perspective and input, however, the QAP provides sufficient flexibility on this issue as drafted. Staff recommends no changes based on these comments.

§11.1(d) – Definitions (Commenter 3)

COMMENT SUMMARY: Commenter 3 suggests adding definitions for Qualified Census Tract (QCT) and Forward Commitment. They suggest adding the QCT definition to make sure all parties pursuing points under the Community Revitalization Plan (CRP) item are working from the same definition. They suggest the definition for Forward Commitment in light of the recent set of Forward Commitments made by the Board. Commenter 3 provided an excerpt from the 2011 QAP relating to Forward Commitments.

STAFF RESPONSE: Staff concurs and new definitions for these terms are reflected in the rule.

§11.1(d)(10) – Definition of Bedroom (Commenter 5)

COMMENT SUMMARY: Commenter 5 notes that while rehab developments are not required to meet Unit Size square footage requirements, they are not similarly exempt on bedroom requirements relating to sizes, and widths for walls and closets. They suggest that these requirements should not be required for rehabs where unit configurations are not being altered.

STAFF RESPONSE: Staff concurs and has added the following clause to the definition for Bedroom and included Supportive Housing Developments as they are also exempt from Unit Size Square footage requirements: "Rehabilitation (excluding Reconstruction) Developments in which Unit configurations are

not being altered will be exempt from the bedroom and closet width, length, and square footage requirements. Supportive Housing Developments are exempt from the bedroom and closet width, length, and square footage requirements."

§11.1(d)(38) – Definition of Development (Commenter 27)

COMMENT SUMMARY: Commenter 27 notes that the new requirement that an owner secure an agreement with a local jurisdiction for a 30 to 45 year LURA term to provide an accessible route for developments separated by only a public right of way could be difficult to secure for some developments that are otherwise able to provide an accessible route; commenter suggests removing this requirement and instead conditioning the award on the provision of an accessible route which can be assured throughout compliance monitoring.

STAFF RESPONSE: It is a requirement of Section 2306.6722 of the Texas Government Code, and as further explained in Chapter 1, Subchapter B, that an accessible pedestrian route from 504 units to amenities and common areas must be present. Additionally, for many years the QAP has required an accessible pedestrian route to promote visitability in non-Fair Housing covered units. This is not a new requirement, but a clarification of existing law and regulations. State law does not allow placement of a LURA on property that the Owner does not own or control. Property standards, including accessibility and visitability, must be reflected in the LURA (See Section 2306.6720 of the Texas Government Code). Despite the commentator's contention, this rule would not outlaw any potential development, because the Owner has the option to submit the development as a scattered site development. Staff has changed this rule to reflect that the agreement must be in place by the 10% test for 9%, Cost Certification for 4%, or MFDL Contract execution, as applicable.

§11.1(d)(124) – Definition of Supportive Housing (Commenters 4, 13, 33)

COMMENT SUMMARY: Commenter 4 states that TDHCA should not mandate criminal history screening criteria except for federally required criteria; each recipient of tax credits should have the autonomy to establish screening criteria appropriate to each development. Commenter 4 further notes that if the requirement remains in the QAP, they suggest that: 1) the temporary denial period addressed in (B)(I)(-a-) be reduced from seven years to three years, and 2) that in (B)(I)(-b-) the term recertification be stricken so that if a conviction has occurred without violating the lease, their ability to renew their lease should not be negatively impacted.

Commenters 13 and 33 also strongly oppose the criminal background screening criteria in subsection (B)(v) believing the criteria are overly broad for the purpose of ensuring the safety of other tenants and staff, will have a discriminatory effect on the basis of race, and will only serve to further limit an already slim safety net of resources for low-income households, and pet owners, who are re-entering society after involvement in the criminal justice system. Commenter 33 notes their belief that black people in Texas are more likely to be excluded from renting in HTC Supportive Housing based on criminal record than people of other races, and provided further information to support this comment which can be found in their letter on the Department's website. They believe it is vital that our affordable housing policies are intentionally crafted to mitigate the state's uniquely high incarceration rates. They go on to note that the benefits of Supportive Housing for those experiencing homelessness, those with a history of substance abuse and those with a history of mental illness are well documented, and that those populations are correlated with increased interaction with the criminal justice system; there is a risk that a significant portion of those populations Supportive Housing is designed to serve will be ineligible for a unit. Commenter 13 notes that the criminal background screening will negatively impact the most vulnerable pet owners from access to a decent safe place to live and will likely result in harm to pets or

force owners to give up their pets. Commenter 33 additionally points out that any issues of safety can be achieved with less discriminatory effect by tailored requirements such as security cameras, and also notes that there is no factual basis to assume that the screening will reduce crime. The suggested edit in this case is to remove all language in (B)(v) other than the requirement that the Tenant Selection Criteria must fully comply with §10.802, which relates to Written Policies and Procedures.

Commenter 37 suggests that a 'guaranty agreement' is not needed as a tax credit financed development will automatically have a Guaranty Agreement with an operating deficit guarantee requirement. To eliminate confusion, Commenter 37 suggests that subsection (iv) which requires the guaranty agreement add "Not required for Applications seeking HTC", which would ensure the language remains applicable for applicants for only direct loan funds.

Commenter 37 also feels the addition to the 2021 QAP of (E)(ii)(V) (which requires that a resident is or will be a member of the Development Owner or service provider board of directors) is unnecessary and can cause nonprofits to have to re-write bylaws, shuffle board seats, and require on-boarding of new board members; they recommend deletion of this requirement.

STAFF RESPONSE: As it relates to the 'guaranty agreement' rather than say this is not a requirement for an HTC application, staff has revised the QAP to provide that in the case of HTC only Applications, the Guaranty Agreement with operating deficit guarantee requirements utilized for the HTC investor will satisfy this requirement. Relating to the comments on the criminal screening criteria, §11.1(d)(126)(B)(v)(II) of the QAP provides that the screening criteria must include provisions for approving applications and recertification despite the tenant's criminal history on the basis of mitigation evidence. Therefore, the rule already allows properties to admin persons that would otherwise be excluded based only on the screening criteria standard. As it relates to the Board member composition requiring a resident to be a Board member, staff concurs and has removed this requirement.

§11.1(e) – Data (Commenters 2, 5, 26, 30)

COMMENT SUMMARY: Commenters 5 and 26 asks that the Department confirm usage of the 2010 census tracts for the 2022 QAP, not the 2020 tracts. The census data used for many of the scoring items and HUDs 2022 QCTs are both based on the 2010 census tracts. Further there has been significant variation with 2010 tracts broken into multiple new tracts, some tracts being combined, and some being renumbered. This makes associating related ACS data for those tracts problematic – there would be no data available for scoring categories where tracts have been newly created or renamed and for split or combined tracts data would not be accurate. Commenter 26 also requests that the specific tracts to be used for CRP be clarified. Commenter 39 agreed and suggested adding this language to the end of the sentence relating to ACS use: "and with the exception of census tract boundaries for which 2010 Census boundaries will continue to be used." Commenter 39 felt that use of the 2020 census tracts would be more broadly applicable for the 2023 QAP.

Alternatively, Commenter 2 suggested parsing this issue. They suggest that in follow-up to the conversation on this topic at the September roundtable, the 2010 census tract boundaries should be used for all items that rely on census tract level 2019 5-year ACS data and 2020 boundaries should be used on items that are not informed by census tract level ACS data (such as Underserved Area). They make this suggestion based on precedent (they note this approach was used in 2012) and integrity of the data as 2019 is the most recent 5-year dataset available and therefore the boundaries in place for that data should be used.

Commenter 2 also suggests that for Qualified Census Tract Designations, the 2022 designations should be used, which were made available by HUD on September 9, 2021.

STAFF RESPONSE: Staff prefers the simplicity of making a uniform decision relating to use of 2010 or 2020 tracts rather than parsing out the applicability in different cases. Staff agrees that clear guidance is needed and supports the use of the 2010 tracts for the reasons presented. Staff also agrees that the 2022 HUD QCT designations should be used. The rule has been changed to reflect these revisions.

§11.3 – Housing Deconcentration Factors (Commenters 8, 10, 12, 15, 25, 30, 34)

COMMENT SUMMARY: Commenters 10, 12, 15, 25, 30, and 34 request that the reference to Supplemental Allocations be removed from all deconcentration factors, with Commenters 10 and 30 specifically emphasizing this for the 2 mile same year rule. The commenters note that the goal of deconcentration was achieved in the prior years and should have no bearing on the 2022 applications since no new units are being provided and that 2022 applications should not be impacted by the 2019 or 2020 supplemental credits. Commenter 8 suggests that the rule should waive any statutory provisions that relate to de-concentration factors and elderly calculations; those transactions were already considered compliant with de-concentration factors in the year of their award. Commenter 8 feels that because the request for supplemental credits is an amendment to the application, it should not impede or be given preferential treatment over other 2022 transactions as it will further limit production of affordable housing. Commenters 25, 30 and 34 suggest that if not removed, the Department should allow the local governing body to 'waive' this requirement by deeming that the proposed development is consistent with the jurisdiction's obligation to affirmatively further fair housing and that they have no objection to the application.

STAFF RESPONSE: To ensure compliance with statutory requirements, those deconcentration factors found in statute remain as originally proposed in the draft QAP. However for those items not originating in statute, staff has removed the applicability of the supplemental; those revisions are reflected in subsections (f), Proximity to Development sites and (g) One Award per Census Tract. Regarding the request relating to local officials waiving these requirements, statute does not provide the authority for a local jurisdiction to waive these requirements.

§11.3(b) – Two Mile Same Year Rule (Commenters 6, 30)

COMMENT SUMMARY: See also comment summary for §11.3 prior to this item. Commenter 6 requests that the reference to the Supplemental Allocation be removed from this item; they feel this unduly penalizes 2022 deals because the test for this was already applied and considered in the year the original allocation was made. Commenter 6 further suggests that much the way Subchapter F indicates that all threshold requirements in the original year are considered to be met for the Supplemental Allocation, concentration factors should be treated the same way; by having been treated correctly in their original allocation year, no further treatment is needed. Commenter 6 does note that should staff determine that it is necessary to keep this in the QAP for statutory compliance, they are supportive of the current language as proposed.

Commenter 30 is concerned that cities be able to accommodate their rapidly growing populations with an adequate supply of affordable units, and feels the two-mile same year rule impedes this effort; it causes unnecessary competition and creates delays and bottle necks. Commenter 30 feels that two developments can be in close proximity without concentrating poverty and that cities are in the best position to make this decision. Commenter 30 recommends adding a provision to the QAP that any political subdivision subject to this rule have the ability to waive the rule if approved by local officials.

Commenter 30 also suggests that the language in this section that allows for a waiver in the case of communities with a population of two million or more and where a disaster has been declared within the prior 5 years, be expanded to all cities, regardless of population size.

STAFF RESPONSE: This section of the QAP is compliant with statute. As it relates to comments regarding the Supplemental Allocation, to ensure compliance with statutory requirements, this item will remain as originally proposed in the draft QAP. As it relates to the comment from Commenter 30, which are more generally suggested for this issue not applicable to the Supplemental Allocation, the Department does not have the authority to give political subdivisions the ability to waive the rule; similarly, staff does not have the authority to provide a waiver in the case of large communities with a disaster declaration. Staff recommends no changes based on these comments.

§11.3(d) – One Mile Three Year Rule (Commenter 5)

COMMENT SUMMARY: See also comment summary for §11.3 prior to this item. Commenter 5 notes that it is unclear whether the new revised language means that the Supplemental application needs a resolution, or whether the 9% Regular 2022 cycle application would need a resolution. Clarification was requested.

STAFF RESPONSE: As it relates to comments regarding the Supplemental Allocation, to ensure compliance with statutory requirements, this item will remain as originally proposed in the draft QAP. Regarding the item noted by Commenter 5, staff feels the QAP is clear that the resolution would be needed for the 9% regular 2022 cycle application, not the development having received the Supplemental Allocation.

§11.3(g) – One Award Per Census Tract Limitation (Commenters 5, 30)

COMMENT SUMMARY: See also comment summary for §11.3 prior to this item. Commenter 5 suggests that this criteria not apply only to urban subregions as it does currently, but that rather it applies to both Urban and Rural subregions; Commenter 5 notes that this issue is as likely to occur in a rural areas and the importance of distributing awarded applications among areas is relevant in both Urban and Rural subregions. Commenter 30 feels that this deconcentration factor unduly limits large cities in Texas to support qualified developments and creates unnecessary competition and bottle necks. Commenter 30 feels that local governments know their city best and should have the ability to waive this rule if approved by local officials.

STAFF RESPONSE: As referenced above, it should be noted that the applicability of Supplemental Allocations for this limitation has been removed. Regarding the ideas that this limitation should be expanded to rural subregions and that cities should have the ability to waive this rule, additional public comment is needed as they are significant changes from the draft QAP proposed. As the timing of the 2022 QAP approval process does not allow for additional rounds of public comment, staff has recommended no change at this time, but will consider these issues as discussion items for the 2023 QAP input sessions.

§11.4(b) – Maximum Request Limit (Commenters 10, 15, 33, 39)

COMMENT SUMMARY: Commenter 10 opposes the increase of the limit to $2 million; the increase provides 25% more tax credits with no associated incentive to build more units, which will result in fewer units produced overall. The commenter urges that if the limit increase remains, then staff should add a tax credit per unit cap. Commenter 15 encourages TDHCA not to count the supplemental credit allocations for elderly transactions against the ceiling available for elderly in the tracts where there are such limits; the available credits for elderly are already very limited and this further reduces that limited resource. A tax credit per unit cap is also supported by Commenter 33. Commenter 33 further suggests

that this increase to $2 million should only be approved if it is tied directly to an increase in Extremely Low Income units for those at 30% of AMI and suggests that to get these extra credits accessed by raising the cap, at least 30% of the units should be for those at 30% of AMI.

Commenter 39 suggests that the penalty of $1.50 per credit for those receiving a Supplemental Allocation should be increased to $3.00 per credit because the $1.50 will not create a sufficient penalty and that all available Supplemental credits will be exhausted; they allude to this in relations to comments they make elsewhere relating to a request to increase the amount allotted for Supplemental allocations.

STAFF RESPONSE: Commenters have raised important points on the implications of increasing the credit cap. The Department cannot add a new tax credits per unit cap without sufficient public comment. However, to ensure that the Department has sufficient time to consider this issue and develop the policy more fully, staff has reverted to the 2021 QAP language for 2022 ($1.5 million cap except for At-Risk which is capped at $2 million), and will revisit this issue in 2023. Regarding the suggestion that the penalty for accessing a Supplemental Allocation should increase from $1.50 to $3.00, the Department feels that such a change would have warranted comment from others, so recommends no change at this time. Regarding the applicability of the Supplemental Allocation to the Elderly caps, to ensure compliance with statutory requirements, this item will remain as originally proposed in the draft QAP.

§11.4(c) – Increase in Eligible Basis (Commenter 8)

COMMENT SUMMARY: Commenter 8 requests that given the major cost increases and pandemic related delays, the 30% boost is necessary for all 2022 transactions. They therefore suggest striking in subparagraph (E) the clause “is not an Elderly Development,” which would therefore allow Elderly Developments to qualify for the boost.

STAFF RESPONSE: Additional public comment on this idea is needed as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.5(1) – Nonprofit Set-Aside (Commenter 37)

COMMENT SUMMARY: Commenter 37 suggests that due to confusion that arises in the nonprofit set-aside, cleanup is proposed that clarifies that it is the “Manager of” the Managing General Partner and controlling Managing Member.

STAFF RESPONSE: Staff concurs. A responsive revision has been made.

§11.5(2) – USDA Set-Aside (Commenters 3, 23, 37, 38)

COMMENT SUMMARY: Commenter 3 suggests revising the “At least 5%” to “No less than 5%” to bring the QAP set-aside language into greater consistency with Texas Gov’t Code 2306.111(d-2) which states exactly 5%; commenter 3 suggests that the intent of the statutory section is to be no less than.

Commenter 23 feels that the provisions of §2306.6702(a)(5)(A)(ii) and §2306.111 can only be harmonized if the USDA priority within At-Risk is established as a cap; the cap ensures that the statutory intent is met while leveling the playing field when competing against remaining At-Risk transactions, particularly because USDA set-aside applications do not qualify for the statutory At-Risk definition outside of the 5% USDA set-aside. Commenter 23 notes that the 2-prong approach provided for 2306.6702(a)(5)(A)(ii) requires that ‘the stipulation to maintain affordability in the contract granting the subsidy is nearing expiration,’ however, USDA typically has automatic rental assistance renewals which keep them from otherwise qualifying to complete

in the remaining At-Risk pool. That two-prong approach also specifies that the HUD-insured or HUD-held mortgage is eligible for prepayments or is nearing the end of its term; the language does not refer to or allow for that party to be USDA. Commenter 23 further notes that the reference to the 5% in 2306.111 is to exactly 5%, nothing more. Commenter notes that if USDA is allowed to exceed 5% the tie-breakers pose a problem because the QAP essentially provides for USDA deals to get perforce scores so they will win a tie every time (commenter provides explanation of this in their letter which can be found on the Department's website). Lastly Commenter 23 suggests that if the QAP continues to be interpreted that the USDA Set-Aside will exceed 5%, then at a minimum the applications must be required to at least select they want consideration in the At-Risk Set-Aside, and if not selected, they are not considered. Commenters 37 and 38 echo the comments made by Commenter 23.

STAFF RESPONSE: Staff concurs that clarification on this issue is needed and proposes a rule revision clarifying that USDA Applicants only receive a priority for 5% and will not be considered for the At-Risk Set-Aside if they do not fully meet the definition of an At-Risk development or have not checked the box in the application. Responsive edits have been made – note that the edits were made within the At-Risk Set-Aside language which is where this priority is discussed.

§11.5(3) – At-Risk Set-Aside (Commenters 27, 30)

COMMENT SUMMARY: Commenter 27 notes that in paragraph (3)(C)(ii) the language is inconsistent with statute; they note that while the QAP requires that units associated with development in this category must have received Section 9 assistance within the 2 years preceding the application, the statute actually requires that developments formerly received Section 9 assistance and provides a timeframe relative to demolition or disposition, not to the Section 9 assistance. Accordingly, Commenter 27 recommends revising the QAP to more accurately mirror statute. Commenter 30 feels that the At-Risk language limited to public housing authorities and public housing finance corporations is restrictive because not all developments with expiring affordability are associated with those organizations; they suggest remove language restricting access to this set-aside.

STAFF RESPONSE: In regards to the correction requested by Commenter 27, staff concurs and a responsive revision has been made. Regarding the comment made by Commenter 30, the Department does not have the authority to revise such statutory provisions and no change is made.

§11.6 – Competitive HTC Allocation Process (Commenter 3)

COMMENT SUMMARY: Commenter 3 suggested that either at this location in the rule, or in the definition for Commitment Notice, that if contingent Commitment Notices are issued by the Department, the rule should state that they expire by December 31 of the cycle year and that if the effective time for these notices is extended to the following year, then these notices shall only be extended by Board action. Commenter 3 makes this suggestion because the QAP does not currently provide for a commitment to be carried forward into a subsequent year, but that action did occur this past year. They note that if the rule is to dictate that the credits should have been returned and used in the 2021 cycle, the Department needs to be clear on that process. If contingent commitments or carryovers are going to be utilized then this needs to be transparently included in the rule, and require Board approval.

STAFF RESPONSE: Staff appreciates the perspective on this issue, but does not feel that a revision to the QAP is needed. Staff recommends no changes based on these comments.

Staff notes that a revision has been made to this section that clarifies that any unused Supplemental Allocations will be added to the appropriate subregion, rather than only referencing the pool of credits and corrects that the Supplemental Credits would have only been added in the statewide collapse.

§11.7 – Tie Breakers (Commenter 1, 5, 10, 23, 27, 28, 32, 33)

COMMENT SUMMARY: Commenter 32 finds that the current tie-breaker relating to the 3-year average poverty rate creates significant uncertainty since the average is not known until the updated site demographic report is published in October/November each year, well after site selection occurs. These same commenters request two revisions to bring greater certainty to the process: 1) Removing the three-year average calculation and replacing it with a flat 20% poverty rate threshold for all regions other than regions 11 and 13, and that for region 11, the rate be a flat 35% and for region 13 the rate be a flat 25%, which brings this into greater consistency with the Opportunity Index. 2) Requesting that the first tie-breaker be split into two independent tie-breakers: first poverty rate, second rent burden, and third distance to the nearest HTC development. This comment from TAAHP to increase the poverty rate to a flat 20% to align with Opportunity Index was supported and also requested by Commenters 1, 23, and 27. Commenter 27 also supported the second recommendation by TAAHP to split the first tie breaker into two separate items.

Commenter 28, suggests that there is a need for a separate tie breakers for the At-Risk and USDA set-asides. They suggest the first tie breaker for At-Risk go to the application with the oldest initial placed in service date that has not received tax credits for a federal funding award from the Department for rehabilitation. They suggest the second tie breaker use the existing language in the QAP relating to distance to the nearest HTC property. Such a revision will work to preserve the older housing stock. Commenter 28 does note that alternatively they would support a separate set of tie breakers for only the USDA set-aside, or both set-asides. This comment from RRHA was supported and also requested by Commenter 1.

Commenter 5 noted that they felt the QAP tiebreaker for poverty rate should remain unchanged. The last 3 year average provides a baseline to give advantage to low poverty areas and as is, more than 50% of all tracts in the state qualify for the first tie-breaker. Increasing the poverty rate to 20% (as requested by TAAHP and others noted above) means more tracts qualify so there is less ability to serve as a true tie-breaker. Additionally, in many areas higher poverty rates equate to lower median income and higher rent burden so an increase up to 20% would mean that lower income areas would rank better than higher income areas. Because this would be a significant policy shift, they request that it remain unchanged for 2022 and discussed further for a subsequent QAP.

Commenter 10 suggests that a tie breaker for tax credits per affordable unit be added as the second tie breaker after poverty to promote awarding those properties that provide more units per credit.

Commenter 23 suggests that the tie-breaker is being interpreted incorrectly. It should be interpreted first as whether the application is above or below the poverty rate threshold, then second considered for rent burden, then lastly for distance.

Commenter 33 suggests adding a tie breaker as the second item after the poverty level that awards the tie decision to the application that provides the most units; this is meant to assist in generating as many units as possible with the limited resources available.

STAFF RESPONSE: As it relates to the comment from Commenter 23 relating to the incorrect application of the tie-breaker, staff has evaluated this and is confident in its application of this standard. For all comments relating to new tie-breakers or revisions to the tie-breakers, the variance in the comments certainly suggests the need for revisiting this issue. However, additional public comment on this idea is clearly needed as these concepts were not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.8(b)(2)(B) – Pre-Application Notifications (Commenters 3, 5, 8, 23, 29, 37)

COMMENT SUMMARY: Commenter 3 suggests that to address those instances where organizations are formed subsequently, the rule should be revised by adding that the Neighborhood Organization notification at Pre-Application include: "…where a reasonable search for applicable entities has been conducted."

Commenters 5 and 29 noted that the requirement to provide addresses for all notifications made was newly added to the QAP in 2021; most applicants did not provide the addresses and the Department did not issue deficiencies requiring them (until notified during the RFAD process). This would indicate that the item is not a necessity for staff, so these commenters suggest its deletion. Commenter 8 also supports striking this requirement because the QAP already requires that the applicants retain proof of delivery and Commenter 23 supports its removal as it will create unnecessary RFADs. Commenter 37 supports its removal as it was a significant 'gotcha' in 2021 and serves no clear purpose.

STAFF RESPONSE: Regarding the comment from Commenter 3, a responsive revision has been made in the rule. Regarding the comments from commenters, 5, 8, 29 and 37, staff concurs and this requirement has been removed from the QAP.

§11.9 – Competitive HTC Selection Criteria (Introduction Paragraph) (Commenter 5)

COMMENT SUMMARY: Commenter 5 notes that this section provides for how boundaries will be measured from the Development Site to scoring items, but does not specify how that measurement should be performed for Scattered Site boundaries. They provide an example where last year only one parcel of several parcels in a scattered site application actually met a criteria, but points were awarded. Commenter asks that the rule indicate that in the case of Scattered Site developments, each individual parcel will be evaluated against the scoring criteria (or Tie Breaker criteria) and if there is a difference in points among the sites, the lower number of points or lower tie-breaking rank will be used for the application.

STAFF RESPONSE: Staff agrees that this is an area where clarification is needed, however additional public comment on this is needed as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.9(b)(1)(A)(i) – Unit Size Scoring Item (Commenter 29)

COMMENT SUMMARY: Commenter 29 notes that with the addition of the provision of units for homeless populations, the development community needs to be able to provide more efficiency units at a lower cost; the best way to achieve this is to reduce the minimum unit size for efficiency units for threshold and scoring. Commenter 29 suggests that the minimum size for scoring be 450 square feet, which aligns with the general market for efficiency unit sizes.

STAFF RESPONSE: Staff sees the value in revising the minimum unit size for efficiencies as there is an increasing trend toward smaller units. However, additional public comment on this idea is needed as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.9(b)(2) – Sponsor Characteristics Scoring Item (Commenters 5, 23, 38)

COMMENT SUMMARY: Commenter 5 asks that clarification be provided on whether more than one HUB can be used to meet the percentage requirements specified; as written the rule implies only one HUB ("the HUB"),

however in the prior application round an applicant used two HUBs to satisfy the owner, cash flow, and developer fee combination requirements. If this is allowable it should be clearly noted. Commenters 23 and 38 appreciates the revisions made for paragraph (C) to promote more affordable service enriched housing sponsored by nonprofits.

STAFF RESPONSE: Staff concurs that this should be clarified. Responsive revisions have been made to the rule allowing for more than one HUB to meet these requirements.

§11.9(c)(1) and (2) – Income and Rent Levels of Tenants Scoring Item (Commenter 33)

COMMENT SUMMARY: Commenter 33 supports the high priority of Rent Levels of Tenants but suggests strengthening it by increasing the percentage of units that must meet specific rent levels. More specifically they suggest that for maximum score for Supportive Housing (13 points) instead of 20% of Units at 30% of AMGI, that this be 40% of the units at 30% of AMGI; that for the second highest scoring item (11 points) instead of 10% or 7.5% (depending on whether rural or urban, respectively) of units at 30% AMGI that these be increased to 35% and 30%; and that the lowest scoring item (7 points) be increased from 5% at 30% AMGI up to 30% AMGI. Commenter 33 presents data on the great need for units for households at or below this income level and notes that the provisions of such units will help to reduce the risk of homelessness for these very low income populations.

STAFF RESPONSE: Additional public comment on this suggestion is needed as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.9(c)(4)(B) – Opportunity Index Scoring Item (Commenters 13, 33)

COMMENT SUMMARY: Commenter 13 opposes the increased distance to amenities allowed in the rural and urban opportunity index points and recommends returning to the maximum distances in the 2020 QAP, as these greater distances disproportionately impact tenants who are pet owners and who are physically disabled and/or do not have access to a car. Commenter 13 notes that is important for affordable housing development to be sited close to vital resources like grocery stores and pet supply stores. They suggest it is likely that proposed sites under the new rule may mean developments are built in places that US Department of Agriculture would consider “low access” to healthy food, which would include grocery stores, where many pet owners purchase the items needed for their pets.

Commenter 33 supports the use of Opportunity Index points to reward projects for their proximity to amenities and high performing schools as they feel without such incentives HTC development will gravitate to low opportunity areas where land is cheaper. Commenter 33 suggests two additional revisions to strengthen this section: 1) they recommend that the distances to amenities be reduced. Commenter provided specific suggested distances for both rural and urban areas of different distances for each of the amenity types (which can be seen in Commenter 33’s letter provided on the Department’s website). Commenter 33 noted that the changes made last year doubled the distances which made these amenities much less accessible for those without a car or for a tenant with a disability. 2) Commenter 33 suggests increasing the total number of points available for Opportunity Index up to 15 points (currently 7 points), while reducing the scope to a few key factors that are mutually exclusive for points (these factors being low poverty, sidewalks and transit, full-service grocery stores, and attendance zone for highly rated public schools), with the menu of many options available for the remainder.

STAFF RESPONSE: Staff notes that the distances opposed by Commenter 13 were changed in the 2021 QAP and not altered in the draft 2022 QAP. Additional public comment on the ideas of reducing distances to

amenities and increasing the total number of points available for Opportunity Index both warrant additional public comment as they are new concepts not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.9(c)(5) – Underserved Area Scoring Item (Commenter 17)

COMMENT SUMMARY: Commenter 17 notes that for rural areas, the current rule drives developers to not pursue developments in municipalities which already have an HTC development. They suggest alternatively, for rural areas only, that paragraphs (C), (D), (E) and (F) be revised to specify 'for rural areas, this applies to census tracts that do not have another development serving the same Target Population' so that another development could be served in those tracts.

STAFF RESPONSE: Staff agrees, but additional public comment on this suggestion is needed as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.9(c)(6) – Residents with Special Housing Needs Scoring Item (Commenters 5, 10, 15, 25, 29, 33)

COMMENT SUMMARY: Commenters 5 and 29 suggest that because this item is limited only to counties of populations more than 1 million and because At-Risk and USDA applications compete on a statewide basis, applicants in those two set-asides should not be eligible for this scoring item as it gives a significant advantage. Commenters 10, 15 and 25 asks that to avoid confusion, the QAP should use terminology used on the Veterans Affairs website for locating VA facilities or release a list of which facilities are eligible.

Commenter 33 supports the provisions in paragraphs (A) and (B) that grant points for dedicating beds and marketing to residents with Special Housing needs including homelessness and the coordination with Continuum of Care organizations. To strengthen this item, they suggest that language in both (A) and (B) be revised to expand this from being applicable during the Compliance Period, to being applicable throughout the Affordability Period.

STAFF RESPONSE: Regarding the suggestion that At-Risk and USDA Applicants not be permitted to earn the new proximity to veterans services points, staff does not agree that this can or should be limited or restricted; At-Risk and USDA will be able to earn these points as reflected in the draft. Regarding seeking greater clarity on which facilities are eligible, staff concurs and has made responsive changes to the QAP that now provides a link to a specific webpage with what medical facilities are and are not eligible. Regarding the comment that the homeless special needs units be expanded to being applicable for the Affordability Period, rather than the shorter Compliance period, staff feels that additional public comment on this suggestion is needed as it proposes a significant expansion of an existing concept that was not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions.

§11.9(c)(7) – Proximity to Jobs Area Scoring Item (Commenters 1, 3, 5, 8, 10, 12, 15, 16, 17, 25, 27, 29, 30, 32, 34, 37, 39, 40)

Commenter 32 appreciates the changes made in the draft in this section, but requests that the 2-mile radius only apply to all urban subregions and the 4-mile radius apply only to all rural subregions rather than using the population factors as laid out in the QAP. As drafted Commenter 32 believes an advantage is given to

unincorporated areas that are competing in an urban subregion as a municipality outside of an incorporated area but within a county with a population of 1 million or more will be able to use the alternate methodology. Sites directly competing with one another would be evaluated under different standards. This comment from TAAHP was supported and also requested by Commenters 3, 8, 10, 27, and 40 who gave similar justifications. Commenter 37 thanks TDHCA for the changes to this item.

Commenter 1 notes that while they support the request made by TAAHP (Commenter 32 summarized above), they urge TDHCA to seek another solution for this point category for 2023 for several reasons: jobs counted in the radius are not jobs that would be filled by residents, the job mapping tool is not accurate, and jobs are often counted at employer headquarters, not where the jobs are in fact located.

Commenters 5, 15, 29 and 39 recommend the language remain as drafted, without changes as proposed above, because the development community has been working with the distances noted in the draft for several weeks. Any changes would create an unfair advantage only to those who are requesting changes in distance. Commenter 6 notes they support the QAP language as proposed as they will result in more affordable sites.

Commenters 12, 16, 25 and 34 also support the language as drafted with no change as the expanded radii in the current draft add mid-size cities and outlying cities that would not have been previously competitive, many of which are experiencing exponential growth. Commenter 17 also supports the language as is, specifically noting the radius should not be based on the urban or rural classification. Commenter 37 supports the modifications already made and hopes that it will mitigate the issue of small, high-priced, commercial-oriented sites.

Commenter 17 further suggests that the radius should actually be expanded to 5 miles for areas with populations greater than 500,000, and to 10 miles for areas with populations less than 500,000; doing so would help move development away from highways and highly commercial areas, allowing developers to pursue land that the commenter feels is proper for residential use, while still being within a reasonable driving distance of jobs. They note that having expanded the rural ratio from 2 to 4 miles has little impact on rural sites – a radius would need to be much larger to capture enough jobs. Commenter 17 also thinks that if the radius distances are not increased, more ties will result as achieving a max score will be too easy; they feel that the maximum job points should be a challenge to attain so that true variability is accomplished among applicants. Lastly Commenter 17 notes that it would be more beneficial and relevant if the data used for this item was current, instead of three to four years old.

Commenter 30 does not support the new expansion of the radius from 1 mile to 2 miles, and requests the QAP revert to the 2021 language, because families living in HTC developments benefit from access to jobs, amenities and services.

STAFF RESPONSE: As it relates to the suggestions to adjusting the criteria to being applied for each urban and rural sub-region from a variety of commenters, to not accepting the draft changes (Commenter 30), or to increasing the radius to greater distances (Commenter 17), staff feels that in light of the expansion already made to the radius distances in the draft and the subsequent broad spectrum of comments that have been received on this item both for and against changes being made, that no further changes should be made until additional public comment on this scoring item can be heard. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no further changes at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions.

§11.9(c)(8) – Readiness to Proceed Scoring Item (Commenter 3)

COMMENT SUMMARY: Commenter 3 requests deleting this scoring item because the item restricts a

developer's ability to adjust to market conditions such as increases in construction costs and decreases in equity pricing that arise from inflationary pressures, delays in the supply chain, and labor shortages. Commenter 3 further notes that the deadline forces developers to spend significantly more on design and other expenses prior to certainty of an award and estimated that at least twice the typical amount of pre-development funds have been spent on these transactions than would have been typically, and in some cases on developments that ultimately were not awarded. Commenter 3 concludes by noting that the scoring item has not in fact resulted in units being produced any earlier than those that do not pursue these points.

STAFF RESPONSE: Staff appreciates the comment, but remains committed to prioritizing applications that are ready to proceed. It should be noted that this item is suspended for 2022. Staff recommends no changes based on these comments.

§11.9(d)(1) – Local Government Support Scoring Item (Commenters 5, 33)

COMMENT SUMMARY: Commenter 5 requests that the QAP be revised to provide clear direction on what resolutions are needed if a site is partially within a municipality and partially within the ETJ or county (questioning whether it should be only a resolution from the city or a resolution being needed from both the city and the county/ETJ.

Commenter 33 is opposed to the striking of language in the draft that reminds local governments to consult their own staff and counsel regarding consistency with fair housing laws. Because the commenter feels such consideration is not consistently occurring across the state, they feel the reminder is needed. They suggest reducing the amount of text stricken and keeping this sentence: "A municipality or county should consult its own staff and legal counsel as to whether its handling of their actions regarding such resolution(s) are consistent with Fair Housing laws as they may apply." Commenter 33 notes that the Department has a duty to affirmatively further fair housing which includes educating other units of government.

STAFF RESPONSE: As it relates to addressing what resolutions are needed if a site is partially within a municipality and partially within the ETJ or county, clarification has been added to the QAP that resolutions must be obtained from both entities. As it relates to Commenter 33's comment, this was removed because the same comment is made in §11.1(j) as broadly applicable responsibilities for municipalities and counties.

§11.9(d)(4) – Quantifiable Community Support Scoring Item (Commenter 5)

COMMENT SUMMARY: Commenter 5 notes that they have found that in the past there have been discrepancies between boundary maps and descriptions or no published boundaries. To prevent uncertainty and conflicts, Commenter 5 requests that the QAP clarify that Neighborhood Organizations must have their boundaries published and on record with the state or county and that those published boundaries will be the boundaries used for the scoring item.

STAFF RESPONSE: Staff does not feel that such a requirement can be made within the statutory language.

§11.9(d)(5)(B) – Community Support from State Representative Scoring Item (Commenters 5, 12, 33)

COMMENT SUMMARY: Commenter 5 requests that the QAP be revised to provide clear direction on how this scoring item will be applied when no letter is submitted if a site is partially within a municipality and partially within the ETJ or county. Commenter 12 requests that the Department be required to notify Applicants within 3 business days of receipt of any letter of Support, Opposition or Neutrality so that necessary business decisions can be made.

Commenter 33 notes that in §2306.6710(b)(1) – which provides how the QAP must score and rank Applications for certain items – the state representative's statement should be weighted less than many other factors; they believe that because the QAP grants a spectrum of points from positive 8 to negative 8 that in

effect this can differentiate projects by up to 16 points, and thus it is receiving more points than warranted by the statutory ranking. They feel this misalignment with statute requires an immediate change and they suggest that the easiest remedy for this item is to revise the points down to a range of positive four to negative four, bringing it properly into alignment (the other points for lower values should be proportionally adjusted downward as well, with the items at 4 or -4 reduced to 2 or -2.

STAFF RESPONSE: As it relates to the handling of properties within the boundaries of a municipality and an ETJ or county, clarification has been added to the QAP that resolutions must be obtained from both entities. As it relates to the request that the Department notify Applicants within 3 business days of receipt of any comment letters received, that is not administratively feasible for the Department. The Department can commit, not in the rule, that it will strive to notify as soon as it is able to.

§11.9(d)(7)(A) – Concerted Revitalization Plan Scoring Item (Commenter 1, 3, 5, 10, 12, 15, 16, 23, 25, 29, 30, 32, 34, 37, 40)

COMMENT SUMMARY: Commenters 32 and 15 appreciate the changes made to this section that simplified this item. Commenter 32, however, requests that sites not located in a QCT be able to achieve equal points as those sites within a QCT. Therefore, the commenter recommends that a 2-point option be added for those sites within a CRP area, but not within a QCT if the applicant can provide "A letter from the appropriate local official for the municipality (or county if the Development Site is completely outside of a municipality) that explicitly identifies the proposed Development as contributing to the concerted revitalization efforts of the municipality or county (as applicable)." The commenter specifically suggests that this be a letter, and not a resolution, in keeping with the changes toward simplifying this item. These comments from TAAHP was supported and also requested by Commenters 1, 12, 25, 37, and 40. One commenter supported this request as well but noted their support based on the challenge of otherwise no longer being able to access the 30% basis boost in §11.4(c)(3)(E) (which provides the 30% basis boost for developments in a CRP area that is not an Elderly Development, and is not located in a QCT). Commenter 40 thought the parity requirements could be achieved by merely removing the reference to QCT versus non-QCT.

Commenter 10 asked that the points for CRP in a QCT be removed, but if they are not removed, supports the comment noted above from TAAHP providing for an alternative 2 points for local support (they referenced a resolution); they note that CRP areas no longer in QCTs may be because revitalization efforts have been accomplishing their purpose of increasing incomes and reducing poverty.

Alternatively Commenters 5, 23 and 29 support the 2-point advantage for applications in a QCT; Commenter 5 notes that if comment suggests removing the QCT advantage, they propose that sites that are eligible for Opportunity Index points not be eligible for CRP because it gives a competitive advantage due to the statutory provision directing that the initial award in some regions go to revitalization applications.

Commenter 3 recommends fixing the inconsistency found in (1)(ii) that says both a plan may consist of one or more documents, but then following says that no more than two plans may be submitted; they feel clarity on this is needed around the number of plans that may be submitted. Commenter 3 recommends requiring a letter from the municipality that the site contributes to revitalization to affirm the plan. Commenter 3 also recommends that the rural CRP points structure be revised to clarify that 7 points are allowable if the development proposed is rural and rehabilitation or reconstruction, but that if it is rural and new construction it can earn 5 points; commenter cited an article on the critical need for rural affordable housing and also provided information on the high poverty rates in some rural counties. They felt that valuing this item at 5 points would still preserve the intent of the scoring item, with prioritizes the preservation of existing stock, but would still provide opportunities for new construction as well.

Commenter 16 notes that giving preference to CRPs that are within a QCT diminishes the ability of municipalities to influence in a proactive manner, as QCTs are HUD designated while CRPs are locally driven.

Alternatively, Commenters 30 and 34 feels that while there was a need to simplify the CRP item, there should not have been the removal of the municipality's input. The changes remove the municipality from identifying projects that contribute to its own efforts, and usurp local control. They recommend continuing to allow cities to identify one project per CRP that will contribute the most to the city's efforts through a resolution which would be worth 2 points, but supports removal of the letter requirement.

STAFF RESPONSE: As it relates to allowing two points to bring parity for non-QCTs, and to address the comments relating to the importance of local input, staff concurs that this is a good compromise to support revitalization statewide while still meeting the interests of the Internal Revenue Code preference and simplifying the requirements of this section. Responsive language has been added providing two points for a letter from the municipality. Regarding the inconsistency noted by Commenter 3 staff concurs and has revised the rule to reflect that no more than two plans may be submitted. The other comment suggested by Commenters 3 regarding the rural point structure would require additional public comment as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions.

§11.9(e)(1) – Financial Feasibility Scoring Item (Commenter 23)

COMMENT SUMMARY: Commenter 23 suggests that to more accurately reflect the ability for there to be approved underwriting exceptions, the language for this scoring item should have added at the end "…unless an underwriting exception applies."

STAFF RESPONSE: While staff appreciates the perspective provided, this comment suggests a change that would conflate two distinct issues – the feasibility of a transaction as presented by a pro forma and approval letter of a Third Party permanent lender for points, and the underwriting performed by the Department, a process intentionally distinct and separate from scoring. To add the suggested language would bring underwriting exceptions identified by Department underwriters into the scoring process. No change is made to this section.

§11.9(e)(2) – Cost of Development per Square Foot Scoring Item (Commenters 3, 15, 17, 28, 37)

COMMENT SUMMARY: Commenters 3, 28 and 37 thank the Department for the increase to the cost per square foot. Commenter 8 notes that the high cost development item which is related to Opportunity Index, does not specify whether this means Opportunity Index points to qualify are those under subparagraph (A) or (B) or both. They suggest clarifying that this can be achieved under either or both of the subparagraphs. Commenter 15 requests that the language be amended to state that, for purposes of this scoring item for all proposed developments, the NRA will include Common Area up to 75 square feet per Unit, of which at least 50 square feet will be air conditioned (note that currently this provision is applicable only for Supportive Housing Developments). Commenter 28 encourages staff to continue to review the data to support increases.

Several commenters felt that the increase was not sufficient. Commenter 15 recommended that the cost per square foot limits, which were increased by 5% in the draft, instead be increased by 7.5% given the cost increases seen in the industry to date and the uncertainty of what costs will be when the supply chain normalizes. Commenter 17 also supported an increase, noting that the 5% increase provided 'barely puts a dent' in the recent cost increases; they provided a set of costs for seven 2021 transactions and six 2016 transactions that they summarize reflect a 31.5% increase in building cost per square foot on average. Commenter 17 therefore urges that TDHCA increase the voluntary eligible basis for both building construction

costs and hard costs by no less than 15%.

STAFF RESPONSE: Regarding the clarification suggested by Commenter 8 relating to Opportunity Index, staff concurs that it was not clear and has clarified that a development qualifies for points only if qualifying whether under subparagraph (A) and (B). Regarding the comment by Commenter 15 which suggests allowing all developments to have the same Common Area standards for scoring as Supportive Housing, staff does not agree; the added space is specifically included for Supportive Housing developments because units are quite small and may lack the same amenities such as full kitchens. Common kitchens and lounges are key features for Supportive Housing. While staff is sympathetic to those commenters that requested larger increases than the 5% reflected in the draft, staff does not agree; staff based this increase on measuring the CPI change from November 2020 to present, which (not seasonally adjusted) was 4.9%.

§11.9(e)(5) – Extended Affordability Period Scoring Item (Commenter 33)

COMMENT SUMMARY: Commenter 33 supports maintaining the current language granting points for extended affordability periods.

STAFF RESPONSE: Duly noted. Staff recommends no changes based on these comments.

§11.9(e)(6) – Historic Preservation Scoring Item (Commenter 15)

COMMENT SUMMARY: Commenter 15 suggests that the scoring item for historic preservation be based on the proportion of the space that is historic in relation to the space that is non-historic which would allow developers to be creative in large and small markets, by allowing smaller projects in small markets to support local cultural resources.

STAFF RESPONSE: While staff is open to considering this suggestion, it would require additional public comment as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.9(e)(7)(B) – Right of First Refusal Scoring Item (Commenters 1, 2, 3, 5, 10, 12, 15, 27, 29, 32, 33, 37, and 39)

COMMENT SUMMARY: Commenter 32 requests that the new single family scoring criteria be removed from the 2022 QAP given the lack of discussion with the development community, the complexity of rent-to-own programs and the many considerations that must be evaluated, and consider this item for the 2023 QAP round tables when other additional items relating to Section 42 compliance are raised. Concerns included that the number of points allotted to this item was too high, there is insufficient detail and standards for what the plan must include, there is no requirement for financial counseling, there would be significant impacts that have not been worked on, that possible abuses may arise at the end of the 15 year period, and that this item will prioritize lower density developments and thus fewer units produced per tax credit. This comment from TAAHP was supported and also requested by Commenters 1, 3, 10, 12, 15, 27, 29, 37, and 39 who had complementary comments.

Commenter 5 noted that traditional apartment developments can also be converted to condominiums and should not be precluded from the opportunity to pursue these points; they suggest that if this item remains in the QAP, that it be open to any construction type, except for Single-Room Occupancy design (which may not have complete kitchen facilities).

Commenters 2 and 10 were also concerned about numerous and significant unintended consequences of this item and suggested that the scoring item be reduced from 3 points to 1 point. Commenter 2 suggested that

the tenant ROFR item be integrated into the original paragraph A, as opposed to a separate additional item, saying only that "if a development is platted to be sold as single-family detached homes" then the tenant right of first refusal would apply. They do note that if such an edit isn't made, they request like those above, that this be delayed for another year and gave a list of concerns for this issue including: an expected reduction in the total number of units created by the program, the insufficient time to design the financing and conversion, an expected result of the program becoming a single-family program, a push of the program's units into the suburbs, concern that units other than single-family design are excluded, and issues that will arise at the end of the Compliance Period.

Commenter 15 suggests that perhaps a set-aside dedicated to rent-to-own projects would meet the same objective.

Commenter 33 provides an explanation of the current process by which properties are reducing their contractual LURA through routine staff and Board action, and the fact that TDHCA staff allow two year ROFR requirements to be reduced to 180 day requirements retroactively on existing LURAs as a given based on recent legislative change. However, Commenter 33 feels that to take these actions on existing LURAs is not what was contemplated by the legislature and should not be done. They note the possible harm tenants will face by increasing rents and possible displacement. While they feel a change to the QAP should not be necessary, they suggest that to address this issue, the QAP add a clause to the end of this section that states: "Such ROFR must be included in the LURA, specifying the required time period for the ROFR." They also suggest that the ROFR notice period should be required to be for two years.

STAFF RESPONSE: While staff appreciates the perspective provided, the Department is committed to ensuring compliance with the Section 42 preference. As such this item has been left in the rule. However, the limitation to the tenant ROFR points has been expanded from single-family development on individual lots to include units that are organized, at the time of LURA recording, as condominiums and for 2022 the point item has been reduced from 3 points to 1 point for this first year of the new scoring item, with the expectation that it will increase again to 3 points in 2023. As it relates to Commenter 33's comments regarding the ROFR procedures of the Department, staff appreciates the input, however such a change would require additional public comment as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions.

§11.10 – Request for Administrative Deficiency (Commenters 8, 35, 39)

COMMENT SUMMARY: Commenter 8 feels strongly that the RFAD process should remain in the rules, but asks that staff disallow anything that does not bring to staff's attention new material information about an application that is not otherwise available to staff.

Commenter 39 notes that there appears to be a contradiction between (d) stating that testimony to the Board cannot be used to appeal staff decisions, and (f) stating that if based on public testimony it can remand the RFAD for further staff consideration; commenter encourages that the QAP be clear on whether or not public testimony may be used to appeal staff decisions made through the RFAD process.

Commenter 35 notes that the RFAD process has become a process by which applicants are appealing other applications, and it creates a record beyond the application itself being included in what the Board considers in making awards, which does not align with statute. Because of this, Commenter 35 suggests that §11.10, Third Party Request for Administrative Deficiency for Competitive HTC Applications, be struck in its entirety. Commenter 35 provides legal rationale for this suggestion. In the event the revision is not made, as suggested, specific language was provided that could be included in the QAP to make clear the components

of an RFAD are not considered to be a part of the application.

STAFF RESPONSE: Staff appreciates the input provided on this section from Commenter 35 and their thoughts on this issue. As it relates to Commenter 39's concern of a contradiction, staff disagrees that a contradiction exists; one of the items relates to staff's presentation, while the other relates to an appeal. Staff recommends no changes based on these comments.

§11.101 – Site and Development Requirements and Restrictions (Commenter 33)

COMMENT SUMMARY: Commenter 33 supports maintaining the array of rules and requirements in this section that protect future tenants; however they request that all of these items should be made immediately applicable to Rehabilitation developments which could be effectuated by striking the sentences throughout this section that exclude Rehabilitation developments. They noted the importance of the floodplain provisions in protecting tenants and believe that tenants of any Department-assisted property should have the same protections regardless of whether that property was a rehabilitation or not.

STAFF RESPONSE: Such a change would require additional public comment as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.101(a)(2) – Undesirable Site Features (Commenters 3, 5, 24)

COMMENT SUMMARY: Commenter 3 recommends removing paragraph (K) relating to Joint Land Use Study for a military installation; they note that one instance relating to Joint Land Use Study occurring the prior year should not be the basis for prompting all such similar properties as undesirable. Commenter 3 notes that when military service members live off site, they need affordable housing and lower ranking members earn salaries similar to teachers, first responders and food service employees. Commenter 3 further suggests that if the item is not removed, then the Department should consider adding military service entities to the list of those entities to receive notifications regarding the property. Commenter 24 feels that as written the language in (K) is too vague and some content of Joint Land Use Study's allude only to discouraged areas so are not a clear violation. Commenter 24 notes that for the area surrounding Randolph Joint Base residential use is merely discouraged, but not prohibited. Commenter 24 is looking at development sites in several areas that are 'discouraged' but plan to mitigate the inside of the units to HUD's standards; the developer notes that have developed more than 34 communities in San Antonio that all adhere to local military requirements but may fall outside of 'encouraged' areas. They suggest that clearer language be used, replacing 'Development Sites that would violate a Joint Land Use Study for any military installation' with 'Development Sites built within Clear, APZ1 or APZ2 zones' or that building within a 65-69 db DNL zone (db DNL refers to the decibels for the Day Night Level, a standard used in Air Installation Studies) is acceptable. They conclude by noting that non-affordable properties of new construction are currently occurring in these areas.

Commenter 5 suggests that if a local ordinance is able to supersede the distances in this section (found in the introductory paragraph of (2)), then the QAP should be revised to allow a local resolution also; this would allow the local government to approve the development and remove subjectivity and interpretation around certain features, while also avoiding unnecessary RFADs.

STAFF RESPONSE: As it relates to either removing subparagraph (K) or revising it, staff does not recommend removing the item entirely as Joint Land Use Studies are documents generated through extensive coordination and serve as important planning documents in communities with military installations. Staff has revised the wording on this item, but has continued to leave this as broadly applicable, so that the Board will have the opportunity to decide on such applications. As it relates to the request from Commenter 5, staff

does not recommend making such a change; a local ordinance is substantially different from a resolution and staff does not think one can be replaced with the other.

§11.101(a)(3) – Neighborhood Risk Factors (Commenters 13, 30, 33)

COMMENT SUMMARY: Commenter 30 supports not requiring mitigation for schools for Applications submitted under the 2022 QAP due to COVID closures.

Commenter 13 opposes language in this section that allows developers to obtain a resolution from the local government rather than being required to submit a Neighborhood Risk Factors Report if a development is in a tract with a poverty rate greater than 40%. Commenter 13 notes that because high-poverty areas have patterns of insufficient investment in grocery stores, hospitals, vet clinics and pet stores, to site affordable housing there is putting that housing where there is known disinvestment. They state that to build a development in a high poverty area the developer should have to prove to the Department that the neighborhood is receiving both public and private investment to benefit existing residents.

Commenter 33 opposes waiving the mitigation requirements for poorly performing schools. Proximity to high quality schools is critical to HTC residents with children; the QAP essentially picks the schools where children of residents will go and commenter urges the Department to use the same judgment it would use in picking schools for its own children. Commenter 33 provided additional discussion on the impact of good schools on low income students and the need for reducing intergenerational poverty. Commenter 33 further notes that the mitigation required (if not waived) is still only a requirement for only very poorly performing schools – in 2018 only 4% of campuses received an Improvement Required rating and in 2018 and 2019 fewer than 5% of campuses received the F rating. Commenter 33 suggests that eliminating the mitigation is akin to expecting that mitigation will naturally take place, but notes that mitigation in reality does not widely occur. "Supply-side" housing policies, including those made through the QAP, have the potential to break the link between economic status and educational opportunity by providing low-income people with the opportunity to live in higher income areas with access to better schools. Commenter 33 provides that incentivizing HTC development near high quality schools is important in addressing racial segregation in the state and providing further explanation on this issue which can be found in Commenter 33's letter provided on the Department's website. Mitigation for poor schools should be accomplished even during the pandemic as the children who will occupy these properties over the affordability term of the property will suffer with poor performing schools. Overall, Commenter 33 urges a return to past standards requiring HTC developments to be located near standard performing schools with additional points awarded to those located near exemplary schools.

Commenter 33 emphasizes also that even if the waiver for mitigation is approved for 2022, staff should ensure it enforces the process in subparagraph (B) of this section of the QAP that requires an Applicant to demonstrate actions being taken that would lead staff to conclude that there is a high probability and reasonable expectation the risk factor will be sufficiently mitigated or improved prior to placement in service as required in §11.101(a)(3)(B).

STAFF RESPONSE: Staff appreciates the extensive consideration given to this issue by Commenters 13 and 33. As it relates to the ability for an applicant to obtain a local resolution rather than being required to submit a Neighborhood Risk Factors Report in a tract with a poverty rate greater than 40%, staff believes that submission of any other documentation to mitigate a poverty rate that exceeds the threshold could result in a subjective review and recommendation by staff. By allowing a resolution instead, it provides the local municipality the opportunity to review efforts that may be underway that could serve to mitigate the poverty rate. A local municipality can provide a perspective on local efforts that staff simply cannot.

As it relates to not allowing the waiver for 2022, in light of the draft QAP having reflected the waiver, and the

development community having begun the possible process of site selection, to now remove the waiver may be very problematic for applicants. Staff does not recommend any changes to this section. As it relates to the final comment noted above by Commenter 33 regarding the Applicant's demonstration of actions under subparagraph (B), staff feels that by the mitigation required in subparagraph (C) being waived, the mitigation provided for in (B) is already waived, by reference; however staff has included subparagraph (B) in the waiver language to provide clarity. Staff recommends no other changes based on these comments.

§11.101(b)(1)(C) – Ineligibility of Developments within Certain School Attendance Zones (Commenters 5, 29, 33)

COMMENT SUMMARY: Commenters 5 and 29 suggest that rather than eliminating some development locations because TEA ratings have been unable to be performed for some time, they recommend that if a Development Site is located in a school attendance zone that is rated F for the most recent year available prior to Application and an Improvement Required Rating for the preceding year, they be considered eligible if they include documentation that the application commits to providing an after school educational service for tenants and a letter from the ISD Superintendent that outlines specific improvements that have been made. Commenter 33 strongly supports the current language as drafted that maintains the ineligibility of developments within certain attendance zones.

STAFF RESPONSE: In the discussion by the Department's Rules Committee relating to the 2022 Draft QAP, Board members indicated an expectation that Applications in these cases would be considered ineligible with no opportunity for mitigation. It should be noted that a waiver may be requested at or before the submission of an application.

§11.1-1(b)(4) – Mandatory Development Amenities (Commenter 31)

COMMENT SUMMARY: Commenter 31 notes their concern for the use of 'or equivalently' when discussing Energy Star applicants and measures; they are concerned this could undermine efforts to improve energy efficiency; they also support inclusion of water-sense plumbing appliances to these requirement amenities.

STAFF RESPONSE: Where a developer chooses to use something that is "equivalently rated," the Department will be looking for confirmation that it is indeed equivalently rated. Similarly, the same would be expected where "equivalently qualified" plumbing fixtures are used instead of EPA WaterSense. Staff recommends no changes based on these comments.

§11.101(b)(6)(A) – Unit Sizes (Commenter 29)

COMMENT SUMMARY: Commenter 29 notes that with the addition of the provision of units for homeless populations, the development community needs to be able to provide more efficiency units at a lower cost; the best way to achieve this is to reduce the minimum unit size for efficiency units for threshold and scoring. Commenter 29 suggests that the minimum size for threshold be 400 square feet, which aligns with the general market for efficiency unit sizes.

STAFF RESPONSE: As noted in the discussion on this similar topic in relation to scoring, staff sees the value in revising the minimum unit size for efficiencies for points as there is an increasing trend toward smaller units. However, additional public comment on this idea is needed as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.101(b)(6)(B) - Unit, Development Construction, and Energy and Water Efficiency Features (Commenter 31)

COMMENT SUMMARY: Commenter 31 appreciates the attention in this section to energy and water efficiency but feels that some of the measures are already required as mandatory and are then also being given points (for instance energy star dishwashers and refrigerators are already required, yet points are given if they have an ice-maker or are front-loading). Commenter 31 also questions the need to give points for LED receded lighting or fixtures as they are now the standard for all new construction in Texas under the 2015 IECC. Commenter 31 suggests that an even higher rated HVAC system be added, such as an 10 or 20 SEER, for up to two points.

STAFF RESPONSE: Staff agrees that greater distinction should be made between what is used for threshold and what they can receive points; however, additional public comment on this idea is needed. The timing of the QAP process does not allow for additional rounds of public comment and staff research. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.101(b)(8)(B) – Green Building (Commenters 11, 31, 41)

COMMENT SUMMARY: Commenter 11 praises TDHCA for maintaining competitive points for third-party green building certification and particularly for incentivizing certification to the ICC-700 standard; commenter feels these items encourage development that is efficient, comfortable, and supports resident health and requests that the items remain in the QAP. Commenter 11 notes that Texas is one of 29 states recognizing this standard in its QAP and provided significant description and background on the National Green Building Standard's Green certification program, which for brevity are not restated herein but whose comments can be found on the Department's website. (Note that this was not a new revision to the QAP, but already in the 2021 QAP.) Commenter 31 supports the continued inclusion of the 2018 IGCC as a new Green Building standard, but also recommends that TDHCA add passive solar standards as another standard that could earn up to four points (this standard is known as the PHIUS+ 2015 passive building energy standard). Commenter 31 also suggests that PV rooftop solar options be added as a feature for which a development could receive points, for instance one point could be achieved if the solar option provided at least 10% of the buildings total energy use.

Commenter 41 applauds TDHCA for looking to building codes and standards that further more sustainable building, but suggests that in an effort to balance that with keeping costs low, several other standards should be added as options for this item which include: The International Living Future Institute's Living Building Challenge or Core Green Building Certification; Green Globes by the Green Building Institute; ASHRAE's Building EQ; ASHRAE's Standard 62.1-2019, Standard 62.2-2019 and ANSI/ASHRAE Standard 105; and IAPMO's Water Efficiency and Sanitation Standard. Commenter 41 also then notes concerns about using the IGCC standard currently in the QAP; the IGCC Standard in its current form is not completely developed by a nationally recognized consensus-based process. They note that the IGCC document is not ANSI approved.

STAFF RESPONSE: Staff appreciates the excellent additional suggestions from Commenters 31 and 41 that would provide more creative and expansive options for promoting green building, however, additional public comment and staff research on this idea is needed as it proposes new concepts not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.101(b)(8)(B) – Visitability, Grab Bar Installation (Commenter 7)

COMMENT SUMMARY: Commenter 7 notes that the QAP already requires properties to provide appropriate blocking to support the installation of a grab bar; they note that while the cost of the grab bar itself is

approximately $21, the labor typically adds another $150 to this cost, which may be out of reach for low-income persons with disabilities. Commenter 7 suggests that to ensure people with disabilities are not priced out of obtaining this commonly necessary modification, that the QAP should require the tenants to pay for the materials, while the landlord pays for the labor costs.

STAFF RESPONSE: Owners are already required to pay for the installation of grab bars on all awards post 2001, unless doing so would be a financial and administrative burden (which would be unlikely). Staff recommends no changes based on these comments.

§11.201(2)(A)(i) – Lottery Applications (Waitlist) Priority 1 or 2 Applications (Commenter 1)

COMMENT SUMMARY: Commenter 1 requested that architectural drawings be considered as part of the Third-Party reports for Private Activity Bond/HTC applications that are on the Bond Review Board waiting list. The three day notice prior to issuance of the reservation does not provide sufficient time for the drawings to be completed and thus results in deficiency notices to clear the inconsistencies.

STAFF RESPONSE: There are several exhibits in the application that require consistency with the architectural drawings. Submission of architectural drawings along with the third party reports post-submission would require revised exhibits be submitted to the application itself. While staff understands that the timeframe allowed is short, there are not date constraints surrounding how old the architectural drawings can be in the QAP, as there are with third party reports. This would indicate that upon submission of the application to the Bond Review Board to await a bond reservation, the architectural drawings could already be in process.

Staff recommends no change based on this comment but has clarified in this section that applications approved by the Board will not have the Determination Notice administratively issued as reflected in the following sentence. Moreover, staff is also providing a clarifying change under §11.201(2)(B)(i) relating to submission of the Application.

§11.201(7) – Limited Review (Commenter 8)

COMMENT SUMMARY: Commenter 8 suggests that the ability to request a limited review for an isolated issue should not only exclude scoring items, but should be expanded to also exclude "failure to comply with any statutory requirement."

STAFF RESPONSE: Additional public comment on this idea is needed as it proposes a new limitation not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.202 – Ineligible Applicants and Applications (Commenter 33)

COMMENT SUMMARY: Commenter 33 suggests adding another criteria to the list of Applicants that would be ineligible for credits, specifically those applicants who have been in control of TDHCA portfolio properties with abysmal inspection scores for more than two years. They cite an example of a specific property owner (Sandpiper Cove) for which the QAP has no provisions to preclude that owner for applying for more credits. Commenter 33 suggests adding language: "Has at any point in the past 30 years been in control of a property in the Department's inventory where the REAC score was below 50 (or the equivalent UPCS score) for two consecutive years. To be disqualified based on this subsection the party must have been in control of the property for two full years prior to the two years of inadequate inspections."

STAFF RESPONSE: Staff appreciates the comment however additional public comment on this idea is needed as it proposes a new concept not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will

consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.204(6) – Experience Requirement (Commenter 1, 12, 29, 32, 40)

COMMENT SUMMARY: As pointed out to staff at the September Round Table, Commenter 32 notes that the experience requirement date window was adjusted by staff inadvertently moving the year 2014 up by one year. They request that because the requirements in 2014 were largely the same, the year 2014 should remain. This comment from TAAHP was supported and also requested by Commenters 1, 12, 29, and 40.

STAFF RESPONSE: Staff concurs. This edit was made in error and is corrected back to 2014 in the attached draft.

§11.204(8) – Required Documentation, Operating and Development Costs (Commenter 8)

COMMENT SUMMARY: Commenter 8 recommends that subparagraph (G) relating to Occupied Developments be revised to clarify that the rule and the items to be submitted in Tab 21 of the Application applies to those that are proposing the redevelopment of occupied residential structures so that it is consistent with section 2306.6705(6) of Texas Gov't Code and/or applying for Direct Loan funds whose development sites include occupied structures.

STAFF RESPONSE: The QAP already specifies that subparagraph (G): "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." Staff recommends no changes based on this comment.

§11.204(13)(B) – Required Documentation, Organizational Charts (Commenter 14)

COMMENT SUMMARY: Commenter 14 notes that for applications with private equity fund investors who are passive investors in the sponsorship entity, the QAP should allow the fund manager to be named in the organizational chart, and not require a full list of investors, as they do not exercise control of the development or make decisions.

STAFF RESPONSE: The purpose of the Organizational Chart is for the Department to do the Previous Participation Review as outlined in 10 TAC Chapter 1 Subchapter C. Staff concurs with this edit for LIHTC only developments, and this edit has been made to the rule. The Department is in discussions with HUD to see if the same consideration can be made to the Multifamily Development Loan Program, as those developments must follow the expanded definition of Principal in 2 CFR Part 2424.

§11.207(3) – Waiver of Rules (Commenter 1)

COMMENT SUMMARY: Commenter 1 does not support a revision to the rule that gives the Board authority to grant forward commitments at their pleasure, but only in cases that affect the application pool or industry as a whole. They suggested the waiver language be revised by adding, "due to circumstances that affect the Texas application pool or industry as a whole."

STAFF RESPONSE: Staff recommends no revision based on this comment.

§11.302(d)(1)(A)(i) – Market Rents (Commenter 12)

COMMENT SUMMARY: Commenter 12 recommends that for developments that contain less than 15% unrestricted units, the underwriter should use the lower of market study approved rents, or the Gross Program Rent at 80% AMI rather than 60% AMI; they suggest that developments proposing unrestricted rents should be held to a standard whereby the unrestricted rents (after adjustment for utilities) should fall 10%

below the prevailing market rate as established in the market study so that there is an affordable 'rent advantage' between the market and affordable units. Commenter 12 suggests that underwriting the rents to 60% AMI creates an 'on paper' shortfall that is not consistent with financial market practices for HTC developments.

STAFF RESPONSE: For developments that contain less than 15% market units, the existing rule limits the Market Rent used for underwriting purposes to the lesser of the Market Rent as reported in the Market Study or the highest allowable HTC Gross Program Rent for the development (80% AMI if electing Income Averaging, 60% AMI otherwise). Staff believes the current rule addresses the comment and recommends no revision.

§11.302(e) Total Housing Development Costs (Commenter 3)

COMMENT SUMMARY: Commenter 3 requests removing the language that had been newly added to this section that provides that the underwriter will adjust cost schedule line items to meet rules, but will not make subsequent adjustments to meet feasibility requirements as a result of the initial adjustment. Commenter 3 suggests that any change to an application by staff must allow the developer to review or challenge the adjustment as even one line adjustment can affect the credit request and sources and uses; changes often create ripple effects and if a change makes an application infeasible, the developer must know to prevent loss of time and money.

STAFF RESPONSE: The Underwriter only adjusts items that exceed limits specified in the Rules. The purpose of the newly added language is to clarify that it is not the Underwriter's role to rework the application beyond enforcing limits specified in the Rules. Staff recommends no revision.

§11.302(e)(7) – Developer Fees (Commenters 23, 33)

COMMENT SUMMARY: Commenter 23 recommends that any cash out to developers on identity of interest transactions should not be included in Total Development Costs and in the leveraging calculation in 9% HTC; the commenter notes that this practice allows an application to take away tax credits that could go to another application in order to fund additional profit to another development. They suggest, alternatively, that applicants should leave in a Seller Note as opposed to cash out. They note that the 2021 changes to this item are what is allowing this to occur.

Commenter 33 recommends amending the Developer Fee such that the fee is based on the number of units rather than costs. With a massive need for affordable housing, this would allow developers to benefit from being creative and resourceful in maximizing the output of units; the current s structure has the wrong incentives which have the developers making their fee tied to the overall costs.

STAFF RESPONSE: As it relates to both suggestions additional public comment on these ideas is needed as they propose new concepts not contemplated in the draft 2022 QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time, but will consider this issue as a discussion item for the 2023 QAP input sessions. Staff recommends no changes based on these comments.

§11.302(g)(2)(B) – Other Underwriting Conditions, Floodplain (Commenters 1, 8, 18)

COMMENT SUMMARY: Commenters 1 and 8 suggests removing the requirement that the Applicant must provide flood insurance for the tenant's contents of their unit; they note that flood insurance is difficult to obtain and expensive and many private insurance companies will not insure a tenant's belongings. They note that the Department is already requiring mitigation for all finished ground floor elevations located wholly or partially in a floodplain.

Commenter 18, submitting a comment on behalf of Commenter 8, notes that this requirement to have a

landlord price or acquire insurance on its tenant's personal property is impossible under Texas law and therefore unenforceable; they note that it is well settled in the State of Texas that a landlord may not obtain insurance covering a tenants personal property as they do not have an insurable interest (further explanation and reference to case law were provided which is available in the commenter's letter available on the Department's website). Commenter 18 states that even the Texas Department of Insurance recognizes that a landlord's insurance will not cover a tenant's personal property. Commenter 18 feels this section of the QAP must be changed and suggests that in lieu of paragraph (B) as written ("The Applicant must identify the cost of flood insurance for the buildings and for the tenant's contents for buildings within the 100 year floodplain and certify that the flood insurance will be obtained") paragraph (B) instead should state: "The Applicant must provide evidence that all tenants will be informed that all or a portion of the buildings are located within the 100-year floodplain and that it is encouraged that they consider getting appropriate renter's insurance." They also suggest a new paragraph (C) be added that states: "The Applicant undertakes and substantiates sufficient mitigation efforts, with documentation of such submitted at Cost Certification." This proposed revision brings TDHCA standards into consistency with HUD standards.

STAFF RESPONSE: Though staff does not agree with the legal arguments made by the commenters, the Texas Legislature's recent addition of Section 92.0135 to the Texas Property Code indicates an expectation of landlords to only provide notice to prospective tenants when dwellings are located in a 100-year floodplain; particularly, written notice that "[m]ost tenant insurance policies do not cover damages or loss incurred in a flood," and written notice to a tenant prior to or at the time of lease signing stating "[tenant] should seek insurance coverage that would cover losses caused by a flood." Therefore, staff has removed the requirement but added clarification in §11.101(a)(1) that notification must occur.

§11.302(i) – Feasibility Conclusion (Commenter 3)

COMMENT SUMMARY: Commenter 3 asks to correct a citation in the introductory paragraph for this section from (6)(B) to (5)(B).

STAFF RESPONSE: Thank you for identifying the incorrect citation. A responsive correction has been made.

§11.901 – Fees (Commenter 23)

COMMENT SUMMARY: Commenter 23 requests that the QAP clarify when the Appraisal Review Fee is due since it is unclear when an application is considered priority and suggested that the Application Log have a column added that specifically denotes Priority. Commenter 23 also requested that if an appraisal is not reviewed, the fee be refunded.

STAFF RESPONSE: Staff agrees that there could be uncertainty regarding the point in time in which a competitive housing tax credit application becomes priority. Staff has revised the rule to reflect that once an application becomes priority and is reviewed by staff, staff will include as an Administrative Deficiency to submit the Appraisal Review Fee. To clear the deficiency, the applicant must submit a copy of the check and provide the date that it was submitted to the Department.

§11.902(f) – Appeals Process (Commenter 39)

COMMENT SUMMARY: Commenter 39 suggesting deleting subsection (f) which had been newly added in the draft QAP and provided that if there is insufficient time for the Executive Director to respond to a Competitive Housing Tax Credit Application appeal prior to the agenda being posted for the July Board meeting at which awards from the Application Round will be made, the appeal may be posted to the Board agenda prior to the Executive Director's issuance of a response. The commenter suggest alternatively that the language state that: "Competitive Housing Tax Credit Application appeals must be submitted no later than four weeks prior to July Board meeting at which awards for the Application Round will be made so that all appeals can be

resolved at Board meeting(s) prior to July Board meeting at which awards from the Application Round will be made." Their suggestion is made to reduce the unnecessary chaos for staff and the development community and allow staff enough time to make sound decisions.

STAFF RESPONSE: While staff aspires to issue scoring notices and other application deficiencies within a timeframe that would allow all applicants to file an appeal at least four weeks prior to the late July Board meeting which has not historically been achievable. To add this provision to the QAP would either take away important appeal rights from Applicants, or conversely force Department reviews in a timeline that cannot be performed. As such, staff recommends no revisions. Staff recommends no changes based on these comments.

Subchapter F – General (Commenter 8)

COMMENT SUMMARY: Commenter 8 requests that Subchapter F be a stand-alone chapter that is unique to the 2022 QAP and rules as this would further strengthen its ability to consider the Supplemental Allocations as not impacting the 2022 regular credit allocations in the deconcentration factors.

STAFF RESPONSE: The Department is required by Section 42 to have any actions that are the basis for the allocation of credits to be within the Qualified Allocation Plan. No change is recommended.

Subchapter F, §11.1001 – General, Supplemental HTC (Commenters 6, 8, 36, 39)

COMMENT SUMMARY: Commenter 6 feels that because the large portion of cost increases happened in the last 10 to 12 months, the 2020 deals have been the ones most adversely impacted and warrant prioritization over 2019 deals; from that perspective Commenter 6 strongly supports that the ineligibility for developments that have already placed in service be kept in the QAP as proposed as those developments are not at risk of not being completed. Commenter 8 suggests that any forward commitments be limited to no more than $5 million in 2022 tax credit equity and such proceeds be limited to only assisting 2019 and 2020 transactions (not 2021).

Commenters 36 and 39 support that the supplemental allocations are only for 2019 and 2020 and oppose the funds being used for 2021 applications as it will dilute the funding for those truly caught off guard by the cost increases (whereas 2021 applicants had some indication of the inflation). Commenter 39 suggests that language be explicitly added that states that 2017 and 2018 allocations that received Force Majeure treatment in 2019 be prohibited from requesting Supplemental allocations to provide clarity on their eligibility. Commenter 36 also notes that they support the suggestion made at the Round Table that the Cost of Development per Square Foot scoring item and the leveraging scoring item be considered satisfied and not affected by the additional credits.

STAFF RESPONSE: Staff appreciates the feedback on the draft from Commenters 6 and 8, who are not suggesting changes beyond those already reflected. Staff agrees that to ensure the policy is as clear as possible, the ineligibility of 2017 and 2018 Force Majeure recipients, as well as 2021 applications, is added, and the clarification regarding the two scoring items has been added. Staff recommends no changes based on these comments.

Subchapter F, §11.1002 – Program Calendar for Supplemental HTC (Commenter 15, 25, 30, 32, 34, 36, 39, 40)

COMMENT SUMMARY: Commenter 32 requests that a notice of intent be made a requirement. Ideally the notices of intent would be due around November 5 so that the development community can evaluate those potential applications as it makes decisions for the traditional 2022 application round. Commenter 32 also requests that the Supplement request deadline be moved up by a month to December 10 (or so) with Board

approval in March 2022. This comment from TAAHP to require a notice of intent was supported and also requested by Commenters 15, 25 34, 36, 39, and 40. Commenter 15 additionally noted the deadline for the notice of intent should be included in the calendar. The TAAHP comment to move the submission date and award date of the supplemental earlier was supported by Commenters 30 and 36.

STAFF RESPONSE: Staff concurs and has added a requirement for a Notice of Intent in §11.1005. The deadline for the Notice of Intent and the deadline for the Supplemental Request were both added to the calendar. The dates for when expected awards will be made was moved to February 2022.

It should be noted that other staff revisions to this section include adding specific 10% Test and Placement in Service deadlines in lieu of the clause "Determined by Board Action."

Subchapter F, §11.1003 – Maximum Supplemental HTC Requests and Award Limits (Commenter 6, 12, 32, 36, 37, 39, 40)

COMMENT SUMMARY: Commenter 32 requests that the cap in subsection (b) on supplemental credits be reduced from 15% to 7%. Commenter 36 suggests a similar reduction but down to 7.5%, while Commenter 39 recommends reducing this cap down to 5%. Lowering the cap would allow more 2019 and 2020 deals to access the credits within each subregion and stretch this limited resource as much as possible. This comment from TAAHP to reduce the maximum request amount was supported and also requested by Commenters 6, 12, 37, and 40.

Commenter 36 supports minimally increasing the total amount of credits available for the Supplemental Allocation, to $6.5 million, which would equate to 10% of the of the amount of estimated credits from the 2022 RAF methodology; such a change would allow for a larger number of 2019 and 2020 developments to be assisted. Commenter 36 notes that they are hopeful that Congress will authorize an increase to the 9% allocation by possibly 50% which could help offset this allotment toward supplemental allocations.

Commenter 39 suggests increasing the total amount of credits available for the Supplemental Allocation, to $8,150,000, and state that this amount will provide sufficient credits to fully fund all requests; their earlier suggestion that the cap for requests go down to 5%, combined with this increase, would all 2019 and 2020 awardees to request up to that 5% limit of their original allocation. If all awardees are provided funds, the only review by staff that would have to occur is the underwriting analysis, thereby expediting reviews. Commenter 39 further states that competition for these credits seems unwise and unfair given the supply chain and labor shortage issues that have caused the issue; they further note that the 5% suggested is consistent with what most Limited Partnership Agreements will allow and those that need more than that amount can access direct loan funds.

STAFF RESPONSE: Staff agrees with the suggested revision to reduce the cap from 15% to 7%, but does not agree with increasing the total credits available for Supplemental Allocations, which will further constrain the 2022 regular tax credit cycle.

Other staff revisions to this section include removing the reference to creating a Supplemental Allocation waitlist, as any Supplemental Credits remaining after the Board's approval of Supplemental Allocations will be transferred to the subregion for the regular 2022 competitive cycle, and added that Supplemental Allocations are limited to the increase in eligible costs and made a corresponding edit to §11.1008.

Subchapter F, §11.1004 – Competitive HTC Set-Asides

Staff revisions to this section include the addition of the At-Risk and USDA Set-asides as part of the allocation process for Supplemental Allocations.

Subchapter F, §11.1005 – Supplemental Credit Allocation Process (Commenters 6, 8, 12, 15, 32, 40)

COMMENT SUMMARY: Commenter 32 concurs with the premise of using the original score as the basis for the ranking of requests for Supplemental Allocations reflected in subsection (c). TAAHP further suggests that a tie-breaker be added to further prioritize requests. The first tie-breaker would be those transactions that are closed and under construction, and the second tie-breaker would be the tie-breakers currently proposed by Commenter 32 for the 2022 QAP which are first poverty rate, second rent burden and third distance to the nearest HTC development. The comment from TAAHP to use the final scores from the award year was supported and also requested by Commenters 12 and 40.

Commenter 6 feels that because the large portion of increases happened in the last 10 to 12 months, the 2020 deals have been the ones most adversely impacted and warrant prioritization over 2019 deals; while their preference would have been that all 2020 applications are assured some credits, they realize this is unlikely and therefore they support the proposed ranking system as drafted because it gives a scoring priority to 2020 deals, who generally score higher than 2019 deals. Commenter 6 specifically noted their opposition to the suggestion by TAAHP that the first tie-breaker be for transactions that are closed because such a priority does not help struggling transactions; they recommend that the rule be left as is on this issue.

Alternatively Commenter 8 is opposed to the use of the original allocation year scoring for that same reason – which is that it gives a natural priority to 2020 transactions. To prevent that preference for 2020 transactions, which will be felt particularly in subregions where only one supplemental is likely to be awarded, Commenter 8 suggests using the following award priorities in this order: transactions that are closed and under construction the longest receive first priority as they are most at risk with the ability for the Real Estate Analysis staff to reprioritize based on what they see are the most impacted financially performing a "harm analysis" to reprioritize within subregions. Commenter 8 also does not support the use of tie-breakers in the supplemental allocation decisions as those tie breakers in the QAP currently do not differentiate those transactions most at risk.

Commenter 15 suggests that rather than using the raw score from the year in which the awards were made, that the allocation requests should be ranked based on the percentage of points awarded in their relevant calendar year, which would be more equitable.

STAFF RESPONSE: Based on the spectrum of comments received both supporting changes to the scoring and prioritization method and leaving them as drafted, staff is recommending to leave this section as currently drafted. Regarding the issue of tie breakers, staff does recommend that tie breakers be put in place to ensure that there is some contemplation of the ties that may occur. As such staff has recommended the use of the tie-breakers as currently drafted in the QAP (not variations suggested by commenters).

Other staff revisions to this section include: addition of the requirement for an Intent to Request a Supplemental Allocation; addition of the process for submitting an actual Request for Supplemental Allocation including that requested amounts may vary from the amount noted in the Notice of Intent without penalty; adding the ability for the Department to make awards of the Supplemental Allocations conditioned on completion of underwriting to help accelerate the timeline for making such awards; and adding reference to the use of Tie Breaker Factors in the case of a tie.

Subchapter F, §11.1006 – Procedural Requirements (Commenter 15)

COMMENT SUMMARY: Commenter 15 suggests that language referencing the requirement to submit a Notice of Intent should be added to this section or the prior section.

STAFF RESPONSE: The section requested was added to §11.1005.

Subchapter F, §11.1007 – Required Documentation for Supplemental Credit Request (Commenter 6, 12, 32, 40)

COMMENT SUMMARY: Commenter 32 requests that an applicant be required to provide evidence from their investor that the additional credits will be purchased and state the dollar value associated with that purchase. This will provide the Department's underwriters with information needed to evaluate the application and ensure the credits will be used. This comment from TAAHP relating to evidence required was supported and also requested by Commenters 12, 40

Commenters 6 and 12 further recommends that more extensive documentation be required for closed transactions to included executed construction contracts, executed change orders, and the final investor projections attached to an executed operating agreement or company agreement; they recommend these items so that TDHCA can be confident its receiving the actual numbers.

STAFF RESPONSE: Staff concurs and language has been added to require the documentation suggested by Commenter 32; however staff did not recommend the more extensive documentation requirements suggested by Commenters 6 and 12.

Other staff revisions to this section include clarifying that eligible cost increases are not limited to construction costs, but must be substantiated.

Subchapter F, §11.1008 – Supplemental Underwriting and Loan Policy (Commenter 36)

COMMENT SUMMARY: Commenter 36 supports this item as drafted and feels it was well written and ensures that the extra credits go toward mitigating the cost increases from hyperinflation experienced the in the market and does not go towards increasing developer fees or decreasing deferred developer fee.

STAFF RESPONSE: Staff appreciates the feedback.

Subchapter F, §11.1009 – Supplemental Credit Fee Schedule

A staff revision to this section was made removing the second clause of the fee schedule as return of credits is not applicable in these cases; this had been inadvertently brought into the rule.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

CHAPTER 11 QUALIFIED ALLOCATION PLAN (QAP)
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SUBCHAPTER A PRE-APPLICATION, DEFINITIONS, THRESHOLD REQUIREMENTS AND COMPETITIVE SCORING

§11.1. General.

(a) Authority. This chapter applies to the awarding and allocation by the Texas Department of Housing and Community Affairs (the Department) of Competitive Housing Tax Credits and the issuance of Determination Notices for non-Competitive Housing Tax Credits. The federal laws providing for the awarding and allocation of Competitive Housing Tax Credits and issuance of Determination Notices for non-Competitive Housing Tax Credits require states to adopt a qualified allocation plan. Pursuant to Tex. Gov't 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 Competitive Housing Tax Credits and issuance of Determination Notices for non-Competitive 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 Post Award and Asset Management Requirements, Compliance Monitoring, and Incomes and Rents rules) collectively constitute the QAP required by Tex. Gov't Code §2306.67022 and §42(m)(1)(B) of the Code. Unless otherwise specified, certain provisions in sections §11.1 - §11.4 also apply to non-Competitive Housing Tax Credits. Subchapters B - E of this chapter also apply to non-Competitive Housing Tax Credits and Multifamily Direct Loans. Applicants 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 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 10 of this title (relating to Uniform Multifamily Rules), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 of this title (relating to Multifamily Direct Loan Rule), and other Department rules. This subchapter does not apply to 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.

(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 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 may 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. The Multifamily Programs Procedures Manual is not a rule and is provided as good faith guidance and assistance, but in all respects the statutes and rules governing the Low Income Housing Tax Credit program supersede these guidelines and are controlling. Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and 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.

(c) Competitive Nature of Program. Applying for Competitive Housing Tax Credits is a technical process that must be followed completely and correctly. Any person who desires to request any reasonable accommodation for any aspect of this process is directed to §1.1 of this ~~T~~title (relating to Reasonable Accommodation Requests to the Department). As a result of the highly competitive nature of applying for Competitive Housing Tax Credits, an Applicant should proceed on the assumption that deadlines are fixed and firm as further provided for in subsection (f) of this section.

(d) Definitions. The capitalized terms or phrases used herein are defined below. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning as defined in Tex. Gov't Code Chapter 2306, Internal Revenue Code (the Code) §42, the HOME Final Rule, and other federal or Department rules, as applicable. Defined terms, when not capitalized, are to be read in context and construed according to common usage.

(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, into a building which will be used, in whole or in part, for residential purposes. Adaptive Reuse requires that at least 75% of the original building remains at completion of the proposed Development. Ancillary non-residential buildings, such as a clubhouse, leasing office or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site. Adaptive Reuse Developments will be considered as New Construction.

(2) Administrative Deficiency--Information requested by Department staff that is required to clarify or explain one or more inconsistencies; to provide non-material missing information in the original Application or pre-application; or to assist staff in evaluating the Application or pre-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 or pre-application. Administrative Deficiencies may be issued at any time while the Application, or pre-application is under consideration by the Department, including at any time after award or allocation and throughout the Affordability Period. A matter may begin as an Administrative Deficiency but later be determined to have constituted a Material Deficiency. If an Applicant claims points for a scoring item, but provides supporting documentation that would support fewer points for that item, staff would treat this as an inconsistency and may issue an Administrative Deficiency or take action without an Administrative Deficiency which will result in a correction of the claimed points to align with the provided supporting documentation.

(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 in some circumstances may be terminated upon foreclosure or deed in lieu of foreclosure. The Department reserves the right to extend the Affordability Period for 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 Code, §42(b).
(A) For purposes of the Application, the Applicable Percentage will be:
(i) nine percent for 70% present value credits; or
(ii) four percent for 30% present value credits.
(B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based on:
(i) the percentage indicated in the Agreement and Election Statement, if executed; or
(ii) 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) Applicant--Means any Person or a group of Persons and any Affiliates of those Persons who file an Application with the Department requesting funding or a tax credit allocation subject to the requirements of this chapter or ~~10 TAC~~ Chapters 12 or 13 of this title and who have undertaken or may contemplate the later formation of one or more business entities, such as a limited partnership, that is to be engaged in the ownership of a Development.

(7) Application Acceptance Period--That period of time during which Applications may be submitted to the Department. For Tax-Exempt Bond Developments it is the date the Application is submitted to the Department.

(8) Award Letter --A document that may be issued to an awardee of a Direct Loan before the issuance of a Contract which preliminarily sets forth the terms and conditions under which the Direct Loan will be made available. An Award Letter will typically be contingent on the awardee satisfying certain requirements prior to executing a Contract.

(9) Bank Trustee--A federally insured bank with the ability to exercise trust powers in the State of Texas.

(10) Bedroom--A portion of a Unit which is no less than 100 square feet; has no width or length less than eight 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 two feet deep and three feet wide and high enough to accommodate five 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. Rehabilitation (excluding Reconstruction) Developments in which Unit configurations are not being altered will be exempt from the bedroom and closet width, length, and square footage requirements. Supportive Housing Developments will be exempt from the bedroom and closet width, length, and square footage

requirements.

(11) 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.

(12) Building Costs--Cost of the materials and labor for the vertical construction or rehabilitation of buildings and amenity structures.

(13) Carryover Allocation--An allocation of current year tax credit authority by the Department pursuant to the provisions of the Code, §42(h)(1)(C) and U.S. Treasury Regulations, §1.42-6.

(14) Carryover Allocation Agreement--A document issued by the Department, and executed by the Development Owner, pursuant to §11.907 of this title (relating to Carryover Agreement General Requirements and Required Documentation).

(15) Cash Flow--The funds available from operations after all expenses and debt service required to be paid have been considered.

(16) Certificate of Reservation or Traditional Carryforward Designation--The notice given by the Texas Bond Review Board (TBRB) to an issuer reserving a specific amount of the private activity bond state ceiling for a specific Development.

(17) 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).

(18) 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.

(19) Commitment Notice (also referred to as Commitment)--An agreement issued pursuant to §11.905(a) of this title (relating to General Information for Commitments or Determination Notices), setting forth the terms and conditions under which Competitive Housing Tax Credits, from the Department will be made available. A Commitment or Commitment Notice does not mean commitment of federal funds under the Direct Loan Program.

(20) Commitment of Funds--Occurs after the Development is approved by the Board and once a Contract is executed between the Department and Development Owner. The Department's Commitment of Funds may not align with commitments made by other financing parties.

(21) Committee--See Executive Award and Review Advisory Committee.

(22) Common Area--Enclosed space outside of Net Rentable Area, whether conditioned or unconditioned, to include such area contained in: property management offices, resident service offices, 24-hour front desk office, clubrooms, lounges, community kitchens, community restrooms, exercise rooms, laundry rooms, mailbox areas, food pantry, meeting rooms, libraries, computer labs,

classrooms, break rooms, flex space programmed for resident use, interior corridors, common porches and patios, and interior courtyards. Common Area does not include individualized garages, maintenance areas, equipment rooms, or storage.

(23) 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.

(24) Competitive Housing Tax Credits --Sometimes referred to as Competitive HTC. Tax credits available from the State 9% Housing Credit Ceiling.

(25) Compliance Period--With respect to a building financed, in part with proceeds of Housing Tax Credits, the period of 15 taxable years, beginning with the first taxable year of the credit period pursuant to Code, §42(i)(1).

(26) Continuously Occupied--The same household has resided in the Unit for at least 12 months.

(27) Contract--A legally binding agreement between the Development Owner and the Department, setting forth the terms and conditions under which Multifamily Direct Loan Program funds will be made available.

(28) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.

(29) Contractor--See General Contractor.

(30) Control (including the terms "Controlling," "Controlled by," and "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. As used herein "acting in concert" involves more than merely serving as a single member of a multi-member body. A member of a multi-member body is not acting in concert and therefore does not exercise control in that role, but may have other roles, such as executive officer positions, which involve actual or apparent authority to exercise control. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Persons with Control of a Development must be identified in the Application. Controlling individuals and entities are set forth in subparagraphs (A) - (E) of this paragraph. Multiple Persons may be deemed to have Control simultaneously.

(A) For for-profit corporations, 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 50% or more interest in the corporation, and any individual who has Control with respect to such stockholder;

(B) For nonprofit corporations or governmental instrumentalities (such as housing authorities), any officer authorized by the board, 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, the Audit committee chair, the Board chair, and anyone identified as the executive director or equivalent.~~;~~

(C) For trusts, all beneficiaries that have the legal ability to Control the trust who are not just financial beneficiaries.~~;~~

(D) For limited liability companies, all managers, managing members, members having a 50% 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.~~; or~~

(E) For partnerships, Principals include all General Partners, and Principals with ownership interest and special limited partners with ownership interest who also possess factors or attributes that give them Control.

(31) 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, and as described in §11.302(d)(4) of this chapter (relating to Operating Feasibility).

(32) Deferred Developer Fee--The portion of the Developer Fee used as a source of funds to finance the development and construction of the Property, and as described in §11.302(i)(2) of this chapter (relating to Feasibility Conclusion).

(33) 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.

(34) Determination Notice--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which specifies the Department's preliminary determination as to the amount of tax credits that the Development may be eligible to claim pursuant to the Code, §42(m)(1)(D).

(35) Developer--Any Person entering into a contractual relationship with the Owner to provide Developer Services with respect to the Development and receiving the right to earn 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. The Developer may or may not be a Related Party or Principal of the Owner.

(36) Developer Fee--Compensation in amounts defined in §11.302(e)(7) of this chapter (relating to Total Housing Development Costs) 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. A person who is entitled to a Developer Fee assumes the risk that it may not be paid if the anticipated sources of repayment prove insufficient.

(37) Developer Services--A scope of work relating to the duties, activities and responsibilities for pre-

development, development, design coordination, and construction oversight 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 oversight;

(H) Other consultative services to and for the Owner;

(I) Guaranties, financial or credit support if a Related Party or Affiliate; and

(J) Any other customary and similar activities determined by the Department to be Developer Services.

(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 proposed qualified low income housing project, as defined by Code, §42(g), that consists of one or more buildings containing multiple Units that is financed under a common plan, and that is owned by the same Person for federal tax purposes and may consist of multiple buildings that are located on scattered sites and contain only rent restricted Units. (§2306.6702(a)(6)).

(A) Development will be considered to be scattered site if the property where buildings or amenities are located do not share a common boundary and there is no accessible pedestrian route that the Development Owner controls (transportation in a motor vehicle will not meet the requirement for an accessible route).

(B) A Development for which several parcels comprise the Development Site and are separated only by a private road controlled by the Development Owner, or a public road or similar barrier where the Development Owner has a written agreement with the public entity for at least the term of the LURA stating that the accessible pedestrian route will remain, is considered contiguous. The written agreement with the public entity must be in place by the earlier of the 10% Test for Competitive HTC or Cost Certification for Tax-Exempt Bond Developments, or the execution of the Multifamily Direct Loan Contract, as applicable.

(39) Development Consultant or Consultant--Any Person 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 or Commitment with the Department. (§2306.6702(a)(7)).

(41) Development Site--The area or, if more than one tract (which may be deemed by the Internal Revenue Service or the Department to be a scattered site), areas on which the Development is proposed and to be encumbered by a LURA, including access to that area or areas through ingress and egress easements.

(42) Development Team--All Persons and Affiliates thereof that play a role in the development, construction, rehabilitation, management or continuing operation of the Development, including any Development Consultant and Guarantor.

(43) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program (NSP), National Housing Trust Fund (NHTF), Tax Credit Assistance Program Repayment Funds (TCAP RF) or State Housing Trust Fund or other program available through the Department for multifamily development. The terms and conditions for Direct Loans will be determined by provisions in Chapter 13 of this title (relating to Multifamily Direct Loan Rule) and the NOFA under which they are awarded, the Contract, or the loan documents. The tax-exempt bond program is specifically excluded.

(44) Economically Distressed Area--An area that is in a census tract that has a median household income that is 75% or less of the statewide median household income 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. 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.

(45) Effective Gross Income (EGI)--As provided for in §11.302(d)(1)(D) of this chapter (relating to Operating Feasibility). 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.

(46) Efficiency Unit--A Unit without a separately enclosed Bedroom.

(47) Elderly Development--A Development that either meets the requirements of the Housing for Older Persons Act (HOPA) under the Fair Housing Act, or a Development that receives federal funding that has a requirement for a preference or limitation for elderly persons or households, but must accept qualified households with children.

(48) Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.

(49) 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 §11.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.

(50) Executive Award and Review Advisory Committee (EARAC also referred to as the Committee). The Department committee required by Tex. Gov't Code §2306.1112.

(51) Existing Residential Development--Any Development Site which contains any type of existing residential dwelling at any time as of the beginning of the Application Acceptance Period.

(52) 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 LURA; or

(B) The date which is 15 years after the close of the Compliance Period.

(53) 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.

(54) Forward Commitment--the issuance of a Commitment of Housing Tax Credits from the State Housing Credit Ceiling for the calendar year following the year of issuance, made subject to the availability of State Housing Credit Ceiling in the calendar year for which the Commitment has been made.

(5~~4~~) General Contractor (including "Contractor")--One who contracts to perform 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) or (B) of this paragraph:

(A) Any subcontractor, material supplier, or equipment lessor receiving more than 50% of the contract sum in the construction contract will be deemed a prime subcontractor; or

(B) If more than 75% 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.

(5~~6~~5) General Partner--Any person or entity identified as a general partner in a certificate of formation for the partnership or is later admitted to an existing partnership as a general partner that is the Development Owner and that Controls the partnership. Where a limited liability corporation is the legal structure employed rather than a limited partnership, the manager or managing member of that limited liability corporation is deemed, for the purposes of these rules, to be the functional equivalent of a general partner.

(5~~7~~6) 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.

(5~~8~~7) Governmental Entity--Includes federal, state or local agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts, tribal governments and other similar entities.

(598) Gross Capture Rate--Calculated as the Relevant Supply divided by the Gross Demand, and as described in §11.302(i)(1) of this chapter (relating to Feasibility Conclusion).

(6059) Gross Demand--The sum of Potential Demand from the Primary Market Area (PMA) and demand from other sources, as described in §11.303(d)(9)(E)(ii) of this chapter (relating to Market Analysis Rules and Guidelines).

(6160) 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.

(6261) 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.

~~(62) HTC Development (also referred to as "HTC Property")--A Development subject to an active LURA for Housing Tax Credits allocated by the Department.~~

~~(63) HTC Property--See HTC Development.~~

(634) Hard Costs--The sum total of Building Costs, Site Work costs, Off-Site Construction costs and contingency.

(645) Historically Underutilized Businesses (HUB)--An entity that is certified as such under and in accordance with Tex. Gov't Code, Chapter 2161.

(656) 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.

(667) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Development Owner as provided for in Code.

(678) Housing Credit Allocation Amount--With respect to a Development or a building within a Development, the amount of Housing Tax Credits the Department and the Board, if applicable, determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the Affordability Period. d

(68) HTC Development (also referred to as HTC Property)--A Development subject to an active LURA for Housing Tax Credits allocated by the Department.

(69) HTC Property--See HTC Development.

(7069) 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.

(7170) Integrated Disbursement and Information System (IDIS)--The electronic grants management information system established by HUD to be used for tracking and reporting HOME and NHTF funding and progress and which may be used for other sources of funds as established by HUD.

(7271) 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)

(7372) Low-Income Unit (also referred to as a Rent Restricted 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.

(743) Managing General Partner--A general partner of a partnership (or, as provided for in the definition of General Partner in 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 refer to a manager or 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.

(754) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates conducted in accordance with §11.303 of this chapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(765) Market Analyst--A real estate appraiser or other professional satisfying the qualifications in §11.303(c) of this chapter, and familiar with the subject property's market area who prepares a Market Analysis.

(776) 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.

(787) Market Study--See Market Analysis.

(798) Material Deficiency--Any deficiency in a pre-application or an Application or other documentation that exceeds the scope of an Administrative Deficiency. Inability to provide documentation that existed prior to submission of an Application to substantiate claimed points or meet threshold requirements is material and may result in denial of the requested points or a termination in the case of threshold items. It is possible that multiple deficiencies that could individually be characterized as Administrative Deficiencies, when taken as a whole would create a need for substantial re-review of the Application and as such would be characterized as constituting a Material Deficiency.

(8079) 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. The Manual is not a rule and is provided only as good faith guidance and assistance.

(810) Net Operating Income (NOI)--The income remaining after all operating expenses, including replacement reserves and taxes have been paid, as provided for in §11.302(d)(3) of this chapter (relating to Operating Feasibility).

(821) Net Program Rent--Calculated as Gross Program Rent less Utility Allowance.

(832) Net Rentable Area (NRA)--The Unit space that is available exclusively to the tenant and is 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. If the construction does not use studs, NRA is measured to the outside of the material to which the drywall is affixed. Remote Storage of no more than 25 square feet per Unit may be included in NRA. For Developments using Multifamily Direct Loan funds the Remote Storage may only be included in NRA if the storage area shares a wall with the residential living space. 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.

(843) Non-HTC Development--Sometimes referred to as Non-HTC Property. Any Development not utilizing Housing Tax Credits or Exchange funds.

(854) 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.

(866) Office of Rural Affairs--An office established within the Texas Department of Agriculture; formerly the Texas Department of Rural Affairs.

(875) 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.~~

(887) 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 12 calendar months.

(898) Original Application--The Competitive HTC Application submitted and approved in 2019 or 2020 for an awarded Development as it relates to a request made for a Supplemental 2022 Allocation.

(9088) Owner--See Development Owner.

(891) 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.

(920) Person or 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.

(931) Physical Needs Assessment--See Scope and Cost Review.

(942) 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 known as Census Designated Places. Any part of a Census Designated Place that, at the time of Application, is within the boundaries of an incorporated city, town or village will be considered as part of the incorporated area. The Department may provide a list of Places for reference.

(953) Post Award Activities Manual--The manual produced and amended from time to time by the Department which explains the post award requirements and provides guidance for the filing of such documentation.

(964) 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.

(975) Preservation--Activities that extend the Affordability Period for rent-restricted Developments that are at risk of losing low-income use restrictions or subsidies.

(986) Primary Market--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines) from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(997) Primary Market Area (PMA)--See Primary Market.

(10098) Principal--Persons that will be capable of exercising Control pursuant to §11.1(d) of this chapter (relating to the definition of Control) over a partnership, corporation, limited liability company, trust, or any other private entity.

(10199) 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.

(1020) 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 or rehabilitated thereon in connection with the Application.

(103) Qualified Census Tract (QCT)--those tracts designated as such by the U.S. Department of Housing and Urban Development.

(1041) 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.

(1052) Qualified Contract Price (QC Price)--Calculated purchase price of the Development as defined within Code, §42(h)(6)(F) and as further delineated in §10.408 of this title (relating to Qualified Contract Requirements).

(1063) Qualified Contract Request (Request)--A request containing all information and items required by the Department relating to a Qualified Contract.

(1074) Qualified Entity--Any entity permitted under Code, §42(i)(7)(A) and any entity controlled by such a qualified entity.

(1085) Qualified Nonprofit Development--A Development which meets the requirements of Code, §42 (h)(5), includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.

(1096) Qualified Nonprofit Organization--An organization that meets the requirements of Code §42(h)(5)(C) for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the property, when applicable, meets the requirements of Tex. Gov't Code §2306.6706, and §2306.6729, and Code, §42(h)(5), including having a Controlling interest in the Development.

(1107) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the construction of Units on the same or another Development Site. At least one Unit must be reconstructed in order to qualify as Reconstruction. The total number of Units to be reconstructed will be determined by program requirements. Developments using Multifamily Direct Loan funds are required to follow the applicable federal requirements.

(11108) 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 any Development Units on the Development Site, but does not include Adaptive Reuse. (§2306.004(26-a)) Reconstructed Units will be considered New Construction for purposes of calculating the Replacement Reserves under 10 TAC §11.302(d)(2)(I) (relating to Operating Feasibility). More specifically, Rehabilitation is the repair, refurbishment or replacement of existing mechanical or 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.

(11209) 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 in an Application submitted prior to the subject, based on the Department's evaluation process described in §11.201(56) of this chapter (relating to Procedural Requirements for Application Submission) that may not yet have been presented to the Board for consideration of approval; and

(C) Comparable Units in previously approved but Unstabilized Developments in the PMA.

(1130) Report--See Underwriting Report.

(1141) Request--See Qualified Contract Request.

(1152) Reserve Account--An individual account:

(A) Created to fund any necessary repairs or other needs for a Development; and

(B) Maintained by a First Lien Lender or Bank Trustee.

(1163) Right of First Refusal (ROFR)--An Agreement to provide a series of priority rights to negotiate for the purchase of a Property by a Qualified Entity or a Qualified Nonprofit Organization at a negotiated price at or above the minimum purchase price as defined in Code §42(i)(7) or as established in accordance with an applicable LURA.

(1174) Rural Area--

(A) A Place that is located:

(i) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

(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; or

(iii) within the boundaries of a local political subdivision that is outside the boundaries of 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 §11.204(5)(A) of this chapter (relating to Required Documentation for Application Submission) or as requested in accordance with §11.204(5)(B) of this chapter.

(1185) Scope and Cost Review (SCR)--Sometimes referred to as "Physical Needs Assessment,"

"Project Capital Needs Assessment," or "Property Condition Report." The SCR 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 SCR must be prepared in accordance with §11.306 of this chapter (relating to Scope and Cost Review Guidelines), as it relates to a specific Development.

(11~~96~~) Scoring Notice--Notification provided to an Applicant of the score for their Application after staff review. More than one Scoring Notice may be issued for a Competitive HTC or a Direct Loan Application.

(1201~~7~~) 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.

(121~~8~~) Site Control--Ownership or a current contract or series of contracts that meets the requirements of §11.204(10) of this chapter, that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the Owner or anyone else, to develop and operate a Property and subject it to a LURA reflecting the requirements of any awards of assistance it may receive from the Department.

(1221~~9~~) Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, underground utilities, and site amenities.

(123~~0~~) State Housing Credit Ceiling--The aggregate amount of Competitive 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 Code, §42(h)(3)(C), and Treasury Regulation §1.42-14.

(124~~1~~) 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.

(125~~3~~) Supplemental Credits--2022 Housing Tax Credits awarded through Subchapter F of this chapter to assist 2019 and 2020 Competitive Housing Tax Credit Developments.

(126~~2~~) Supportive Housing--A residential rental Development and Target Population meeting the requirements of subparagraphs (A) - (E) of this paragraph:~~.~~

(A) Be intended for and targeting occupancy for households in need of specialized and specific non-medical services in order to maintain housing or transition into independent living;

(B) Be owned and operated by an Applicant or General Partner that must:

(i) have supportive services provided by the Applicant, an Affiliate of the Applicant, or a Third Party provider if the service provider is able to demonstrate a record of providing substantive services

similar to those proposed in the Application in residential settings for at least three years prior to the beginning of the Application Acceptance Period, or Application Submission Date for Multifamily Direct Loan Applications;

(ii) secure sufficient funds necessary to maintain the Supportive Housing Development's operations throughout the entire Affordability Period;

(iii) provide evidence of a history of fundraising activities reasonably deemed to be sufficient to address any unanticipated operating losses;

(iv) provide a fully executed guaranty agreement whereby the Applicant or its Affiliate assume financial responsibility of any outstanding operating deficits, as they arise, and throughout the entire Affordability Period (in the case of HTC only Applications, the Guaranty Agreement with operating deficit guarantee requirements utilized for the HTC investor will satisfy this requirement); and

(v) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of credit, criminal conviction, and prior eviction history that may disqualify a potential resident. This process must also follow §1.204 of this title (regarding Reasonable Accommodations), and: ~~.~~

(I) The criminal screening criteria must not allow residents to reside in the Development who are subject to a lifetime sex offender registration requirement; and provide at least, for:

(-a-) Temporary denial for a minimum of seven years from the date of conviction based on criminal history at application or recertification of any felony conviction for murder related offense, sexual assault, kidnapping, arson, or manufacture of a controlled substance as defined in ~~section~~ §102 of the Controlled Substances Act (21 U.S.C. 802); and

(-b-) Temporary denial for a minimum of three years from the date of conviction based on criminal history at application or recertification of any felony conviction for aggravated assault, robbery, drug possession, or drug distribution; ~~.~~

(II) The criminal screening criteria must include provisions for approving applications and recertification despite the tenant's criminal history on the basis of mitigation evidence. Applicants/tenants must be provided written notice of their ability to provide materials that support mitigation. Mitigation may be provided during initial tenant application or upon appeal after denial. Mitigation may include personal statements/certifications, documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. In addition, the criteria must include provision for individual review of permanent or temporary denials if the conviction is more than 7 years old, or if the applicant/resident is over 50 years of age, and the prospective resident has no additional felony convictions in the last 7 years. The criteria must prohibit consideration of any previously accepted criminal history or mitigation at recertification, unless new information becomes available. Criminal screening criteria and mitigation must conform to federal regulations and official guidance, including HUD's 2016 Guidance on Application of Fair Housing Act

Standards to the Use of Criminal Records; and.

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third party database is incorrect;.

(C) Where supportive services are tailored for members of a household with specific needs, such as:

(i) homeless or persons at-risk of homelessness;

(ii) persons with physical, intellectual, or developmental disabilities;

(iii) youth aging out of foster care;

(iv) persons eligible to receive primarily non-medical home or community-based services;

(v) persons transitioning out of institutionalized care;

(vi) persons unable to secure permanent housing elsewhere due to specific, non-medical, or other high barriers to access and maintain housing;

(vii) Persons with Special Housing Needs including households where one or more individuals have alcohol or drug addictions, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), HIV/AIDS, or is a veteran with a disability; or

(viii) other target populations that are served by a federal or state housing program in need of the type and frequency of supportive services characterized herein, as represented in the Application and determined by the Department on a case-by-case basis;.

(D) Supportive services must meet the minimum requirements provided in clauses (i) - (iv) of this subparagraph:

(i) regularly and frequently offered to all residents, primarily on-site;

(ii) easily accessible and offered at times that residents are able to use them;

(iii) must include readily available resident services or service coordination that either aid in addressing debilitating conditions, or assist residents in securing the skills, assets, and connections needed for independent living; and

(iv) a resident may not be required to access supportive services in order to qualify for or maintain tenancy in a rent restricted Unit that the household otherwise qualifies for; and

(E) Supportive Housing Developments must meet the criteria of either clause (i) or (ii) of this subparagraph:

(i) not financed, except for construction financing, or a deferred-forgivable or deferred-payable construction-to-permanent Direct Loan from the Department, with any debt containing foreclosure provisions or debt that contains scheduled or periodic repayment provisions. A loan from a local government or instrumentality of local government is permissible if it is a deferred-forgivable or deferred-payable construction-to-permanent loan, with no foreclosure provisions or scheduled or periodic repayment provisions, and a maturity date after the end of the Affordability Period. For tax credit applications only, permanent foreclosable debt that contains scheduled or periodic repayment provisions (including payments subject to available cash-flow) is permissible if sourced by federal funds and otherwise structured to meet valid debt requirements for tax credit eligible basis considerations. In addition, permanent foreclosable, cash-flow debt provided by an Affiliate is permissible if originally sourced from charitable contributions or pass-through local government funds and the foreclosure provisions are triggered only by default on non-monetary default provisions. Developments meeting these requirements are not subject to §11.302(i)(4) & (5) (relating to Feasibility Conclusion). Any amendment to an Application or Underwriting Report resulting in the addition of debt prohibited under this definition will result in the revocation of IRS Form(s) 8609, and may not be made for Developments that have Direct Loans after a LURA is executed, except as a part of Work Out Development approved by the Asset Management Division; or

(ii) financed with debt that meets feasibility requirements under Subchapter D of this chapter without exemptions and must also be supported by project-based rental or project-based operating subsidies for 25% of the Units evidenced by an executed agreement with an unaffiliated or governmental third party able to make that commitment, and meet all of the criteria in subclauses (I) - (VII) of this clause:

(I) the Application includes documentation of how resident feedback has been incorporated into design of the proposed Development;

(II) the Development is located less than 1/2 mile from regularly-scheduled public transportation, including evenings and weekends;

(III) at least 10% of the Units in the proposed Development meet the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 Federal Register 29671 for persons with mobility impairments;

(IV) multiple systems will be in place for residents to provide feedback to Development staff;

~~(V) a resident is or will be a member of the Development Owner or service provider board of directors;~~

(V~~I~~) the Development will have a comprehensive written eviction prevention policy that includes an appeal process; and

(V~~I~~I) the Development will have a comprehensive written services plan that describes the available services, identifying whether they are provided directly or through referral linkages, by whom, and in what location and during what days and hours. A copy of the services plan will be readily accessible

to residents.

(F) Supportive housing Units included in an otherwise non-Supportive Housing Development do not meet the requirements of this definition.

~~(123) 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 Chapter 10, Subchapter F of this title (relating to Compliance Monitoring), and published on the Department's web site (www.tdhca.state.tx.us).~~

(1274) Target Population--The designation of types of housing populations shall include Elderly Developments, and those that are Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations, although the Application may request that any other populations required for targeting, preference, or limitation by a federal or state fund source are identified.

(1285) Tax-Exempt Bond Development--A Development requesting or having been issued a Determination Notice for 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 Code, §42(h)(4).

(1296) 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.

(130) 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 Chapter 10, Subchapter F of this title (relating to Compliance Monitoring), and published on the Department's web site (www.tdhca.state.tx.us).

(13127) Third Party--A Person who is not:

(A) An Applicant, General Partner, Developer, or General Contractor;

(B) An Affiliate to the Applicant, General Partner, Developer, or General Contractor;

(C) Anyone receiving any portion of the administration, contractor, or Developer Fee from the Development; or

(D) In Control with respect to the Development Owner.

(13228) 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.

(1332~~2~~9) Transitional Housing--A Supportive Housing Development funded with HOME, NSP, or TCAP RF, and not layered with Housing Tax Credits 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 24 months; and

(B) Is owned by a Development Owner that includes a Governmental Entity or a nonprofit 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.

(134~~0~~) U.S. Department of Agriculture (USDA)--Texas Rural Development Office (TRDO) serving the State of Texas.

(135~~1~~) 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.

(136~~2~~) Underwriter--The author(s) of the Underwriting Report.

(137~~3~~) Underwriting Report--Sometimes referred to as the Report. A decision making tool prepared by the Department's Real Estate Analysis Division that contains a synopsis of the proposed Development and that reconciles the Application information, including its financials and market analysis, with the underwriter's analysis. The Report allows the Department and Board to determine whether the Development will be financially feasible as required by Code §42(m), or other federal or state regulations.

(138~~4~~) Uniform Multifamily Application Templates--The collection of sample resolutions and form letters, produced by the Department, as may be required under this chapter or Chapters 12 and 13 of this title (relating to Multifamily Housing Bond Rules and Multifamily Direct Loan Rule, respectively) that may, but are not required to, be used to satisfy the requirements of the applicable rule.

(139~~5~~) Uniform Physical Condition Standards (UPCS)--As developed by the Real Estate Assessment Center of HUD.

(140~~36~~) 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.

(141~~37~~) Unit Type--Units will be considered different Unit Types if there is any variation in the number of Bedrooms, full bathrooms or a square footage difference equal to or more than 120 square feet.

(142~~38~~) 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% occupancy level for at least 90 days 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.

(143~~39~~) 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 subparagraph (A) within the definition of Rural Area in 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 §11.204(5) of this chapter.

(144~~0~~) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation, §1.42-10 and §10.614 of this ~~T~~title (relating to Utility Allowances).

(145~~1~~) Work Out Development--A financially distressed Development for which the Owner or a primary financing participant is seeking a change in the terms of Department funding or program restrictions.

(e) Data. Where this chapter requires the use of American Community Survey or Housing & Urban Development data, the Department shall use the most current data available as of October 1 of the year prior to Application, unless specifically otherwise provided in federal or state law or in the rules, with the exception of census tract boundaries for which 2010 Census boundaries will continue to be used. All references to census tracts throughout this chapter will mean the 2010 Census tracts. All American Community Survey (ACS) data must be 5-year estimates, unless otherwise specified and it is the ACS data that will be used for population determination. The availability of more current data shall be disregarded. Where other data sources are specifically required, such as NeighborhoodScout, the data available after October 1, but before Pre-Application Final Delivery Date, will be permissible. The NeighborhoodScout report submitted in the Application must include the report date. All references to QCTs throughout this chapter mean the 2022 QCTs designated by HUD in September 2021, to be effective January 1, 2022.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be received by the Department on or before 5:00 p.m. Austin local time on the day of the deadline. If the deadline falls on a weekend or holiday, the deadline is 5:00 p.m. Austin local time on the next day which is not a weekend or holiday and on which the Department is open for general operation. Unless otherwise noted or provided in statute, deadlines are based on calendar days. Deadlines, with respect to both date and time, cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that could not have been anticipated and makes timely adherence impossible. 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.

(g) Documentation to Substantiate Items and Representations in a Competitive HTC Application. In order to ensure the appropriate level of transparency in this highly competitive program,

Applications and all correspondence and other information relating to each Application are posted on the Department's website and updated on a regular basis. Applicants must use the Application form posted online to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, meeting of threshold requirements, or timely requesting a waiver or determination. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the Deficiency process. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. Although a responsive narrative will be created after Application submission, all facts and materials to substantiate any item in response to such an Administrative Deficiency must have been clearly established at the time of submission of the Application.

(h) 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.

(i) Public Information Requests. Pursuant to Tex. Gov't 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. As part of its certifications, the Applicant shall certify that the authors of the reports and other information and documents submitted with the Application have given their consent to the Applicant to submit all reports and other information and documents to the Department, and for the Department to publish anything submitted with the Application on its website and use such information and documents for authorized purposes.

(j) Responsibilities of Municipalities and Counties. In considering resolutions regarding housing de-concentration issues, threshold requirements, or scoring criteria, municipalities and counties should consult their own staff and legal counsel as to whether their handling of actions regarding such resolution(s) are consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas (FHAST) form on file, any current Analysis of Impediments to Fair Housing Choice, any current Assessment of Fair Housing, 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.

(k) Request for Staff Determinations. Where the requirements of this ~~C~~chapter do not readily align with 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 the applicable rules. In no instance will staff provide a determination regarding a scoring item. Any 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 may, in its sole discretion, provide the request to the Board for it to make the determination. Staff's determination may take into account the articulated purpose of or policies addressed by a particular rule or requirement, materiality of elements, substantive elements of the development plan that relate to a term or definition, a common usage of the particular term, or other issues relevant to a rule or

requirement. All such requests and 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. An Applicant may appeal a determination for their Application, using the Appeal Process provided for in §11.902 of this chapter, if the determination provides for a treatment that relies on factors other than the explicit definition. A Board determination may not be appealed. A staff or Executive Director determination not timely appealed cannot be further appealed or challenged.

§11.2. Program Calendar for Housing Tax Credits.

(a) Competitive HTC Deadlines. Non-statutory deadlines specifically listed in the Program Calendar may be extended by the Department for a period of not more than 5 business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Department that there is good cause for the extension.

Deadline	Documentation Required
01/03/2022	Application Acceptance Period Begins. Public Comment period starts.
01/07/2022	Pre-Application Final Delivery Date (including waiver requests).
02/15/2022	Deadline for submission of Application for .ftp access if pre-application not submitted.
03/01/2022	End of Application Acceptance Period and Full Application Delivery Date (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Scope and Cost Reviews (SCRs); Appraisals; Primary Market Area Map; Feasibility Report; all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors). 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) of this chapter).

Deadline	Documentation Required
04/01/2022	Market Analysis Delivery Date pursuant to §11.205 of this chapter.
05/06/2022	Deadline for Third Party Request for Administrative Deficiency.
Mid-May 2022	Scoring Notices Issued for Majority of Applications Considered "Competitive."
06/1~~7~~/2022	Public comment deadline for the comment to be included in the Board materials relating to the June presentation of~~or~~ awards are due in accordance with ~~10 TAC~~ §1.10.
June 2022	On or before June 30, publication of the list of Eligible Applications for Consideration for Award in July.
July 2022	On or before July 31, Board issuance of Final Awards.
Mid-August	Commitments are Issued.
11/01/2022	Carryover Documentation Delivery Date.
11/30/2022	Deadline for closing under §11.9(c)(8) (if applicable) (not subject to an extension under ~~10 TAC~~ §11.2(a) pursuant to the requirements of ~~10 TAC~~ §11.9(c)(8)).
07/01/2023	10% Test Documentation Delivery Date.
12/31/2024	Placement in Service.
Five business days after the date on the Deficiency Notice (without incurring point loss)	Administrative Deficiency Response Deadline (unless an extension has been granted).

(b) Tax-Exempt Bond and Direct Loan-only Application Dates and Deadlines. Applicants are strongly encouraged to submit the required items well in advance of published deadlines. Other deadlines may be found in Chapters 12 and 13 or a NOFA.

(1) Full Application Delivery Date. The deadline by which the Application must be received by the Department. For Direct Loan Applications, deadlines will be defined in the applicable NOFA and for Tax-Exempt Bond Developments, such deadlines are more fully explained in §11.201 of this chapter (relating to Procedural Requirements for Application Submission).

(2) Administrative Deficiency Response Deadline. Such deadline shall be five business days after the date on the deficiency notice, unless extended as provided for in ~~10 TAC~~ §11.201(6) related to the Deficiency Process.

(3) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Scope and Cost Review (SCR), Appraisal (if applicable), Market Analysis and the Feasibility Report (if applicable)). For Direct Loan Applications, the Third Party reports meeting the requirements described in §11.205 of this chapter must be submitted in order for the Application to be considered complete, unless the Application is made in conjunction with an Application for Housing Tax Credits or Tax-Exempt Bond, in which case the Delivery Date for those programs will apply. For Tax-Exempt Bond Developments, the Third Party Reports must be received by the Department pursuant to §11.201(2) of this chapter.

(4) Resolutions Delivery Date. Resolutions required for Tax-Exempt Bond Developments must be received by the Department no later than 14 calendar days before the Board meeting or prior to the issuance of the Determination Notice, as applicable. If the Direct Loan Application is made in conjunction with an Application for Housing Tax Credits, or Tax-Exempt Bond Developments, the Resolution Delivery Date for those programs will apply to the Direct Loan Application.

(5) Challenges to Neighborhood Organization Opposition Delivery Date. Challenges must be received by the Department no later than 45 calendar days prior to the Board meeting at which consideration of the award will occur.

§11.3. Housing De-Concentration Factors.

(a) Rules reciting statutory limitations are provided as a convenient reference only, and to the extent there is any deviation from the provisions of statute, the statutory language is controlling.

(b) Two Mile Same Year Rule (Competitive HTC Only).

(1) As required by Tex. Gov't 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, or from the Development Site of a Supplemental Allocation of 2022 credits, within said county that is awarded in the same calendar year. If two or more Applications or Supplemental Allocations are submitted that would violate §2306.6711(f), the Supplemental Allocation of 2022 credits will be the one considered eligible, and the other Applications will not be reviewed; if there is no Supplemental Allocation of 2022 credits, the lower scoring of the Applications will not be reviewed unless the higher scoring Application is terminated or withdrawn.

(2) This subsection does not apply if an Application is located in an area that, within the past five years, meets the requirements of Tex. Gov't Code §2306.6711(f-1), which excludes any municipality

with a population of two million or more where a federal disaster has been declared by the Full Application Delivery Date as identified in §11.2(a) of this chapter (relating to Program Calendar for Housing Tax Credits), and the governing body of the municipality containing the Development has by vote specifically authorized the allocation of housing tax credits for the Development in a resolution submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter, and the municipality is authorized to administer disaster recovery funds as a subgrant recipient, for the disaster identified in the federal disaster declaration.

(c) Twice the State Average Per Capita (Competitive HTC and Tax-Exempt Bond Only). As provided for in Tex. Gov't 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 Acceptance Period Begins (or for Tax-Exempt Bond Developments, Applications submitted after the Application Acceptance Period Begins), then 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 Tex. Gov't 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 Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter (relating to Program Calendar for Housing Tax Credits) or Resolutions Delivery Date in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Direct Loan Application Dates and Deadlines), as applicable.

(d) One Mile Three Year Rule (Competitive HTC and Tax-Exempt Bond Only). (§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) A Development serves the same Target Population as the proposed Development, regardless of whether the Development serves general, Elderly, or Supportive Housing; and

(B) A Development has received an allocation of Housing Tax Credits or private activity bonds, or a Supplemental Allocation of 2022 credits, 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 in subparagraph B has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a proposed 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 Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter, regarding Competitive HTC Deadlines, or Resolutions Delivery Date in §11.2(b) of this chapter, regarding Tax-Exempt Bond and Direct Loan Development Dates and Deadlines, as applicable.

(3) Where a specific source of funding is referenced in subparagraphs (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application.

(e) 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% Housing Tax Credit Units per total households as reflected in the Department's current Site Demographic Characteristics Report shall be considered ineligible unless the Governing Body of the appropriate municipality or county containing the Development has adopted a resolution stating the proposed Development is consistent with the jurisdiction's obligation to affirmatively further fair housing and that the Governing Body of the appropriate municipality or county containing the Development has no objection to the Application. Rehabilitation Developments are not required to obtain such resolution. The resolution must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter (regarding Competitive HTC Deadlines), or Resolutions Delivery Date in §11.2(b) of this chapter (regarding Tax-Exempt Bond and Direct Loan Application Dates and Deadlines), as applicable.

(f) Proximity of Development Sites. (Competitive HTC Only) In a county with a population that is less than one million, if two or more HTC Applications, ~~including Supplemental Allocations of 2022 credits, regardless of the Applicant(s),~~ are proposing Developments serving the same Target Population on sites separated by 1,000 feet or less, ~~the Supplemental Allocation of 2022 credits will be the one considered eligible, and the other Applications will not be reviewed; if there is no Supplemental Allocation of 2022 credits,~~ the lower scoring of the Application(s), including consideration of tie-breakers, will be considered ineligible and will not be reviewed unless the higher

scoring Application is terminated or withdrawn.

(g) One Award per Census Tract Limitation (Competitive HTC Only). If two or more Competitive HTC Applications ~~including Supplemental Allocations of 2022 credits~~ are proposing Developments in the same census tract in an urban subregion, ~~the Supplemental Allocation of 2022 credits will be the one considered eligible, and the other Applications will not be reviewed; if there is no Supplemental Allocation of 2022 credits,~~ the lower scoring of the Application(s), including consideration of tie breakers, will be considered ineligible and will not be reviewed unless the higher scoring Application is terminated or withdrawn. This subsection does not apply to Applications submitted under the USDA Set-Aside (~~10 TAC~~ §11.5(2)) or the At-Risk Set-Aside (~~10 TAC~~ §11.5(3)).

§11.4. Tax Credit Request, Award Limits and Increase in Eligible Basis.

(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 or provides the guaranty only during the construction period, 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. Any Supplemental Allocation of credits awarded to such parties will carry a value of $1.50 for every $1.00 Supplemental Allocation awarded when calculating the $3 million maximum for all 2022 Applications. Prior to posting the agenda for the last Board meeting in June, an Applicant that has Applications pending for more than $3 million in credit may notify staff in writing or by email of the Application(s) they will not pursue in order to bring their request within the $3 million cap. Any other Applications they do not wish to pursue will remain on the waiting list if not otherwise terminated. If the Applicant has not made this self-selection by this date, staff will first select the Application(s) that will enable the Department to comply with the state and federal non-profit set-asides, and will then select the highest scoring Application, including consideration of tie-breakers if there are tied scores. The Application(s) that does not meet Department criteria will not be reviewed unless the Applicant withdraws an Application that is eligible for an award and has been reviewed. 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 consultant or advisor that do not exceed $200,000.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150% of the credit amount available in the subregion based on estimates released by the Department on December 1, or $1,500,000,~~2,000,000~~ whichever is less, or $2,000,000 for Applications under the At-Risk Set-Aside. In addition, for Elderly Developments in a Uniform State Service Region containing a county with a population that exceeds one million, the

request may not exceed the final amount published on the Department's website after the annual release of the Internal Revenue Service notice regarding the credit ceiling (2306.6711(h));~~.~~ Supplemental Allocations made from the 2022 ceiling to Elderly Developments in such tracts will be included in calculating the allocated Elderly credits in that region, thereby reducing the available credits for Elderly Developments in that region for 2022 Competitive HTC Applications. For all Applications, 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 reduce the Applicant's request to the maximum allowable under this subsection through the underwriting process. 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% Boost). Applications will be evaluated for an increase of up to 30% in Eligible Basis provided they meet any one of the criteria identified in paragraphs (1) - (4) 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 determined by the Department, in which case a credit amount necessary to fill the gap in financing will be recommended. In no instance will the boost exceed more than the amount of credits required to create the HTC rent-restricted Units. The criteria in paragraph (3) 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% Housing Tax Credit Units per total households in the tract as reflected in the Department's current Site Demographic Characteristics Report. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20% Housing Tax Credit Units per total households are not eligible for a 30% increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code, unless the Application includes a resolution acknowledging the Development is located in a census tract that has more than 20% Housing Tax Credits Units per total households and stating that the Governing Body of the appropriate municipality or county containing the Development has no objection to the Application. Rehabilitation Developments where this rule is triggered are eligible for the boost and are not required to obtain such a resolution from the Governing Body. An acceptable, but not required, form of resolution may be obtained in the Multifamily Uniform Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter (regarding Competitive HTC Deadlines), or Resolutions Delivery Date in §11.2(b) of this chapter (regarding Tax-Exempt Bond and Direct Loan Application Dates and Deadlines), as applicable. The Application must include a census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT.~~; or~~

(2) The Development is located in a Small Area Difficult Development Area (SADDA) (based on Small Area Fair Market Rents as determined by the Secretary of HUD) that has high construction, land and utility costs relative to the AMGI. The Application must include the SADDA map that clearly shows the proposed Development is located within the boundaries of a SADDA.~~; or~~

(3) For Competitive HTC only, Development meets one of the criteria described in subparagraphs (A) - (F) of this paragraph pursuant to Code, §42(d)(5)(B)(v):

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

(B) The Development is entirely Supportive Housing and is in accordance with ~~10 TAC~~ §11.1(d)(12~~6~~2)(E) related to the definition of Supportive Housing;

(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 10% of the proposed low income Units for households at or below 30% of AMGI. These Units may not be used to meet any scoring criteria, or used to meet any Multifamily Direct Loan program requirement;

(E) The Development is in an area covered by a concerted revitalization plan, is not an Elderly Development, and is not located in a QCT. A Development will be considered to be in an area covered by a concerted revitalization plan if it is eligible for and elects points under §11.9(d)(7) of this chapter; or

(F) The Development is located in a Qualified Opportunity Zone designated under the Bipartisan Budget Act of 2018 (H.R. 1892). Pursuant to Internal Revenue Service Announcement 2021-10, the boundaries of the Opportunity Zone are unaffected by 2020 Decennial Census changes.

(4) For Tax-Exempt Bond Developments, as a general rule, a QCT or SADDA designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30% boost in its underwriting evaluation. The Department acknowledges guidance contained in the Federal Register regarding effective dates of QCT and SADDA designations. Pursuant to the Federal Register Notice, unless federal guidance states otherwise, complete Applications (including all Third Party Reports) with a corresponding Certificate of Reservation that are submitted to the Department in the year the QCT or SADDA designation is effective may be underwritten to include the 30% boost, provided a complete application was submitted to the bond issuer in the year the QCT or SADDA designation is effective. Where this is the case, the Application must contain a certification from the issuer that speaks to the date on which such complete application (as defined in the Notice) was submitted. If the issuer is a member of the organizational structure then such certification must come from the bond counsel to the issuer.

§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. In order to be eligible to compete in the Set-aside, the Application must meet the requirements of the Set-aside as of the Full Application Delivery Date. ~~-~~Election to compete in a Set-aside does not constitute eligibility to compete in the Set-aside, and Applicants who are ultimately deemed not to qualify to compete in the Set-aside will be considered not to be participating in the Set- aside for purposes of qualifying for points under §11.9(e)(3) of this chapter (related to Criteria promoting the efficient use of limited resources and applicant accountability). Commitments of Competitive HTCs issued by the Board in the current program year will be applied to each Set-aside, Rural regional allocation, Urban regional allocation, and USDA Set-aside for the

current Application round as appropriate.

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)). At least 10% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of Code, §42(h)(5) and Tex. Gov't Code §2306.6729 and §2306.6706(b). The Supplemental Allocation amount for any Qualified Nonprofit Developments receiving a Supplemental Allocation from the 2022 ceiling will be attributed to the 2022 Nonprofit Set-Aside. Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this Set-aside (i.e., greater than 50% ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the manager of the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the Manager of 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 or to 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% of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. The Supplemental Allocation amount for any USDA Developments receiving a Supplemental Allocation from the 2022 ceiling will be attributed to the 2022 USDA Set-Aside. 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 subregion unless the Application is receiving USDA Section 514 funding. Applications must also meet all requirements of Tex. Gov't Code §2306.111(d-2).

(A) Eligibility of Certain Developments to Participate in the USDA or Rural Set-asides. (§2306.111 (d-4)). A proposed or Existing Residential Development that, before September 1, 2013, has been awarded or has received federal financial assistance provided under ~~Section~~ §§514, 515, or 516 of the Housing Act of 1949 (42 U.S.C. ~~Section~~ §§1484, 1485, or 1486) may be attributed to and come from the At-Risk Development Set-aside or the Uniform State Service Region in which the Development is located, regardless of whether the Development is located in a Rural Area.

(B) All Applications that are eligible to participate under the USDA Set-aside will be considered Rural for all scoring items under this chapter. If a Property receiving USDA financing is unable to participate under the USDA Set-aside and it is located in an Urban subregion, it will be scored as Urban.

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

(A) At least 15% 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). The Supplemental Allocation amount for any At-Risk Developments receiving a Supplemental Allocation from the 2022 ceiling will be attributed to the 2022 At-Risk Set-Aside. 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~~ No more than 5% of the State Housing Credit Ceiling associated with this Set- aside ~~may~~ will be given as priority to Rehabilitation Developments under the USDA Set-aside; ~~.~~ any Applications submitted under the USDA Set-Aside in excess of this 5% priority may compete within the At-Risk Set-Aside only if they meet the definition for an At-Risk Development and have made the selection of the At-Risk Set-Aside in their Application.

(B) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(A) must meet the following requirements:

(i) Pursuant to Tex. Gov't Code §2306.6702(a)(5)(A)(i), a Development must have received the benefit of a subsidy in the form of a qualified below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive from any of the programs provided in subclauses (I) to (VIII) of this clause. Applications participating in the At-Risk Set-Aside must include evidence of the qualifying subsidy.

(I) Sections 221(d)(3) and (5), National Housing Act (12 U.S.C. §1715l);

(II) Section 236, National Housing Act (12 U.S.C. §1715z-1);

(III) Section 202, Housing Act of 1959 (1 2 U.S.C. §1701q);

(IV) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. §1701s);

(V) the Section 8 Additional Assistance Program for housing developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of Housing and Urban Development as specified by 24 C.F.R. Part 886, Subpart A;

(VI) the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development as specified by 24 C.F.R. Part 886, Subpart C;

(VII) §§514, 515, and 516, Housing Act of 1949 (42 U.S.C. §§1484, 1485, and 1486); or

(VIII) §42, Internal Revenue Code of 1986.

(ii) Any stipulation to maintain affordability in the contract granting the subsidy or any HUD-insured or HUD-held mortgage as described in §2306.6702(a)(5)(A)(ii)(a) will be considered to be nearing expiration or nearing the end of its term if the contract expiration will occur or the term will end within two years of July 31 of the year the Application is submitted. Developments with HUD-insured

or HUD-held mortgages qualifying as At-Risk under §2306.6702(a)(5)(A)(ii)(b) will be considered eligible if the HUD-insured or HUD-held mortgage is eligible for prepayment.

(iii) Developments with existing Department LIHTC LURAs must have completed all applicable Right of First Refusal procedures prior to the pre-application Final Delivery Date.

(C) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(B) must meet one of the requirements under clause (i), ~~or~~ (ii) or (iii) of this subparagraph and also meet the stipulations noted in clause (iv) of this subparagraph:

(i) Units to be Rehabilitated or Reconstructed must be owned by a public housing authority or a public facility corporation created by a public housing authority under Chapter 303, Local Government Code and received assistance under §9, United States Housing Act of 1937 (42 U.S.C. ~~section~~ §1437g); or

(ii) Units to be Rehabilitated or Reconstructed must have been proposed to be disposed of or demolished, or already disposed or demolished within the two-year period preceding the date the Application is submitted, by a public housing authority or public facility corporation created by a public housing authority under Chapter 303, Local Government Code and received assistance under §9, United States Housing Act of 1937 (42 U.S.C. §1437g) ~~in the two-year period preceding the Application for housing tax credits~~; or

(iii) To the extent that an Application is eligible under Tex. Gov't Code §2306.6702(a)(5)(B)(iii), the Development must receive assistance through the Rental Assistance Demonstration (RAD) program administered by the United States Department of Housing and Urban Development (HUD). Applications must include evidence that RAD participation is included in the applicable public housing plan that was most recently approved by HUD, and evidence that HUD has approved the Units proposed for Rehabilitation or Reconstruction for participation in the RAD program; and

(iv) Notwithstanding any other provision of law, an At-Risk Development described by Tex. Gov't Code §2306.6702(a)(5)(B) that was previously allocated housing tax credits set aside under subsection (a) of this section does not lose eligibility for those credits if the portion of Units reserved for public housing as a condition of eligibility for the credits under Tex. Gov't Code §2306.6714 (a-1)(2) are later converted under RAD.

(D) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Tex. Gov't Code §2306.6702(a)(5)(i) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. Alternatively, pursuant to Tex. Gov't Code §2306.6702(a)(5)(B), 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 with the units proposed for Rehabilitation or Reconstruction prior to the tax credit Carryover deadline;

(ii) the Applicant seeking tax credits must propose the same number of restricted Units (the Applicant may, however, add market rate Units); and

(iii) the new Development Site must either:

(I) qualify for points on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria); OR

~~(iv)~~(II) the local Governing Body of the applicable municipality or county (if completely outside of a municipality) in which that Development is located must submit a resolution confirming that the proposed Development is supported by the municipality or county in order to carry out a previously adopted plan that meets the requirements of §11.9(d)(7). Development Sites that cross jurisdictional boundaries must provide such resolutions from both local governing bodies.

(E) If Developments at risk of losing affordability from the financial benefits available to the Development are able to retain, renew, or replace the existing financial benefits and affordability they must do so unless regulatory barriers necessitate elimination of all or a portion of that benefit for the Development.

(i) Evidence of the legal requirements that will unambiguously cause the loss of affordability and that this will occur within the two calendar years of July 31 of the year the Application is submitted, and must be included with the application.~~; and~~

(ii) For Developments qualifying under Tex. Gov't Code §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25% of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1). If less than 100% of the public housing benefits are transferred to the proposed Development, an explanation of the disposition of the remaining public housing benefits must be included in the Application, as well as a copy of the HUD-approved plan for demolition and disposition.

(F) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under Code, §42. Evidence must be provided in the form of a copy of the recorded LURA, the first year's 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. The Application must also include evidence that any applicable Right of First Refusal procedures have been completed prior to the pre-application Final Delivery Date.

(G) 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 during the Application Round 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 (subregion) Housing Tax Credits in an amount not less than $600,000 in each Rural and Urban subregion, consistent with the Regional Allocation Formula developed in compliance with Tex. Gov't Code §2306.1115. As authorized by Tex. Gov't Code

§2306.111(d-3), the Department will reserve $600,000 in housing tax credits for Applications in rural areas in each uniform state service region. The process of awarding the funds made available within each subregion 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 the regional allocation formula together with other policies and purposes set out in Tex. Gov't Code, Chapter 2306 and the Department shall provide the public 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 competitive ranking of Applications within a particular subregion 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 based on the criteria described in §11.4(a) of this chapter. The Department will publish on its website on or before December 1of each year, initial estimates of Regional Allocation Formula percentages and limits of credits available, and the calculations periodically, if those calculations change, until the credits are fully allocated. Any 2022 credits designated for the purpose of Supplemental Allocations, but not awarded to Supplemental Allocations through the process described in Subchapter F of this chapter, will be added to the appropriate subregion for which those credits had been allocated in the Supplemental regional allocation ~~total pool of credits available for the Application Round~~ and the Regional Allocation Formula updated to reflect such increases.

(2) Credits Returned and National Pool Allocated After January 1. For any credits returned after January 1 and eligible for reallocation (not including credit returned and reallocated under force majeure provisions), the Department shall first return the credits to the subregion 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 subregion and be awarded in the collapse process to an Application in another region, subregion 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 any remaining credits and awarded to the next Application on the waiting list for the state collapse, if sufficient credits are available to meet the requirements of the Application as may be amended after underwriting review.

(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 reviews will be conducted in the order described in subparagraphs (A) - (F) of this paragraph 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 set of reviews 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 USDA Set-Aside requirement.

(B) At-Risk Set-Aside Application Selection (Step 2). The second set of reviews 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 (relating to At-Risk Set-Aside) 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 subregions to award under the remaining steps.

(C) Initial Application Selection in Each Subregion (Step 3). The highest scoring Applications within each of the 26 subregions will then be selected provided there are sufficient funds within the subregion 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 subregions.~~:~~

(i) In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code §2306.6711(h), and will publish such percentages on its website. The Supplemental Allocation amount for any Supplemental Allocations made in such a county to an Elderly Development will be attributed to the total of 2022 credits made to Elderly Developments for that Uniform State Service Region.

(ii) In accordance with Tex. Gov't Code, §2306.6711(g), in Uniform State Service Regions containing a county with a population that exceeds 1.7 million, the Board shall allocate competitive tax credits to the highest scoring development, if any, that is part of a concerted revitalization plan that meets the requirements of §11.9(d)(7) (except for §11.9(d)(7)(A)(ii)(III) and §11.9(d)(7)(B)(iii)), is located in an urban subregion, and is within the boundaries of a municipality with a population that exceeds 500,000.

(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 subregion) 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 subregion as compared to the subregion'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% 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 subregion 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 subregion:

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

(ii) the subregion 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 subregion in the State~~, and any remaining credits from the 2022 Supplemental Allocation~~, will be combined into one "pool." The funds will be used to award the highest scoring Application (not

selected or eliminated in a prior step) in the most underserved subregion in the State compared to the amount originally made available in each subregion. In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available as calculated through the Regional Allocation Formula (RAF) for Elderly Developments, and as reduced by any 2022 Supplemental Allocations made meeting these criteria as provided in §11.4(b) of this subchapter (relating to Maximum Request Limit (Competitive HTC Only)), within an urban subregion of that service region. Therefore, certain Applications for Elderly Developments may be excluded from receiving an award from the collapse. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code §2306.6711(h) and will publish such percentages on its website. This process will continue until the funds remaining are insufficient to award the next highest scoring Application that is not rendered ineligible through application of the elderly cap in the next most underserved subregion. At least seven calendar days prior to the July Board meeting of the Department at which final awards of credits are authorized, the Department will post on its website the most current 2022 State of Texas Competitive Housing Tax Credit Ceiling Accounting Summary which includes the Regional Allocation Formula percentages including the maximum funding request/award limits, the Elderly Development maximum percentages and limits of credits available, and the methodology used for the determination of the award determinations within the State Collapse. In the event that more than one subregion is underserved by the same degree, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved subregion:

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

(ii) the subregion 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% 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 subregion 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. The waiting list is not static. The allocation process will be used in determining the next Application to award. If credits are returned through any process, those credits will first be made available in the set-aside or subregion from which they were originally awarded. 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 as may be amended 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. The Department will evaluate all waiting list awards for compliance with requested Set-asides. This may cause some lower scoring Applications to be selected instead of a higher scoring Application. Where sufficient credit becomes available to award an Application on the waiting list later in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline and changes to the Application as necessary to ensure to the extent possible that available resources are allocated by December 31. (§2306.6710(a) - (f); §2306.111).

(5) Credit Returns Resulting from Force Majeure Events. In the event that the Department receives a return of Competitive HTCs during the current program year from an Application that received a Competitive Housing Tax Credit award during any of the preceding three years, such returned credit will, if the Board determines that all of the requirements of this paragraph are met to its satisfaction, be allocated separately from the current year's tax credit allocation, and not be subject to the requirements of paragraph (2) of this section. The 2019 and 2020 Applications awarded~~requesting~~ Supplemental Allocations under Subchapter F of this chapter to address unforeseen cost increases are deemed to have met the requirements of this paragraph. The Board determination must indicate the year of the Multifamily Rules to be applied to the Development. The Department's Governing Board may impose a deadline that is earlier than the Placed in Service Deadline and may impose conditions that were not placed on the original allocation. Requests to allocate returned credit separately where all of the requirements of this paragraph have not been met or requests for waivers of any part of this paragraph will not be considered. For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in §(b)(2)(C)(iii) of Treasury Regulation 1.42-14. The Board may approve the execution of a current program year Carryover Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "Force Majeure" events that occurred before issuance of Forms 8609. Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; unrelated party litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a Force Majeure event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. Force Majeure events must make construction activity impossible or materially impede its progress;

(B) Acts or events caused by the negligent or willful act or omission of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by Force Majeure. In order for rainfall, material shortages, or labor shortages to constitute Force Majeure, the Development Owner must clearly explain and document how such events could not have been

reasonably foreseen and mitigated through appropriate planning and risk management. Staff may use Construction Status reports for the subject or other Developments in conducting their review and forming a recommendation to the Board; ~~.~~

(C) A Development Owner claiming Force Majeure must provide evidence of the type of event, as described in subparagraph (A) of this paragraph, when the event occurred, and that the loss was a direct result of the event;

(D) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all obligations not impeded by the event, including timely closing of all financing and start of construction, that the Development and Development Owner was properly insured and that the Department was timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph;

(E) The event prevents the Development Owner from meeting the placement in service requirements of the original allocation;

(F) The requested current year Carryover Agreement allocates the same amount of credit as that which was returned; and

(G) The Department's Real Estate Analysis Division determines that the Development continues to be financially feasible in accordance with the Department's underwriting rules after taking into account any insurance proceeds related to the event.

§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. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held. The tie breaker factors are not intended to specifically address a tie between equally underserved subregions in the rural or statewide collapse.

(1) Applications proposed to be located in a census tract with a poverty rate below the average poverty rate for all awarded Competitive HTC Applications from the past three years (with Region 11 adding an additional 15% to that value and Region 13 adding an additional 5% to that value). The poverty rate for each census tract will come from the most recent American Community Survey data. If a tie still persists, then the Development in the census tract with the highest percentage of statewide rent burden for renter households at or below 80% Area Median Family Income (AMFI), as determined by the U.S. Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy (CHAS) dataset and as reflected in the Department's current Site Demographic Characteristics Report.

(2) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development that serves the same Target Population and that was awarded less than 15 years ago according to the Department's property inventory tab of the Site Demographic

Characteristics Report. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph according to the property inventory included in the HTC Site Demographic Characteristics Report. The linear measurement will be performed from closest boundary to closest boundary of the Site presented at Pre-Application, if a pre-application is submitted, or the Site presented at full Application, whichever is closest.

§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 13 state service regions, subregions and set-asides. Based on an understanding of the potential competition they can make a more informed decision about 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.

(1) The pre-application must be submitted using the URL provided by the Department, as outlined in the Multifamily Programs Procedures Manual, along with the required pre-application fee as described in §11.901 of this chapter (relating to Fee Schedule), not later than the pre-application Final Delivery Date as identified in §11.2(a) of this chapter (relating to Competitive HTC Deadlines Program Calendar). If the pre-application and corresponding fee is not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

(2) Only one pre-application may be submitted by an Applicant for each Development Site and for each Site Control document.

(3) 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 the Application, pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as Applications, 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.

(4) The pre-application becomes part of the full Application if the full Application claims pre-application points.

(5) Regardless of whether a Full Application is submitted, a pre-application may not be withdrawn after the Full Application Delivery Date described in ~~10 TAC~~ §11.2(a) relating to Competitive HTC Deadlines Program Calendar.

(b) Pre-Application Threshold Criteria. Pursuant to Tex. Gov't 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 §11.204(10) of this title (relating to Required Documentation for Application Submission). For purposes of meeting this specific requirement related to pre-application threshold criteria, proof of consideration and any documentation required for identity of interest transactions is not required at the time of pre-application submission but will be required at the time of full application submission;

(B) Funding request;

(C) Target Population;

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

(E) Total Number of Units proposed;

(F) Census tract number in which the Development Site is located, and a map of that census tract with an outline of the proposed Development Site;

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

(H) Proposed name of ownership entity; and

(I) Disclosure of the following Neighborhood Risk Factors under §11.101(a)(3):

(i) The Development Site is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com; and

(ii) The Development Site is located within the attendance zone of an elementary school, a middle school or a high school that has a TEA Accountability Rating of D for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding or a TEA Accountability Rating of F for the most recent year available prior to Application and a Met Standard Rating by the Texas Education Agency for the most recent available year preceding.

(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 30 days prior to the beginning of the Application Acceptance Period whose boundaries include the entire proposed Development, where a reasonable search for applicable entities has been conducted.

(B) Notification Recipients. ~~No later than the date the pre-application is submitted, notification must be sent to all of the entities prescribed in clauses (i) - (viii) of this subparagraph.~~ Developments located in an ETJ of a municipality are required to notify both municipal 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 included in the Public Notification Template provided in the Uniform ~~2020~~ Multifamily Application Template or in an alternative format that meets the applicable requirements and achieves the intended purpose. The Applicant is required to retain proof of delivery in the event the Department requests 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. ~~Regardless of the method of delivery, the Applicant must provide an accurate mailing address in the Pre-application.~~ Officials to be notified are those officials in office at the time the pre-application is submitted. Between the time of pre-application (if made) and full Application, the boundaries of an official's jurisdictions may change. If there is a change in jurisdiction between pre-application and the Full Application Delivery Date, additional notifications must be made at full Application to any entity that has not been previously notified by the Applicant. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct entity constitutes notification. No later than the date the pre-application is submitted, notification must be sent to all of the entities prescribed in clauses (i) - (viii) of this subparagraph:~~.~~

(i) Neighborhood Organizations on record with the state or county 30 days prior to the beginning of the Application Acceptance Period whose boundaries include the entire 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) - (VIII) 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, high-rise, etc.);

(VI) The approximate total number of Units and approximate total number of Low-Income Units;

(VII) The residential density of the Development, i.e., the number of Units per acre; and

(VIII) Information on how and when an interested party or Neighborhood Organization can provide input to the Department.

(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 a population exclusively or as a preference unless such targeting or preference is documented in the Application and is in full compliance with all applicable state and federal laws, including state and federal fair housing laws.~~; and~~

(iii) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

(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 (relating to Criteria promoting the efficient use of limited resources and applicant accountability), 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.

(d) Applicants that may be requesting a Multifamily Direct Loan from the Department may submit a Request for Preliminary Determination on or before February 11. The results of evaluation of the Request may be used as evidence of review of the Development and the Principals for purposes of scoring under ~~10 TAC~~ §11.9(e)(1)(E) of this chapter (relating to Criteria promoting the efficient use of limited resources and applicant accountability). Submission of a Request for Preliminary Determination does not obligate the Applicant to request Multifamily Direct Loan funds with their full 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 Tex. Gov't Code, Chapter 2306, Code §42, and other criteria established in a manner consistent with Chapter 2306 and Code §42. 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. The Application must include one or more maps indicating the location of the Development Site and the related distance to the applicable facility. Distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the facility, unless otherwise noted. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held.

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); 2306.6725(b)(1); §42(m)(1)(C)(iii) and (ix)) An Application may qualify for up to fifteen (15) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (6 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. If the Development involves both Rehabilitation and Reconstruction or New Construction, the Reconstruction or New Construction Units must meet these requirements:~~.~~

(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, Development Construction, and Energy and Water Efficiency Features (9 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 §11.101(b)(6)(B) of this title (relating to Unit, Development Construction, and Energy and Water Efficiency Features) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments and Supportive Housing Developments will start with a base score of five (5) point.

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

(A) HUB. The ownership structure contains ~~either~~ a HUB or HUBs certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date. The HUB or HUBs must have some

combination of ownership interest in each of the General Partner of the Applicant, Cash Flow from operations, and Developer Fee which taken together equal at least 50% and no less than 5% for any category. For HUD 202 Rehabilitation projects which prohibit for-profit ownership, ownership will not be required for a HUB or nonprofit, only for Cash Flow or Developer Fee; the total ownership percentage must still equal 50%, even if it is only attributable to one of the two categories. Any Application that includes ~~a~~one or more HUBs must include a narrative description of each of the HUB's experience directly related to the housing industry.

(i) The HUB must materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. Material participation means that the HUB is regularly, continuously, and substantially involved in providing services integral to the Development Team; providing services as an independent contractor is not sufficient.

(ii) A Principal of the HUB cannot be a Related Party to or Affiliate, including the spouse, of any other Principal of the Applicant, Developer or Guarantor (excluding another Principal of said HUB). (2 points).

(iii) The HUB must be involved with the Development Services or in the provision of on-site tenant services during the Development's Affordability Period. A Principal of the HUB or nonprofit Organization cannot be a Related Party to or Affiliate, including the spouse of, any other Principal of the Applicant, Developer or Guarantor (excluding another Principal of said HUB or Nonprofit Organization). (1 point).

(B) Qualified Nonprofit Organization. The ownership structure contains a Qualified Nonprofit Organization provided the Application is submitted in the Nonprofit Set-Aside. The Qualified Nonprofit Organization must have some combination of ownership interest in the General Partner of the Applicant, Cash Flow from operations, and Developer Fee which taken together equal at least 50%, and no less than 5% for any category. For HUD 202 Rehabilitation projects which prohibit for-profit ownership, ownership will not be required for a nonprofit, only for Cash Flow or Developer Fee; the total ownership percentage must still equal 50%, even if it is only attributable to one of the two categories.

(i) The Qualified Nonprofit Organization must materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. Material participation means that the Qualified Nonprofit Organization is regularly, continuously, and substantially involved in providing services integral to the Development Team; providing services as an independent contractor is not sufficient.

(ii) A Principal of the Qualified Nonprofit Organization cannot be a Related Party to or Affiliate, including the spouse, of any other Principal of the Applicant, Developer, or Guarantor (excluding another Principal of said Qualified Nonprofit Organization). (2 points).

(iii) The Qualified Nonprofit Organization must be involved with the Development Services or in the provision of on-site tenant services during the Development's Affordability Period. A Principal of the Qualified Nonprofit Organization cannot be a Related Party to or Affiliate, including the spouse

of, any other Principal of the Applicant, Developer, or Guarantor (excluding another Principal of said Qualified Nonprofit Organization). (1 point).

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

(i) The nonprofit organization must maintain Control of the Development and materially participate in the operation of the Development throughout the Compliance Period.

(ii) The nonprofit organization, or individuals with Control of the nonprofit organization, must provide verifiable documentation of at least 10 years' experience in the continuous operation of a Development that provides services similar to those in the proposed Development.

(iii) The Applicant will provide a minimum of 3 additional points under §11.101(7) related to Resident Supportive Services, in addition to points selected under §11.9(c)(3).

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

(1) Income Levels of Residents. (§§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), (B), (C), or (D) of this paragraph.

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs that propose to use either the 20-50 or 40-60 election under §42(g)(1)(A) or §42(g)(1)(B) of the Code, respectively:

(i) At least 60% of all Low-Income Units at 50% or less of AMGI in a Supportive Housing Development proposed by a Qualified Nonprofit (16 points);

(ii) At least 40 % of all Low-Income Units at 50% or less of AMGI (15 points);

(iii) At least 30% of all Low-Income Units at 50% or less of AMGI (13 points); or

(iv) At least 20% of all Low-Income Units at 50 %or less of AMGI (11 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph and that propose to use either the 20-50 or 40-60 election under §42(g)(1)(A) or §42(g)(1)(B) of the Code, respectively:

(i) At least 60% of all Low-Income Units at 50% or less of AMGI in a Supportive Housing Development proposed by a Qualified Nonprofit (16 points);

(ii) At least 20% of all Low-Income Units at 50% or less of AMGI (15 points);

(iii) At least 15% of all Low-Income Units at 50% or less of AMGI (13 points); or

(iv) At least 10% of all Low-Income Units at 50% or less of AMGI (11 points).

(C) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs that propose to use the Average Income election under §42(g)(1)(C) of the Code:

(i) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 54% or lower (15 points);

(ii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 55% or lower (13 points); or

(iii) The average income and Rent restriction for all Low-Income Units for the proposed Development will be 56% or lower (11 points).

(D) For Developments proposed to be located in the areas other than those listed in subparagraph (C) of this paragraph and that propose to use the Average Income election under §42(g)(1)(C) of the Code:

(i) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 55% or lower (15 points);

(ii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 56% or lower (13 points); or

(iii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 57% or lower (11 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(E)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. If selecting points from §11.9(c)(1)(A) or §11.9(c)(1)(B), these levels are in addition to those committed under paragraph (1) of this subsection. If selecting points from §11.9(c)(1)(C) or §11.9(c)(1)(D), these levels are included in the income average calculation under paragraph (1) of this subsection. These units must be maintained at this rent level throughout the Affordability Period regardless of the Average Income calculation. Scoring options include:

(A) At least 20% of all Low-Income Units at 30% or less of AMGI for Supportive Housing Developments proposed by a Qualified Nonprofit (13 points);

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

(C) At least 5% of all Low-Income Units at 30% or less of AMGI (7 points).

(3) Resident Supportive Services. (§2306.6710(b)(3) and (1)(G), and §2306.6725(a)(1)) A Development may qualify to receive up to eleven (11) points.

(A) The Applicant certifies that the Development will provide a combination of resident supportive services, which are listed in §11.101(b)(7) of this chapter (relating to Development Requirements

and Restrictions) and meet the requirements of that section. (10 points).

(B) The Applicant certifies that the Development will contact local nonprofit and governmental providers of services that would support the health and well-being of the Department's residents, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. Applicants may contact service providers on the Department list, or contact other providers that serve the general area in which the Development is located. (1 point).

(4) Opportunity Index. (42(m)(1)(C)(i)) The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials. A Development is eligible for a maximum of seven (7) opportunity index points from subparagraphs (A) and (B) of this paragraph.

(A) A proposed Development is eligible for up to two (2) opportunity index points if it is located entirely within a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) of this subparagraph:~~.~~

(i) The Development Site is located entirely within a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and a median household income rate in the two highest quartiles within the uniform service region~~.~~ (2 points); or

(ii) The Development Site is located entirely within a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with a median household income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile for median household income that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, without physical barriers such as (but not limited to) highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. For purposes of this scoring item, a highway is a limited-access road with a speed limit of 50 miles per hour or more; and (1 point)

(B) An Application that meets one of the foregoing criteria in subparagraph (A) of this paragraph may qualify for additional points for any one or more of the ~~following~~ factors in clause (i) or (ii) of this subparagraph. Each amenity may be used only once for scoring purposes, unless allowed within the scoring item, regardless of the number of categories it fits. All members of the Applicant or Affiliates cannot have had an ownership position in the amenity or served on the board or staff of a nonprofit that owned or managed that amenity within the year preceding the Pre-Application Final Delivery Date. All amenities must be operational or have started Site Work at the Pre-Application Final Delivery Date. Any age restrictions associated with an amenity must positively correspond to the Target Population of the proposed Development.

(i) For Developments located in an Urban Area (other than Applicants competing in the USDA Set-Aside), an Application may qualify to receive points through a combination of requirements in subclauses (I) - (XV) of this clause.

(I) The Development Site is located on a route, with sidewalks for pedestrians, that is 1/2 mile or less from the entrance to a public park with a playground or from a multiuse hike-bike trail. The entirety

of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. (1 point).

(II) The Development Site is located on a route, with sidewalks for pedestrians, that is within a specified distance from the entrance of a public transportation stop or station with a route schedule that provides regular service to employment and basic services. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. Only one of the following may be selected:

(-a-) The Development Site is 1/2 mile or less from the stop or station and the scheduled service is beyond 8 a.m. to 5 p.m., plus weekend service (both Saturday and Sunday). (1 point); or

(-b-) The Development Site is 1/2 mile or less from the stop or station and the scheduled service arrives every 15 minutes, on average, between 6 a.m. and 8 p.m., every day of the week. (2 points).

(III) The Development Site is located within 2 miles of a full-service grocery store. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed Development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point).

(IV) The Development Site is located within 2 miles of a pharmacy. For the purposes of this menu item only, the pharmacy may be claimed if it is within the same building as a grocery store. (1 point).

(V) The Development Site is located within 4 miles of a health-related facility, such as a full service hospital, community health center, minor emergency center, emergency room or urgent care facility. Physician offices and physician specialty offices are not considered in this category. (1 point).

(VI) The Development Site is within 3 miles of a center that is licensed by the Department of Family and Protective Services (DFPS) specifically to provide a school-age program or to provide a child care program for infants, toddlers, or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point)

(VII) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less as defined by neighborhoodscout.com, or local law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the census tract in which the Development Site is located. (1 point)

(VIII) The development Site is located within 2 miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open 50 hours or more per week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point)

(IX) The Development Site is located within 6 miles of an accredited university or community college, as confirmed by the Texas Higher Education Coordination Board (THECB). To be considered a

university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered community colleges, and to be considered for these purposes must confer at least associate's degrees. The university or community college must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item. (1 point)

(X) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as tabulated by the most recent American Community Survey 5-year Estimate. (1 point)

(XI) Development Site is within 2 miles of an indoor recreation facility available to the public. Examples include, but are not limited to, a gym, health club, a bowling alley, a theater, or a municipal or county community center. A facility that is primarily a restaurant or bar with recreational facilities is not eligible. (1 point)

(XII) Development Site is within 2 miles of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include, but are not limited to, swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point).

(XIII) Development Site is within 2 miles of community, civic or service organizations that provide regular and recurring substantive services, beyond exclusively congregational or member-affiliated activities, available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership). (1 point).

(XIV) Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point).

(XV) Development Site is located in the attendance zone of a general enrollment public school rated A or B by TEA for the most recently available rating. (1 point).

(ii) For Developments located in a Rural Area and any Application qualifying under the USDA set-aside, an Application may qualify to receive points through a combination of requirements in subclauses (I) - (XIV) of this clause.

(I) The Development Site is located within 5 miles of a full-service grocery store. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed Development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point).

(II) The Development Site is located within 5 miles of a pharmacy. For the purposes of this menu item only, the pharmacy may be claimed if it is within the same building as a grocery store. (1 point).

(III) The Development Site is located within 5 miles of health-related facility, such as a full service

hospital, community health center, minor emergency center, or a doctor with a general practice that takes walk-in patients. Physician specialty offices are not considered in this category. (1 point).

(IV) The Development Site is located within 5 miles of a center that is licensed by the Department of Family and Protective Services (DFPS) specifically to provide a school-age program or to provide a child care program for infants, toddlers, or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point).

(V) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less, as defined by neighborhoodscout.com, or local law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the census tract in which the Development Site is located. (1 point).

(VI) The Development Site is located within 5 miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open 40 hours or more per week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point).

(VII) The Development Site is located within 5 miles of a public park with a playground. (1 point).

(VIII) The Development Site is located within 15 miles of an accredited university or community college, as confirmed by the Texas Higher Education Coordination Board (THECB). To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered community colleges, and to be considered for these purposes must confer at least associate's degrees. The university or community college must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item. (1 point).

(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher. (1 point).

(X) Development Site is within 4 miles of an indoor recreation facility available to the public. Examples include, but are not limited to, a gym, health club, a bowling alley, a theater, or a municipal or county community center. A facility that is primarily a restaurant or bar with recreational facilities is not eligible. (1 point).

(XI) Development Site is within 4 miles of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include, but are not limited to, swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point).

(XII) Development Site is within 4 miles of community, civic or service organizations that provide regular and recurring substantive services, beyond exclusively congregational or member-affiliated activities, available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership). (1 point).

(XIII) Development Site is in the current service area of Meals on Wheels or similar nonprofit service

that provides regular visits and meals to individuals in their homes. (1 point).

(XIV) Development Site is located in the attendance zone of a general enrollment public school rated A or B by TEA for the most recently available rating. (1 point).

(5) Underserved Area. (§§2306.6725(a)(4) and (b)(2); 2306.127(3), 42(m)(1)(C)(ii)). ~~An Application may qualify to receive up to five (5) points if the Development Site meets the criteria described in subparagraphs (A) - (H) of this paragraph.~~ Points are not cumulative and an Applicant is therefore limited to selecting one subparagraph. If an Application qualifies for points under paragraph §11.9(c)(4) of this subsection, then the Application is not eligible for points under subparagraphs (A)and (B) of this paragraph. Years are measured by deducting the most recent year of award on the property inventory of the Site Demographic Characteristics Report from January 1 of the current year. The Application must include evidence that the Development Site meets the requirements. An Application may qualify to receive up to five (5) points if the Development Site meets any one of the criteria described in subparagraphs (A) - (H) of this paragraph:

(A) The Development Site is located wholly or partially within the boundaries of a colonia as such boundaries are determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border. For purposes of this scoring item, the colonia must lack water, wastewater, or electricity provided to all residents of the colonia at a level commensurate with the quality and quantity expected of a municipality and the proposed Development must make available any such missing water, wastewater, and electricity supply infrastructure physically within the borders of the colonia in a manner that would enable the current dwellings within the colonia to connect to such infrastructure (2 points);

(B) The Development Site is located entirely within the boundaries of an Economically Distressed Area that has been awarded funds by the Texas Water Development Board in the previous five years ending at the beginning of the Application Acceptance Period (1 point);

(C) The Development Site is located entirely within a census tract that does not have another Development that was awarded less than 30 years ago according to the Department's property inventory in the Site Demographic Characteristics Report (4 points);

(D) For areas not scoring points for subparagraph (C), the Development Site is located entirely within a census tract that does not have another Development that was awarded less than 20 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report (3 points);

(E) For areas not scoring points for subparagraphs (C) or (D) of this paragraph, the Development Site is located entirely within a census tract that does not have another Development that was awarded less than 15 years ago according to the Department's property inventory in the Site Demographic Characteristics Report (2 points);

(F) The Development Site is located entirely within a census tract whose boundaries are wholly within an incorporated area and the census tract itself and all of its contiguous census tracts do not have another Development that was awarded less than 15 years ago according to the Department's

property inventory tab of the Site Demographic Characteristics Report. This item will apply in Places with a population of 100,000 or more, and will not apply in the At-Risk Set-Aside; ~~.~~ (5 points)

(G) The Development Site is located entirely within a census tract where, according to American Community Survey 5-year Estimates, the population share of persons below 200% federal poverty level decreased by 10% or more and where the total number of persons at or above 200% federal poverty level had increased by 15% or more between the years 2010 and 2017. This measure is referred to as the Affordable Housing Needs Indicator in the Site Demographic Characteristics Report. (3 points); or

(H) An At-risk or USDA Development placed in service 25 or more years ago, that is still occupied, and that has not yet received federal funding, or LIHTC equity, for the purposes of Rehabilitation for the Development. If the Application involves multiple sites, the age of all sites will be averaged for the purposes of this scoring item. (3 points).

(6) Residents with Special Housing Needs. (§2306.6710(b)(4); §42(m)(1)(C)(v)) An Application may qualify to receive up to four ~~three~~ (4 ~~3~~) points by serving Residents with Special Housing Needs by selecting points under any combination of subparagraphs (A), (B), or (C).

(A) The Development must commit at least 5% of the total Units to Persons with Special Housing Needs. The Units identified for this scoring item may not be the same Units identified previously for the Section 811 PRA Program. For purposes of this subparagraph, Persons with Special Housing Needs is defined as a household where one or more individuals have alcohol or drug addictions, is a Colonia resident, a Person with a Disability, has Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), HIV/AIDS, homeless, veterans, and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to specifically market Units to Persons with Special Housing Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Housing Needs or held vacant, unless the Units receive HOME funds from any source. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Housing Needs, but will be required to continue to specifically market Units to Persons with Special Housing Needs. (2 points)

(B) If the Development has committed units under ~~10 TAC~~ §11.9(c)(6)(A), the Development must commit at least an additional 2% of the total Units to Persons referred from the Continuum of Care or local homeless service providers to be made available for those experiencing homelessness. Rejection of an applicant's tenancy for those referred may not be for reasons of credit history or prior rental payment history. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to specifically market the 2% of Units through the Continuum of Care and other homelessness providers local to the Development Site. In addition, the Department will require an initial minimum twelve-month period in Urban subregions, and an initial six-month period in Rural subregions, during which Units must either be occupied by Persons referred from the Continuum of Care or local homeless service providers, or held vacant, unless the Units receive HOME funds from any source. After the initial twelve-month or six-month period, the Development Owner will no longer be required to hold Units vacant but will be required to continue to provide quarterly notifications to the Continuum of Care and other homeless service providers

local to the Development Site on the availability of Units at the Development Site. Applications in the At-risk or USDA set asides are not eligible for this scoring item. Developments are not eligible under this paragraph unless points have also been selected under ~~10 TAC~~ §11.9(c)(6)(A). (1 point)

(C) If the Development is located in a county with a population of 1 million or more, but less than 4 million, and is located not more than two miles from a veteran's hospital, veteran's affairs medical center, or veteran's affairs health care center, (which include all providers listed under the Veteran's Health Administration categories, excluding Benefits Administration offices, listed at this link https://www.va.gov/directory/guide/fac_list_by_state.cfm?State=TX&dnum=ALL) and agrees to provide a preference for leasing units in the Development to low income veterans. (1 point)

(7) Proximity to Job Areas. (§42(m)(1)(C)(i)) An Application may qualify to receive up to six (6) points if the Development Site is located in one of the areas described in subparagraphs (A) or (B) of this paragraph, and the Application contains evidence substantiating qualification for the points. The data used will be based solely on that available through US Census' OnTheMap tool. Jobs counted are limited to those based on the work area, all workers, and all primary jobs. Only the 2018 data set will be used, unless a newer data set is posted to the US Census website on or before October 1, 2021. The Development will use OnTheMap's function to import GPS coordinates that clearly fall within the Development Site, and the OnTheMap chart/map report submitted in the Application must include the report date. This scoring item will not apply to Applications under the At-Risk or USDA Set-Aside.

(A) Proximity to Jobs. For Development Sites within the boundaries of a municipality of 500,000 or more, or the unincorporated areas of a county with a population of 1 million or more~~.~~, ~~A~~a Development may qualify for points under this subparagraph if it meets one of the criteria in clauses (i) - (vi) of this subparagraph.

(i) The Development is located within 2 miles of 16,500 jobs. (6 points)

(ii) The Development is located within 2 miles of 13,500 jobs. (5 points)

(iii) The Development is located within 2 miles of 10,500 jobs. (4 points)

(iv) The Development is located within 2 miles of 7,500 jobs. (3 points)

(v) The Development is located within 2 miles of 4,500 jobs. (2 points)

(vi) The Development is located within 2 miles of 2,000 jobs. (1 point)

(B) Proximity to Jobs. For Development Sites within the boundaries of a municipality of 499,999 or less, or the unincorporated areas of a county with a population of less than 1 million~~.~~, ~~A~~ Development may qualify for points under this subparagraph if it meets one of the criteria in clauses (i) - (vi) of this subparagraph.

(i) The Development is located within 4 miles of 16,500 jobs. (6 points)

(ii) The Development is located within 4 miles of 13,500 jobs. (5 points)

(iii) The Development is located within 4 miles of 10,500 jobs. (4 points)

(iv) The Development is located within 4 miles of 7,500 jobs. (3 points)

(v) The Development is located within 4 miles of 4,500 jobs. (2 points)

(vi) The Development is located within 4 miles of 2,000 jobs. (1 point)

(8) Readiness to proceed in disaster impacted counties. Due to uncertainty linked to the COVID-19 pandemic, scoring for all Applicants under this item is suspended (no points may be requested, nor will they be awarded) for 2022 HTC Applications. An Application for a proposed Development that is located in a county declared by the Federal Emergency Management Agency to be eligible for individual assistance, within four years preceding December 1, 2021. Federal Emergency Management Agency declarations that apply to the entire state at any point in time prior to Application do not apply. The Applicant must provide a certification that they will close all financing and fully execute the construction contract on or before the last business day of November or as otherwise permitted under subparagraph (C) of this paragraph. For the purposes of this paragraph only, an Application may be designated as "priority." Applications in the At-Risk or USDA Set-asides are not eligible for these points. (5 points)

(A) Applications must include evidence that appropriate zoning will be in place at award and acknowledgement from all lenders and the syndicator of the required closing date.

(B) The Board cannot and will not waive the deadline and will not consider waiver under its general rule regarding waivers. Failure to close all financing and provide evidence of an executed construction contract by the November deadline will result in penalty under ~~10 TAC~~ §11.9(f), as determined solely by the Board.

(C) Applications seeking points under this paragraph will receive an extension of the November deadline equivalent to the period of time they were not indicated as a priority Application, if they ultimately receive an award. The period of the extension begins on the date the Department publishes a list or log showing an Application without a priority designation, and ends on the earlier of the date a log is posted that shows the Application with a priority designation, or the date of award.

(d) Criteria promoting community support and engagement.

(1) Local Government Support. (§2306.6710(b)(1)(B)) 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 Final Input from Elected Officials Delivery Date and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2(a) of this chapter, relating to Competitive HTC Deadlines. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. Resolutions received by the Department setting forth that the municipality and/or county objects to or opposes the Application or Development will result in zero points awarded to the Application for that Governing Body. If a Development site is located partially within a municipality

and partially within a county or extraterritorial jurisdiction, positive points will only be awarded if a resolution is obtained from both entities. Such resolutions will be added to the Application posted on the Department's website. Once a resolution is submitted to the Department it may not be changed or withdrawn. 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 points from either:

(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 clause (i) or (ii) of this subparagraph and under clause (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, the Application will receive points from either:

(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. (§2306.6725(a)(5)) The source of the funding cannot be the Applicant, Developer, or an Affiliate of the Applicant. The commitment of Development funding must be reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form or reflected in a lower cost in the Development Cost Schedule, such as notation of a reduction in building permits and related costs. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction over the proposed Development stating they will provide a loan, grant, reduced fees or contribution of other value that equals $500 or more for Applications located in Urban subregions or $250 or more for Applications located in Rural subregions for the

benefit of the Development. The letter must describe the value of the contribution, the form of the contribution, e.g. reduced fees or gap funding, and any caveats to delivering the contribution. Once a letter is submitted to the Department it may not be changed or withdrawn. (1 point)

(3) Declared Disaster Area. (§2306.6710(b)(1)(H); §42(m)(1)(C)(i)) 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 Tex. Gov't Code §418.014.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(I); §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 current, valid existence with boundaries that contain the entire Development Site -. In addition, the Neighborhood Organization must be on record 30 days prior to the beginning of the Application Acceptance period with the Secretary of State or county in which the Development Site is located as of the beginning of the Application Acceptance Period. Once a letter is submitted to the Department it may not be changed or withdrawn. The written statement must meet all of the requirements in subparagraph (A) of this paragraph. Letters received by the Department setting forth that the eligible Neighborhood Organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website. Written statements from the Neighborhood Organizations included in an Application and not received by the Department from the Neighborhood Organization will not be scored but will be counted as public comment.

(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 entire Development Site and that the Neighborhood Organization meets the definition pursuant to Tex. Gov't 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 Tex. Gov't 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% of the current membership of the Neighborhood Organization consists of homeowners and/or tenants living 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 should be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this paragraph, 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 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;

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

(iv) notification regarding deadlines for submission of responses to Administrative Deficiencies.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in only one of the 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) ~~n~~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) ~~e~~Eight (8) points for explicitly stated support from a Neighborhood Organization.~~;~~

(iii) ~~s~~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) ~~f~~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) ~~f~~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) ~~z~~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 May 1, 2022. The Neighborhood Organization expressing opposition will be given seven 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. Should the Neighborhood Organization's statements be found to be contrary to findings or determinations of a local Government Entity, or should the Neighborhood Organization not respond in seven calendar days, then the Application shall be eligible for four (4) points under subparagraph (C)(v) of this subsection.

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2); §2306.6710(f) and (g)) Applications may receive up to eight (8) points for express support, zero points for neutral statements, or have deducted up to eight (8) points for express opposition.

(A) Letter from a State Representative. To qualify under this subparagraph, letters must be on the State Representative's letterhead or submitted in such a manner as to verify the sender, be signed by the State Representative, identify the specific Development and express whether the letter conveys support, neutrality, or opposition. 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(a) of this chapter (relating to Competitive HTC Deadlines). Letters received by the Department from State Representatives will be added to the Application posted on the Department's website. 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. If the office is vacant, the Application will be considered to have received a neutral letter. Neutral letters or letters that do not specifically refer to the Development will receive zero (0) points. A letter from a state representative expressing the level of community support may be expressly based on the representative's understanding or assessments of indications of support by others, such as local government officials, constituents, or other applicable representatives of the community. In providing this letter, pursuant to Tex. Gov't Code §2306.6710(b)(1)(J), a representative may either express their position of support, opposition, or neutrality regarding the Application, which shall be presumed to reflect their assessment of the views of their constituents, or they may provide a statement of the support, opposition, or neutrality of their constituents regarding the Application without expressing their personal views on the matter.

(B) No Letter from a State Representative. To qualify under this subparagraph, no written statement can be received for an Application from the State Representative who represents the geographic area in which the proposed Development is located, unless the sole content of the written statement is to convey to the Department that no written statement will be provided by the State

Representative for a particular Development. Points available under this subparagraph will be based on how an Application scores under §11.9(d)(1), of this section~~,~~ (relating to Local Government Support). If a Development site is located partially within a municipality and partially within a county or extraterritorial jurisdiction, positive points will only be awarded if a resolution is obtained from both entities. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

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

(I) Eight (8) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; or

(III) Negative eight (-8) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development.

(ii) Within the extraterritorial jurisdiction of a municipality, the Application will receive points under subclause (I) or (II) or (III) of this subparagraph, and under subclause (IV) or (V) or (VI) of this subparagraph.~~:~~

(I) Four (4) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development.~~; or~~

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.~~; or~~

(III) Negative four (-4) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development.~~; and~~

(IV) Four (4) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development.~~; or~~

(V) Zero (0) points for no resolution or a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.~~; or~~

(VI) Negative four (-4) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development.

(iii) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

(I) Eight (8) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development; or~~.~~

(III) Negative eight (-8) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development.

(6) Input from Community Organizations. (§2306.6725(a)(2)) Where, at the time of Application, the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization or there is a qualifying Neighborhood Organization that has given no statement or a statement of neutrality (as described in clauses (4)(C)(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), or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters of support must be submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. 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. Letters received by the Department setting forth that the community organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website.

(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. 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 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 Applicant must provide evidence that the community or civic organization remains in good standing by providing evidence from a federal or state government database confirming that the exempt status continues. An Organization must also provide evidence of its participation in the community in which the Development Site is located including, but not limited to, a listing of services 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 as described in subparagraph C), or taxing entities.

(B) An Application may receive two (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 two (2) points for a letter of support from a Special Management District formed under Tex. Local Gov't Code chapter 375 whose boundaries, as of the Full Application Delivery Date as identified in §11.2(a) of this chapter, (relating to Competitive HTC Deadlines, 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) Concerted Revitalization Plan. (§42(m)(1)(B)(ii)(III) and (C)(iii)). An Application may qualify for up to seven (7) points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(A) For Developments located in an Urban Area:

(i) An Application may qualify to receive points if the Development Site is geographically located within an area ~~-~~for which a concerted revitalization plan (plan or CRP) has been developed and published by the municipality.

(ii) A plan may consist of one or two~~more~~ complementary local planning documents that together have been approved by the municipality as a plan to revitalize the specific area. The plan and supporting documentation must be submitted using the CRP Application Packet. No more than two local plans may be submitted for each proposed Development. The concerted revitalization plan may be a Tax Increment Reinvestment Zone (TIRZ) or Tax Increment Finance (TIF) or similar plan. A city- or county-wide comprehensive plan, including a consolidated plan or one-year action plan required to receive HUD funds does not equate to a concerted revitalization plan unless evidence is presented that additional efforts have been undertaken to meet the requirements in clause (iii) of this subparagraph.

(iii) The area targeted for revitalization must be larger than the assisted housing footprint.

(iv) The Application must include a copy of the plan or a link to the online plan and a description of where specific information required below can be found in the plan. The plan must meet the criteria described in subclauses (I) and (II) of this clause:

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

(II) The plan must be current at the time of Application.

(v) If the Application includes an acceptable Concerted Revitalization Plan, up to seven (7) points will be awarded as follows:

(I) the proposed Development Site is located within a Qualified Census Tract (7 points); or

(II) the proposed Development Site is not located within a Qualified Census Tract and in addition to all requirements for this paragraph has also submitted a letter from the appropriate local official for the municipality (or county if the Development Site is completely outside of a municipality) that

explicitly identifies the proposed Development as contributing to the concerted revitalization efforts of the municipality or county (as applicable) (7 points); or

(III) the proposed Development Site is not located with a Qualified Census Tract and does not have a letter described in subclause (II) of this clause (5 points).

(B) ~~(i)~~ For Developments located in a Rural Area the Rehabilitation, or demolition and Reconstruction, of a Development in a rural area that has been leased and occupied at 85% or greater for the six months preceding Application by low income households and which was initially constructed 25 or more years prior to Application submission as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program. The occupancy percentage will not include Units that cannot be occupied due to needed repairs, as confirmed by the SCR or CNA. Demolition and relocation of units must be determined locally to be necessary to comply with the Affirmatively Furthering Fair Housing Rule, or if necessary to create an acceptable distance form Undesirable Site Features or Neighborhood Risk Factors. (7 points)

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) 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 permanent lender. In addition to the signed pro forma, a lender approval letter must be submitted. An acceptable form of lender approval letter may be obtained in the Uniform Multifamily Application Templates.~~:~~ Scoring will be awarded as follows:

(A) If the letter evidences review of the Development alone it will receive twenty-four (24) points; or

(B) If the letter is from the Third Party permanent lender and evidences review of the Development and the Principals, it will receive twenty-six (26) points; or

(C) If the Development is Supportive Housing and meets the requirements of ~~10 TAC~~ §11.1(d)(126~~2~~)(E)(i), it will receive twenty-six (26) points; or

(D) If the Development is part of the USDA set-aside and meets the requirements of ~~10 TAC~~ §11.5(2) and the letter is from the Third Party construction lender, and evidences review of the Development and the Principals, it will receive twenty-six (26) points; or

(E) If the Department is the only permanent lender, and the Application includes the evaluation of the Request for Preliminary Determination submitted under ~~10 TAC~~ §11.8(d), it will receive twenty-six (26) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) For the purposes of this scoring item, Eligible Building Costs will be defined as Building Costs voluntarily included in Eligible Basis for the purposes of determining a Housing Credit Allocation. Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and voluntary

Eligible Hard Costs will include general contractor overhead, profit, and general requirements. 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. If the proposed Development is a Supportive Housing Development, the NRA will include Common Area up to 75 square feet per Unit, of which at least 50 square feet will be conditioned.

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

(i) the Development is elevator served, meaning it is either an 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 75% single family design;

(iii) the Development is Supportive Housing; or

(iv) the Development Site qualifies for a minimum of five (5) points under subsection (c)(4)(A) and (B) of this section, related to Opportunity Index, and is located in an Urban Area.

(B) Applications proposing New Construction or Reconstruction or Adaptive Reuse will be eligible for twelve (12) points if one of the following conditions is met:

(i) the voluntary Eligible Building Cost per square foot is less than $82.67 per square foot;

(ii) the voluntary Eligible Building Cost per square foot is less than $88.58 per square foot, and the Development meets the definition of a high cost development;

(iii) the voluntary Eligible Hard Cost per square foot is less than $106.29 per square foot; or

(iv) the voluntary Eligible Hard Cost per square foot is less than $118.10 per square foot, and the Development meets the definition of high cost development.

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

(i) the voluntary Eligible Building Cost per square foot is less than $84.36 per square foot;

(ii) the voluntary Eligible Building Cost per square foot is less than $94.48 per square foot, and the Development meets the definition of a high cost development;

(iii) the voluntary Eligible Hard Cost per square foot is less than $112.19 per square foot; or

(iv) the voluntary Eligible Hard Cost per square foot is less than $124.01 per square foot, and the Development meets the definition of high cost development.

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

(i) the voluntary Eligible Building Cost is less than $106.29 per square foot; or

(ii) the voluntary Eligible Hard Cost is less than $129.91 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 voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $118.10 per square foot; or

(ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $153.53 per square foot, located in an Urban Area, and that qualify for 5 or more points under subsection (c)(4)(A) and (B) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $153.53 per square foot.

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted by the Pre-Application Final Delivery Date. Applications that meet all of the requirements described in subparagraphs (A) - (H) of this paragraph will qualify for six (6) points:

(A) The total number of Units does not increase by more than 10% 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, or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self-score form) does not vary by more than four (4) 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. The site at full Application may not require notification to any person or entity not required to have been notified at pre-application; ~~and~~

(G) The Development Site does not have the following Neighborhood Risk Factors as described in ~~10 TAC~~ §11.101(a)(3) that were not disclosed with the pre-application:

(i) the Development Site is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military

installation) in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(ii) The Development Site is located within the attendance zone of an elementary school, a middle school or a high school that has a TEA Accountability Rating of D for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding or a TEA Accountability Rating of F for the most recent year available prior to Application and a Met Standard Rating by the Texas Education Agency for the most recent available year preceding; and.

(H) 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 5% of the total Units are restricted to serve households at or below 30% 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 9% 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 9% of the Total Housing Development Cost (3 points); or

(iii) if the Housing Tax Credit funding request is less than 10% of the Total Housing Development Cost (2 points); or

(iv) if the Housing Tax Credit funding request is less than 11% 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% 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. (§§2306.6725(a)(5) and (7); 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 (4) points for this item.

(A) Development Owners that agree to extend the Affordability Period for a Development to 45 years

total. (4 points)

(B) Development Owners that agree to extend the Affordability Period for a Development to 40 years total. (3 points)

(C) Development Owners that agree to extend the Affordability Period for a Development to 35 years total. (2 points)

(6) Historic Preservation. (§2306.6725(a)(6); §42(m)(1)(C)(x)) An Application may qualify to receive five (5) points if at least 75% of the residential Units shall reside within the Certified Historic Structure. The Development must receive historic tax credits before or by the issuance of Forms 8609. The Application must include either documentation from the Texas Historical Commission that the Property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status and evidence that the Texas Historic Commission received the request for determination of preliminary eligibility and supporting information on or before February 1 of the current year (5 points).

(7) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)). An Application may receive points under subparagraphs (A) and (B) of this paragraph.

(A) 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 Tex. Gov't 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).

(B) The Development at the time of LURA execution is single family detached homes on separate lots or is organized as condominiums under Chapter 81 or 82 of the Texas Property Code ~~is designed as single-family detached homes~~ and commits to offer a right of first refusal to tenants of the property to purchase the dwelling at the end of the Compliance Period. A de minimus amount of a participating tenant's rent may be attributed to the purchase of a Unit. Such commitment will be reflected in the LURA for the Development. The Applicant must provide a description of how they will implement the 'rent-to-own' activity, how they will make tenants aware of the opportunity, and how they will implement the right at the end of the Compliance Period. Such a Development may not be layered with National Housing Trust Funds. §42(m)(1)(C)(viii) (1~~3~~ point~~s~~)

(8) Funding Request Amount. The Application requests no more than 100% of the amount of LIHTC available within the subregion or set-aside as determined by the regional allocation formula on or before December 1, 2021. (1 point)

(f) Factors Affecting Scoring and Eligibility in current and future Application Rounds. Staff may recommend to the Board and the Board may find that an Applicant or Affiliate should be ineligible to compete in the following year's competitive Application Round or that it should be assigned a penalty deduction in the following year's competitive Application Round of no more than two points for each submitted Application (Tex. Gov't Code §2306.6710(b)(2)) because it meets the conditions for any of the items listed in paragraphs (1) - (4) of this subsection. For those items pertaining to non-

statutory deadlines, an exception to the penalty may be made if the Board or Executive Director, as applicable, makes an affirmative finding setting forth that the need for an extension of the deadline was 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 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. The Executive Director may make a determination that the matter does not warrant point deduction only for paragraph (1). (§2306.6710(b)(2)) Any deductions assessed by the Board for paragraphs (1), (2), (3), or (4) of this subsection based on a Housing Tax Credit Commitment from a preceding Application round will be attributable to the Applicant or Affiliate of an Application submitted in the Application round referenced above.

(1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10% Test deadline(s) or has requested an extension of the Carryover submission deadline or the 10% Test deadline (relating to either submission or expenditure).

(2) If the Applicant or Affiliate failed to meet the federal commitment or expenditure requirements, deadlines to enter into a Contract or close a Direct Loan, or did not meet benchmarks of their Contract with the Department.

(3) If the Applicant or Affiliate, in the Competitive HTC round immediately preceding the current round, failed to meet the deadline to both close financing and provide evidence of an executed construction contract under ~~10 TAC~~ §11.9(c)(8) related to construction in specific disaster counties.

(4) If the Developer or Principal of the Applicant has violated or violates the Adherence to Obligations.

§11.10. Third Party Request for Administrative Deficiency for Competitive HTC Applications.

(a) The purpose of the Third Party Request for Administrative Deficiency (RFAD) process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. While an Administrative Deficiency may be issued as the result of an RFAD, not all RFADs will result in an Administrative Deficiency being issued.

(b) staff will consider each RFAD received and proceed as it deems appropriate under the applicable rules including, if the Application in question has a noncompetitive score relative to other Applications in the same Set-Aside or subregion or will not be eligible for an award through the collapse as outlined in ~~10 TAC~~ §11.6(3), not reviewing the matter further.

(c) If the assertion(s) in the RFAD describe matters that are part of the Application review process, and the RFAD does not contain information not present in the Application, staff will not review or act on it.

(d) The RFAD and any testimony presented to the Board regarding the result of an RFAD may not be

used to appeal staff decisions regarding competing Applications (§2306.6715(b)). Any RFAD that questions a staff decision regarding staff's scoring of an Application filed by another Applicant will be disregarded.

(e) Requestors must provide, at the time of filing the request all information that the requestor offers in support of the deficiency. A copy of the request and supporting information must be provided by the requestor directly to the Applicant at the same time it is provided to the Department. Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered. An RFAD that expresses the requestor's opinion will not be considered.

(f) Staff shall provide to the Board a written report summarizing each third party request for administrative deficiency and the manner in which it was addressed. Interested persons may provide testimony on this report before the Board takes any formal action to accept the report. When the Board receives a report on the disposition of RFADs it may, for any staff disposition contained in the report, change the conclusion if it believes the change is necessary to bring the result into compliance with applicable laws and rules as construed by the Board; or if based on public testimony, it believes staff's conclusion should be revisited, it may remand the RFAD to staff for further consideration, which may result in a reaffirmation, reversal, or modification.

(g) The results of a RFAD may not be appealed by the requestor, and testimony to the Board arguing staff's determination will not be considered unless the requestor can show that staff failed to follow the applicable rule.

(h) A scoring notice or termination notice that results from a RFAD may be appealed by the Applicant as further described in §11.902 of this chapter, relating to Appeals Process.

(i) Information received after the RFAD deadline will not be considered by staff or presented to the Board unless the information is of such a matter as to warrant a termination notice.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

SUBCHAPTER B SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS

§11.101. Site and Development Requirements and Restrictions.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

(a) Site Requirements and Restrictions. The purpose of this section is to identify specific requirements and restrictions related to a Development Site seeking multifamily funding or assistance from the Department.

(1) Floodplain. New Construction or Reconstruction Developments located within a 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. The Applicant will have to use floodplain maps and comply with regulation as they exist at the time of commencement of construction. 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 federal or local requirements they must also be met. Applicants requesting NHTF funds from the Department must also meet the federal environmental provisions under 24 CFR §93.301(f)(1)(vi). Applicants requesting HOME or NSP1 PI funds from the Department must meet the federal environmental provisions under 24 CFR Part 58, as in effect at the time of execution of the Contract between the Department and the Owner. 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 100 year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from HUD or USDA are exempt from this requirement, to the extent NHTF is not being requested from the Department., ~~but~~ All Developments located within a 100 year floodplain must state in the Tenant Rights and Resource Guide that part or all of the Development Site is located in a floodplain, and that it is encouraged that they consider getting appropriate insurance or take necessary precautions. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the 100 year floodplain provided the 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, as certified to by a Third Party engineer.

(2) Undesirable Site Features. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (VA) may be granted an exemption; however, depending on the undesirable site feature(s) staff may recommend mitigation still be provided as appropriate. Such an exemption must be requested at the time of or prior to the filing of an Application. Historic Developments that would otherwise qualify under §11.9(e)(6) of this chapter (related to Criteria promoting the efficient use of limited resources and applicant accountability) may be granted an exemption, and such exemption must be requested at the time of or prior to the filing of an Application. The distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature, unless otherwise noted below. Where there is a local ordinance that specifies the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, then such smaller distances may be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. Pre-existing zoning does not meet the requirement for a local ordinance. If a state or federal cognizant agency would require a new facility under its jurisdiction to have a minimum separation from housing, the Department will defer to that agency and require the same separation for a new housing facility near an existing regulated or registered facility. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (L)~~(K)~~ of this paragraph, staff may issue a Deficiency. Requests for pre-determinations

of Site eligibility prior to pre- application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit a request for pre-determination at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer a request for a pre-determination may be submitted prior to Application submission. An Applicant should understand that any determination made by staff or the Board at that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the Undesirable Site Features become available while the Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated by staff and may result in deficiency or termination. The following are Undesirable Site Features:

(A) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Texas Transportation Code §396.001;

(B) Development Sites located within 300 feet of a solid waste facility or sanitary landfill facility or illegal dumping sites (as such dumping sites are identified by the local municipality);

(C) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D) Development Sites in which any of the buildings or designated recreational areas (including pools), excluding parking areas, are to be located within 100 feet of the nearest line or structural element of any overhead high voltage transmission line, support structures for high voltage transmission lines, or other similar structures. This does not apply to local service electric lines and poles;

(E) Development Sites located within 500 feet of active railroad tracks, measured from the closest rail to the boundary of the Development Site, unless:

(i) the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone covering the area within 500 feet of the Development Site;

(ii) the Applicant has engaged a qualified Third Party to perform a noise assessment and the Applicant commits to perform sound mitigation in accordance with HUD standards as if they were directly applicable to the Development; or

(iii) the railroad in question is commuter or light rail;

(F) Development Sites located within 500 feet of heavy industry (i.e. facilities that require extensive use of land and machinery, produce high levels of external noise such as manufacturing plants, or maintains fuel storage facilities (excluding gas stations);

(G) Development Sites located within 10 miles of a nuclear plant;

(H) Development Sites in which the buildings are located within the accident potential zones or the

runway clear zones of any airport;

(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids or Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance (PIPA);

(J) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily;

(K) Development Sites that are within the boundaries of ~~would violate~~ a Joint Land Use Study for any military Installation; or

(L) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents or render the Site inappropriate for housing use and which cannot be adequately mitigated. If staff believe that a Site should be deemed unacceptable under this provision due to information that was not included in the Application, it will provide the Applicant with written notice and an opportunity to respond.

(3) Neighborhood Risk Factors.

(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. For Competitive HTC Applications, an Applicant must disclose at pre-application as required by §11.8(b) of this chapter. Requests for pre-determinations of Site eligibility prior to pre- application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre- application or for Tax-Exempt Bond Developments utilizing a local issuer a request for a pre-determination may be submitted prior to Application submission. An Applicant should understand that any determination made by staff or the Board at that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the Neighborhood Risk Factors become available while the Tax- Exempt Bond Development or Direct Loan only Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated by staff and may result in staff issuing a Deficiency. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, staff will issue a Material Deficiency. An Applicant's own non-disclosure is not appealable as such appeal is in direct conflict with certifications made in the Application and within the control of the Applicant. The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and include, where applicable, a review as described in subparagraph (C) of this paragraph. Mitigation to be considered by staff, including those allowed in subparagraph (C) of this paragraph, are identified in subparagraph (D) of this paragraph.

Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility.

(B) The Neighborhood Risk Factors include those noted in clauses (i) - (iv) of this subparagraph and additional information as applicable to the neighborhood risk factor(s) disclosed as provided in subparagraphs (C) and (D) of this paragraph must be submitted in the Application. In order to be considered an eligible Site despite the presence of Neighborhood Risk Factors, an Applicant must demonstrate actions being taken that would lead staff to conclude that there is a high probability and reasonable expectation the risk factor will be sufficiently mitigated or significantly improved prior to placement in service and that the risk factor demonstrates a positive trend and continued improvement. Conclusions for such reasonable expectation may need to be affirmed by an industry professional, as appropriate, and may be dependent upon the severity of the Neighborhood Risk Factor disclosed.

(i) ~~t~~The Development Site is located within a census tract that has a poverty rate above 40% for individuals (or 55% for Developments in regions 11 and 13).

(ii) ~~t~~The Development Site is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(iii) ~~t~~The Development Site is located within 1,000 feet (measured from nearest boundary of the Site to the nearest boundary of blighted structure) of multiple vacant structures that have fallen into such significant disrepair, overgrowth, or vandalism that they would commonly be regarded as blighted or abandoned.

(iv) ~~t~~The Development Site is located within the attendance zone of an elementary school, a middle school or a high school that has a TEA Accountability Rating of D for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding or a TEA Accountability Rating of F for the most recent year available prior to Application and a Met Standard Rating by the Texas Education Agency for the most recent available year preceding. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. Schools with an application process for admittance, limited enrollment or other requirements that may prevent a child from attending will not be considered as the closest school or the school which attendance zone contains the site. 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. Sixth grade centers will be considered as part of the middle school rating. Elderly Developments, Developments encumbered by a TDHCA LURA on the first day of the Application Acceptance Period or date the pre-application is submitted (if applicable), and Supportive Housing SRO Developments or Supportive Housing Developments where all Units are Efficiency Units are exempt and are not required to provide mitigation for this subparagraph, but are still required to provide rating information in the Application and disclose the presence of the Neighborhood Risk Factor.

(C) Should any of the neighborhood risk factors described in ~~subparagraph~~clauses ~~(B)~~(ii)-(iv) of subparagraph (B) of this paragraph exist, the Applicant must submit the Neighborhood Risk Factors Report that contains the information described in clauses (i) - (viii) of this subparagraph, if such information pertains to the Neighborhood Risk Factor(s) disclosed, and mitigation pursuant to subparagraph (D) of this paragraph so staff may conduct a further Development Site and neighborhood review. The Neighborhood Risk Factors Report cannot be supplemented or modified unless requested by staff through the deficiency process. Due to TEA not releasing Accountability Ratings for the 2020-2021 school year as a result of COVID-19, mitigation for schools as described in subparagraphs, (B), (C), and (D) of this paragraph is not required for Applications submitted in 2022. The information required includes:

(i) a determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;

(ii) an assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;

(iii) an assessment concerning any of the features reflected in paragraph (2) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (2) of this subsection;

(iv) an assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the Primary Market Area, including comment on concentration based on the size of the Primary Market Area;

(v) an assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located;

(vi) an assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy;

(vii) A copy of the TEA Accountability Rating Report for each of the schools in the attendance zone containing the Development that received a TEA Accountability Rating of D for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding or a TEA Accountability Rating of F for the most recent year available prior to Application

and a Met Standard Rating by the Texas Education Agency for the most recent available year preceding, along with a discussion of performance indicators and what progress has been made over the prior year, and progress relating to the goals and objectives identified in the campus improvement plan or turnaround plan pursuant to §39.107 of the Texas Education Code in effect. The actual campus improvement plan does not need to be submitted unless there is an update to the plan or if such update is not available, information from a school official that speaks to progress made under the plan as further indicated under subparagraph (D)(iv) of this paragraph; and

(viii) Any additional information necessary to complete an assessment of the Development Site, as requested by staff.

(D) Information regarding mitigation of neighborhood risk factors should be relevant to the risk factors that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application, and should include the measures described in clauses (i) - (iv) of this subparagraph or such other mitigation as the Applicant determines appropriate to support a finding of eligibility. If staff determines that the Development Site cannot be found eligible and the Applicant appeals that decision to the Board, the Applicant may not present new information at the Board meeting. In addition to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing. Due to TEA not releasing Accountability Ratings for the 2020-2021 school year as a result of COVID-19, mitigation for schools as described in subparagraphs (C) and (D) of this paragraph is not required for Applications submitted in 2022.

(i) ~~m~~Mitigation for Developments in a census tract that has a poverty rate that exceeds 40% may include a resolution from the Governing Body of the appropriate municipality or county containing the Development, acknowledging the high poverty rate and authorizing the Development to move forward. A Neighborhood Risk Factors Report is not required to be submitted, the resolution alone will suffice. If the Development is located in the ETJ, the resolution would need to come from the county.

(ii) ~~e~~Evidence by the most qualified person that the data and evidence establish that there is a reasonable basis to proceed on the belief that the crime data shows, or will show, a favorable trend such that within the next two years Part I violent crime for that location is expected to be less than 18 per 1,000 persons or the data and evidence reveal that the data reported on neighborhoodscout.com does not accurately reflect the true nature of what is occurring and what is actually occurring does not rise to the level to cause a concern to the Board over the level of Part I violent crime for the location. The data and evidence may be based on violent crime data from the city's police department or county sheriff's department, as applicable based on the location of the Development, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that yields a crime rate below the threshold indicated in this section or that would yield a crime rate below the threshold indicated in this section by the time the Development is placed into service. The instances of violent crimes within the police beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. The data must include incidents reported during the entire ~~2019 and~~ calendar year previous to the year of Application. Violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under

subparagraph (C) of this paragraph. A written statement from the most qualified person (i.e. Chief of Police or Sheriff (as applicable) or the police officer/detective for the police beat or patrol area containing the proposed Development Site), including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts must be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. It is expected that such written statement would also speak to whether there is a reasonable expectation that based on the efforts underway there is crime data that reflects a favorable downward trend in crime rates. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typical scope of work and should include a security plan, partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the Applicant's existing properties should also be submitted, if applicable.

(iii) ~~e~~Evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public or private investment. Acceptable mitigation to address extensive blight should include a plan, whereby it is contemplated such blight or infestation will have been remediated within no more than two years from the date of the award and that a responsible party will use the blighted property in a manner that complies with local ordinances. In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.

(iv) ~~e~~Evidence of mitigation for each of the schools in the attendance zone that has a TEA Accountability Rating of D for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding or a TEA Accountability Rating of F for the most recent year available prior to Application and a Met Standard Rating by the Texas Education Agency for the most recent available year preceding may include satisfying the requirements of subclauses (I) - (III) of this clause.

(I) Documentation from a person authorized to speak on behalf of the school district with oversight of the school in question that indicates the specific plans in place and current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan and in restoring the school(s) to an acceptable rating status. The documentation should include actual data from progress already made under such plan(s) to date demonstrating favorable trends and should speak to the authorized persons assessment that the plan(s) and the data supports a reasonable conclusion that the school(s) will have an acceptable rating by the time the proposed Development places into service. The letter may, to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, plans to implement early childhood education, and long- term trends that would point toward their achieving an A, B, or C Rating by the time the Development is placed in service. The letter from such education professional should also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so. Such assessment could include whether the team involved has employed

similar strategies at prior schools and were successful.

(II) The Applicant provides evidence that it has entered into agreement with the applicable school district or elementary school that has not achieved a rating of A, B, or C, a Head Start provider with capacity in their charter, or a charter school provider to provide suitable and appropriately designed space on-site for the provision of an early childhood pre-K program at no cost to residents of the proposed Development. Suitable and appropriately designed space includes at a minimum a bathroom and large closet in the classroom space, appropriate design considerations made for the safety and security of the students, and satisfaction of the requirements of the applicable building code for school facilities. Such provision must be made available to the school or provider, as applicable, until the later of the elementary school that had not achieved a rating of A, B or C, or the school or provider electing to end the agreement. If a charter school or Head Start provider is the provider in the named agreement and that provider becomes defunct or no longer elects to participate in the agreement prior to the achievement of a rating of A, B or C, the Development Owner must document their attempt to identify an alternate agreement with one of the other acceptable provider choices. However if the contracted provider is the school district or the school who is lacking the A, B or C rating and they elect to end the agreement prior to the achievement of such rating, the Development will not be considered to be in violation of its commitment to the Department.

(III) The Applicant has committed that until such time the school(s) achieves a rating of A, B, or C it will operate an after school learning center that offers at a minimum 15 hours of weekly, organized, on-site educational services provided middle and high school children by a dedicated service coordinator or Third-Party entity which includes at a minimum: homework assistance, tutoring, test preparation, assessment of skill deficiencies and provision of assistance in remediation of those deficiencies (e.g., if reading below grade level is identified for a student, tutoring in reading skills is provided), research and writing skills, providing a consistent weekly schedule, provides for the ability to tailor assistance to the age and education levels of those in attendance, and other evidence-based approaches and activities that are designed to augment classroom performance. Up to 20% of the activities offered may also include other enrichment activities such as music, art, or technology.

(E) In order for the Development Site to be found eligible, including when mitigation described in subparagraph (D) of this paragraph is not provided in the Application, despite the existence of one or more Neighborhood Risk Factors, the Applicant must explain how the use of Department funds at the Development Site is consistent with the goals in clauses (i) - (iii) of this subparagraph. If the Board grants an Appeal of staff's determination of Site eligibility, the Board shall document the reasons for a determination of eligibility.

(i) ~~p~~Preservation of existing occupied affordable housing units to ensure they are safe and suitable or the new construction of high quality affordable housing units that are subject to federal rent or income restrictions.~~; and~~

(ii) ~~d~~Determination that the risk factor(s) that has been disclosed are not of such a nature or severity that should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph.~~; or~~

(iii) ~~n~~No mitigation was provided, or in staff's determination the mitigation was considered unsatisfactory and the Applicant has requested a waiver of the presence of Neighborhood Risk Factors on the basis that the Development is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order and such documentation is submitted with the disclosure.

(4) Site and Neighborhood Standards (Direct Loan only). A New Construction Development requesting federal funds must meet the Site and Neighborhood Standards in 24 CFR §983.57(e)(2) or (3). A Development requesting NHTF funds that meets the federal definition of reconstruction in 24 CFR §93.2 must also meet these standards.

(b) Development Requirements and Restrictions. The purpose of this subsection is to identify specific restrictions on a proposed Development requesting multifamily funding by the Department.

(1) Ineligible Developments. A Development shall be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph apply.

(A) General Ineligibility Criteria include: ~~.~~

(i) Developments such as hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities that are usually classified as transient housing (as provided in Code §42(i)(3)(B)(iii) and (iv));

(ii) any Development with any building(s) with four or more stories that does not include an elevator. Developments where topography or other characteristics of the Site require basement splits such that a tenant will not have to climb more than two stories to fully utilize their Unit and all Development amenities, will not require 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 proposes population limitations that violate §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; or

(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 at least the one-for-one replacement of the existing Unit mix. Adding additional units would not violate this provision.

(B) Ineligibility of Elderly Developments include: ~~.~~

(i) any Elderly Development of two stories or more that does not include elevator service for any Units or Common Areas above the ground floor;

(ii) any 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, or security officer. These employee Units must be specifically designated as such; or

(iii) any Elderly Development (including Elderly in a Rural Area) proposing more than 70% two-Bedroom Units.

(C) Ineligibility of Developments within Certain School Attendance Zones. Any Development that falls within the attendance zone of a school that has a TEA Accountability Rating of F for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding is ineligible with no opportunity for mitigation. Developments that are encumbered by a TDHCA LURA on the first day of the Application Acceptance Period or at the time of Pre-application (if applicable), an Elderly Development, or a Supportive Housing SRO Development or Supportive Housing Development where all Units are Efficiency Units are exempt.

(2) Development Size Limitations. The minimum Development size is 16 Units. Competitive Housing Tax Credit or Multifamily Direct Loan-only Developments involving New Construction or Adaptive Reuse in Rural Areas are limited to a maximum of 80 total Units. Tax-Exempt Bond Developments involving New Construction or Adaptive Reuse in a Rural Area must meet the Development size limitation and corresponding capture rate requirements in §11.302(i)(1)(C) of this chapter (related to Feasibility Conclusion). Rehabilitation 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, and meet the minimum Rehabilitation amounts identified in subparagraphs (A) - (C) of this paragraph. Such amounts must be maintained through the issuance of IRS Forms 8609. For Developments with multiple buildings that have varying placed in service dates, the earliest date will be used for purposes of establishing the minimum Rehabilitation amounts. Applications must meet the Rehabilitation amounts identified in subparagraphs (A), (B) or (C) of this paragraph. For Tax-Exempt Bond Developments that include existing USDA funding that is continuing or new USDA funding, staff may consider the cost standard under subparagraph (A) of this paragraph on a case-by-case basis.

(A) For Housing Tax Credit Developments under the USDA Set-Aside the Rehabilitation will involve at least $25,000 per Unit in Building Costs and Site Work.~~;~~

(B) For Tax-Exempt Bond Developments, less than 20 years old, based on the placed in service date, the Rehabilitation will involve at least $20,000 per Unit in Building Costs and Site Work. If such Developments are greater than 20 years old, based on the placed in service date, the Rehabilitation will involve at least $30,000 per Unit in Building Costs and Site Work.~~; or~~

(C) For all other Developments, the Rehabilitation will involve at least $30,000 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) - (N) of this paragraph.

Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (N) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), or (M) of this paragraph; however, access must be provided to a comparable amenity in a Common Area. All amenities listed below must be at no charge to the residents. Residents must be provided written notice of the applicable required amenities for the Development. The Board may waive one or more of the requirements of this paragraph for Developments that will include Historic Tax Credits, with evidence submitted with the request for amendment that the amenity has not been approved by the Texas Historical Commission or National Park Service, as applicable. Applicants for Multifamily Direct Loans should be aware that certain amenities are not eligible for Direct Loan funding, including without limitation, detached community spaces, furnishings, swimming pools, athletic courts, and playgrounds, as more fully described at §13.3 of this title, relating to General Loan Requirements. Amenities include:

(A) All Bedrooms, the dining room and living room in Units must be wired with current cabling technology for data and phone;

(B) Laundry connections;

(C) Exhaust/vent fans (vented to the outside) in the bathrooms;

(D) Screens on all operable windows;

(E) Disposal and Energy-Star or equivalently rated dishwasher (not required for USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);

(F) Energy-Star or equivalently rated refrigerator;

(G) Oven/Range;

(H) Blinds or window coverings for all windows;

(I) At least one Energy-Star or equivalently rated ceiling fan per Unit;

(J) Energy-Star or equivalently rated lighting in all Units;

(K) All areas of the Unit (excluding exterior storage space on an outdoor patio/balcony) must have heating and air-conditioning;

(L) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half spaces per Unit for non- Elderly Developments and one space per Unit for Elderly Developments. The minimum number of required spaces must be available to the tenants at no cost. If parking requirements under local code rely on car sharing or similar arrangements, the LURA will require the Owner to provide the service at no cost to the tenants throughout its term;

(M) Energy-Star or equivalently rated windows (for Rehabilitation Developments, only if windows

are planned to be replaced as part of the scope of work); and

(N) Adequate accessible parking spaces consistent with the requirements of the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 FR 29671, the Texas Accessibility Standards, and if covered by the Fair Housing Act, HUD's Fair Housing Act Design Manual.

(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:.

(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 residents and made available throughout normal business hours and maintained throughout the Affordability Period. Residents must be provided written notice of the elections made by the Development Owner. If fees or deposits 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 all applicable accessibility standards, including those adopted by the Department, and where a specific space or size requirement for a listed amenity is not specified then the amenity must be reasonably adequate based on the Development size. 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 and the amenities selected must be distributed proportionately across all sites. A Development composed of non-contiguous single family sites must provide a combination of unit and common amenities to equal the appropriate points under subparagraph (A) of this paragraph for the Development size. In the case of additional phases of a Development any amenities that are anticipated to be shared with the first phase development cannot be claimed for purposes of meeting this requirement for the second phase. The second phase must include enough points to meet this requirement that are provided on the Development Site, regardless of resident access to the amenity in another phase. All amenities must be available to all Units via an accessible route.

(C) The common amenities and respective point values are set out in clauses (i) - (v) of this subparagraph, which are grouped primarily for organizational purposes. Applicants are not required to select a specific number of amenities from each section. 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) Community Space for Resident Supportive Services includes:

(I) Except in Applications where more than 10% of the units in the proposed Development are Supportive Housing SRO Units, an Application may qualify to receive half of the points required under ~~10 TAC~~ §11.101(b)(5)(A)(i)-(vi) by electing to provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site. To receive the points the Applicant must commit to all of items (-a-) - (-c-) of this subclause.

(-a-) Space and Design. The educational space for the HQ Pre-K program must be provided on the Development Site and must be a suitable and appropriately designed space for educating children that an independent school district or open-enrollment charter school can utilize to establish and operate a HQ Pre-K program. This space includes at a minimum a bathroom and large closet in the classroom space; appropriate design considerations made for the safety and security of the students; including limited and secure ingress and egress to the classroom space; and satisfaction of the requirements of all applicable building codes for school facilities. The Applicant must provide in the Application a copy of the current school facility code requirements applicable to the Development Site and Owner and Architect certifications that they understand the associated space and design requirements reflected in those code requirements. The Application must also include acknowledgement by all lenders, equity providers and partners that the Application includes election of these points.

(-b-) Educational Provider. The Applicant must enter into an agreement, addressing all items as described in subitems (-1-) - (-5-) below, and provide evidence of such agreement to the Department on or before submission of the Cost Certification. Lack of evidence of such agreement by the deadline will be cause for rescission of the Carryover Agreement for Competitive HTC Applications.

(-1-) The agreement must be between the Owner and any one of the following: a school district; open- enrollment charter school; or Education Service Center. Private schools and private childcare providers, whether nonprofit or for profit, are not eligible parties, unless the private school or private childcare provider has entered into a partnership with a school district or open-enrollment charter school to provide a HQ Pre-K program in accordance with Texas Education Code Chapter 29, Subchapter E-1.

(-2-) The agreement must reflect that at the Development Site the educational provider will provide a HQ Pre-K program, in accordance with Texas Education Code Chapter 29, Subchapter E-1, at no cost to residents of the proposed Development and that is available for general public use, meaning students other than those residing at the Development may attend.

(-3-) Such agreement must reflect a provision that the option to operate the HQ Pre-K program in the space at the Development Site will continue to be made available to the school or provider until such time as the school or provider wishes to withdraw from the location. This provision will not limit the Owner's right to terminate the agreement for good cause.

(-4-) Such agreement must set forth the responsibility of each party regarding payment of costs to use the space, utility charges, insurance costs, damage to the space or any other part of the Development, and any other costs that may arise as the result of the operation of the HQ Pre-K program.

(-5-) The agreement must include provision for annual renewal, unless terminated under the provisions of item (-c-).

(-c-) If an education provider who has entered into an agreement becomes defunct or elects to withdraw from the agreement and provision of services at the location, as provided for in subitem (-b-)(-3-) of this subclause, the Owner must notify the Texas Commissioner of Education at least 30 days prior to ending the agreement to seek out any other eligible parties listed in subitem (-b-)(-1-) of this subclause above. If another interested open-enrollment charter school or school district is identified by the Texas Commissioner of Education or the Owner, the Owner must enter into a subsequent agreement with the interested open-enrollment charter school or school district and continue to offer HQ Pre-K services. If another interested provider cannot be identified, and the withdrawing provider certifies to the Department that their reason for ending the agreement is not due to actions of the Owner, the Owner will not be considered to be in violation of its commitment to the Department. If the Owner is not able to find a provider, they must notify the Commissioner annually of the availability of the space.

(II) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for children and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal 15 square feet times the total number of Units, but need not exceed 2,000 square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets or cabinetry (4 points).~~;~~

(III) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for adults and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal 10 square feet times the total number of Units, but need not exceed 1,000 square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets or cabinetry (2 points).~~;~~

(IV) Service provider office in addition to leasing offices (1 point).~~;~~

(ii) Safety amenities include:

(I) Controlled gate access for entrance and exit areas, intended to provide access that is limited to the Development's tenancy (1 point).~~;~~

(II) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point).~~;~~

(III) Twenty-four hour, seven days a week monitored camera/security system in each building. Monitoring may be on-site or off-site (2 points).~~;~~

(IV) Twenty-four hour, seven days a week recorded camera / security system in each building (1 point).;

(V) The provision of a courtesy patrol service that, at a minimum, answers after-hour resident phone calls regarding noise and crime concerns or apartment rules violations and that can dispatch to the apartment community a courtesy patrol officer in a timely manner (3 points).;

(iii) Health/ Fitness / Play amenities include:

(I) Accessible walking/jogging path, equivalent to the perimeter of the Development or a length that reasonably achieves the same result, separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point).;

(II) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 40 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (1 point).;

(III) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 20 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (2 points).;

(IV) One Children's Playscape Equipped for five to 12 year olds, or one Tot Lot (2 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if clause (V) of this subparagraph is not selected.; ~~or~~

(V) Two Children's Playscapes Equipped for five to 12 year olds, two Tot Lots, or one of each (4 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if clause (IV) of this subparagraph is not selected.;

(VI) Horseshoe pit; putting green; shuffleboard court; pool table; ping pong table; or similar equipment in a dedicated location accessible to all residents to play such games (1 point).;

(VII) Swimming pool (3 points).;

(VIII) Splash pad/water feature play area (1 point).;

(IX) Sport Court or field (including, but not limited to, Tennis, Basketball, Volleyball, Soccer or Baseball Field) (2 points).;

(iv) Design / Landscaping amenities include:

(I) Full perimeter fencing that contains the parking areas and all amenities (excludes guest or general public parking areas) (2 points).;

(II) Enclosed community sun porch or covered community porch/patio (1 point).;

(III) Dog Park area that is fully enclosed (the perimeter fencing may be used for part of the enclosure) and intended for tenant owned dogs to run off leash (requires that the Development allow dogs) (1 point).;

(IV) Shaded rooftop or structural viewing deck of at least 500 square feet (2 points).;

(V) Porte-cochere (1 point).;

(VI) Lighted pathways along all accessible routes (1 point).;

(VII) a resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water (which may be subject to local water usage restrictions) (1 point).;

(v) Community Resources amenities include:

(I) Gazebo, covered pavilion, or pergola with sitting area (seating must be provided) (1 point).;

(II) Community laundry room with at least one washer and dryer for every 40 Units (2 points).;

(III) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point). Grill must be permanently installed (no portable grills).;

(IV) Business center with workstations and seating internet access, 1 printer and at least one scanner which may be integrated with the printer, and either 2 desktop computers or laptops available to check-out upon request (2 points).;

(V) Furnished Community room (2 points).;

(VI) Library with an accessible sitting area (separate from the community room) (1 point).;

(VII) Activity Room stocked with supplies (Arts and Crafts, board games, etc.) (2 points).;

(VIII) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points).;

(IX) Community Theater Room equipped with a 52 inch or larger screen or projection with surround sound equipment; DVD player or a streaming service at no cost to residents; and seating (3 points).;

(X) High-speed Wi-Fi with advanced telecommunications capacity as determined under 47 U.S.C. 1302 or more with coverage throughout the clubhouse or community building (1 point).;

(XI) High-speed Wi-Fi with advanced telecommunications capacity as determined under 47 U.S.C.

1302 with coverage throughout the Development (2 points).;

(XII) Bicycle parking that allows for, at a minimum, one bicycle for every five Units, within reasonable proximity to each residential building that allows for bicycles to be secured with lock (lock not required to be provided to tenant) (1 point).;

(XIII) Package Lockers or secure package room. Automated Package Lockers or secure package room provided at a location within the complex that can be accessed by residents 24/7 and at no charge to the resident. To qualify, there would need to be at least one locker for every eight residential units (2 points).;

(XIV) Recycling Service (includes providing a storage location and service for pick-up) (1 point).;

(XV) Community car vacuum station (1 point).

(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. If the Development involves both Rehabilitation and Reconstruction or New Construction, the Reconstruction or New Construction Units must meet these requirements. The requirements are:

(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, Development Construction, and Energy and Water Efficiency 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 nine (9) points. Direct Loan Applications not layered with Housing Tax Credits must include enough amenities to meet a minimum of four (4) five (5) 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 Affordability Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments and Supportive Housing Developments will start with a base score of five (5) points. At least two (2) points must be selected from clause (iii), Energy and Water

Efficiency Features, of this subparagraph (B).

(i) Unit Features include:

(I) Covered entries (0.5 point);

(II) Nine foot ceilings in living room and all Bedrooms (at minimum) (1 point);

(III) Microwave ovens (0.5 point);

(IV) Self-cleaning or continuous cleaning ovens (0.5 point);

(V) 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);

(VI) Covered patios or covered balconies (0.5 point);

(VII) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);

(VIII) Built-in (recessed into the wall) shelving unit (0.5 point);

(IX) Breakfast Bar (a space, generally between the kitchen and dining area, that includes an area for seating although actual seating such as bar stools does not have to be provided) (0.5 point);

(X) Walk-in closet in at least one Bedroom (0.5 point);

(XI) 48-inch" upper kitchen cabinets (1 point);

(XII) Kitchen island (0.5 points);

(XIII) Kitchen pantry with shelving (may include the washer/dryer unit for Rehabilitation Developments only) (0.5 point);

(XIV) Natural stone or quartz countertops in kitchen and bath (1 point);

(XV) Double vanity in at least one bathroom (0.5 point); and

(XVI) Hard floor surfaces in over 50% of unit NRA (0.5 point).

(ii) Development Construction Features include:

(I) Covered parking (may be garages or carports, attached or freestanding) and include at least one covered space per Unit (1.5 points);

(II) Thirty year roof (0.5 point);

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

(IV) Electric Vehicle Charging Station (0.5 points);

(V) An Impact Isolation Class (IIC) rating of at least 55 and a Sound Transmission Class (STC) rating of 60 or higher in all Units, as certified by the architect or engineer of record (3 points); and

(VI) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Four (4) points may be selected from only one of the categories described in items (-a-) - (-d-) of this subclause. If the Development involves scattered sites, there must be green building features incorporated into each site in order to qualify for these points.

(-a-) Enterprise Green Communities. 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.

(-b-) Leadership in Energy and Environmental Design (LEED). 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).

(-c-) ICC/ASHRAE - 700 National Green Building Standard (NGBS). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NGBS Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(-d-) 2018 International Green Construction Code.

(iii) Energy and Water Efficiency Features include:

(I) Energy-Star or equivalently rated refrigerator with icemaker (0.5 point);

(II) Energy-Star or equivalently rated laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (2 points);

(III) Recessed LED lighting or LED lighting fixtures in kitchen and living areas (1 point);

(IV) Energy-Star or equivalently rated ceiling fans in all Bedrooms (0.5 point);

(V) EPA WaterSense or equivalent qualified toilets in all bathrooms (0.5 point);

(VI) EPA WaterSense or equivalent qualified showerheads and faucets in all bathrooms (0.5 point);

(VII) 15 SEER HVAC, or in Region 13, an efficient evaporative cooling system. For Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work,

a radiant barrier in the attic is provided, (1 point);

(VIII) 16 SEER HVAC, for New Construction or Rehabilitation (1.5 points); and

(IX) A rainwater harvesting/collection system or locally approved greywater collection system (0.5 points).

(7) Resident Supportive Services. The resident supportive services include those listed in subparagraphs (A) - (E) of this paragraph, which are grouped primarily for organizational purposes. Applicants are not required to select a specific number of services from each section. Tax Exempt Bond Developments must select a minimum of eight points; Direct Loan Applications not layered with Housing Tax Credits must include enough services to meet a minimum of four 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 title (relating to Monitoring for Social Services) and maintained throughout the Affordability Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. A Development Owner may be required to substantiate such service(s) if requested by staff. Should the QAP in subsequent years provide different services than those listed in subparagraphs (A) - (E) of this paragraph, the Development Owner may request an Amendment as provided in ~~10 TAC~~ §10.405(a)(2). The services provided should be those that will directly benefit the Target Population of the Development. Residents must be provided written notice of the elections made by the Development Owner. No fees may be charged to the residents for any of the services, there must be adequate space for the intended services and services offered should be accessible to all (e.g. exercises classes must be offered in a manner that would enable a person with a disability to participate). 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. These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider. Unless otherwise noted in a particular clause, courses and services must be offered by an onsite instructor(s).

(A) Transportation Supportive Services include:

(i) shuttle, at least three days a week, to a grocery store and pharmacy or a major, big-box retailer that includes a grocery store and pharmacy, OR a daily shuttle, during the school year, to and from nearby schools not served by a school bus system for children who live at the Development (3.5 points); and

(ii) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point). ~~;~~

(B) Children Supportive Services include:

(i) provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at

the Development Site meeting the requirements of ~~10 TAC~~ §11.101(b)(5)(C)(i)(I). (Half of the points required under ~~10 TAC~~ §11.101(b)(7)); and

(ii) Twelve hours of weekly, organized, on-site services provided to K-12 children by a dedicated service coordinator or third-party entity. Services include after-school and summer care and tutoring, recreational activities, character building programs, mentee opportunities, test preparation, and similar activities that promote the betterment and growth of children and young adults (3.5 points).~~;~~

(C) Adult Supportive Services include:

(i) Four hours of weekly, organized, on-site classes provided to an adult audience by persons skilled or trained in the subject matter being presented, such as English as a second language classes, computer training, financial literacy courses, health education courses, certification courses, GED preparation classes, resume and interview preparatory classes, general presentations about community services and resources, and any other course, class, or presentation that may equip residents with new skills that they may wish to develop (3.5 points);

(ii) annual income tax preparation (offered by an income tax prep service) or IRS-certified VITA (Volunteer Income Tax Assistance) program (offered by a qualified individual) that also emphasizes how to claim the Earned Income Tax Credit (1 point);

(iii) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; may include resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points); and

(iv) external partnerships for provision of weekly substance abuse meetings at the Development Site (1 point).~~;~~

(D) Health Supportive Services include:

(i) food pantry consisting of an assortment of non-perishable food items and common household items (i.e. laundry detergent, toiletries, etc.) accessible to residents at least on a monthly basis or upon request by a resident. While it is possible that transportation may be provided to a local food bank to meet the requirement of this resident service, the resident must not be required to pay for the items they receive at the food bank (2 points);

(ii) annual health fair provided by a health care professional (1 point);

(iii) weekly exercise classes (offered at times when most residents would be likely to attend) (2 points); and

(iv) contracted onsite occupational or physical therapy services for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points).~~;~~

(E) Community Supportive Services include:

(i) partnership with local law enforcement or local first responders to provide quarterly on-site social and interactive activities intended to foster relationships with residents (such activities could include playing sports, having a cook-out, swimming, card games, etc.) (2 points);

(ii) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);

(iii) twice monthly arts, crafts, and other recreational activities (e.g. Book Clubs and creative writing classes) (1 point);

(iv) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, holiday celebrations, etc.) (1 point);

(v) specific service coordination services offered by a qualified Owner or Developer, qualified provider or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (3 points);

(vi) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(vii) 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);

(viii) a part-time resident services coordinator with a dedicated office space at the Development or a contract with a third-party to provide the equivalent of 15 hours or more of weekly resident supportive services at the Development (2 points); and

(ix) provision, by either the Development Owner or a community partner, of an education tuition- or savings-match program or scholarships to residents who may attend college (2 points).

(8) Development Accessibility Requirements. All Developments must meet all specifications and accessibility requirements as identified in subparagraphs (A) - (F) 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 Federal law and as further defined in Chapter 1, Subchapter B of this title (relating to Accessibility Requirements). (§§2306.6722; 2306.6730).

(B) Regardless of building type, all Units accessed by the ground floor or by elevator (affected units) must comply with the visitability requirements in clauses (i) - (iii) of this subparagraph. Design specifications for each item must comply with the standards of the Fair Housing Act Design Manual. Buildings occupied for residential use on or before March 13, 1991 are exempt from this

requirement. If the townhome Units of a Rehabilitation Development do not have a bathroom on the ground floor, the Applicant will not be required to add a bathroom to meet the requirements of clause (iii) of this subparagraph. Visitability requirements include:

(i) All common use facilities must be in compliance with the Fair Housing Design Act Manual;

(ii) To the extent required by the Fair Housing Design Act Manual, there must be an accessible or exempt route from common use facilities to the affected units; and

(iii) Each affected unit must include the features in subclauses (I) - (V) of this clause:~~.~~

(I) At least one zero-step, accessible entrance;

(II) At least one bathroom or half-bath with toilet and sink on the entry level. The layout of this bathroom or half-bath must comply with one of the specifications set forth in the Fair Housing Act Design Manual;

(III) The bathroom or half-bath must have the appropriate blocking relative to the toilet for the later installation of a grab bar, if ever requested by the tenant of that Unit;

(IV) There must be an accessible route from the entrance to the bathroom or half-bath, and the entrance and bathroom must provide usable width; and

(V) Light switches, electrical outlets, and thermostats on the entry level must be at accessible heights.

(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, 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 Chapter 1, Subchapter B of this title (relating to Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act).

(E) For all Developments other than Direct Loan Developments, for the purposes of determining the appropriate distribution of accessible Units across Unit Types, assuming all the Units have similar features only the number of Bedrooms and full bathrooms will be used to define the Unit Type, but accessible Units must have an equal or greater square footage than the square footage offered in the smallest non-accessible Unit with the same number of Bedrooms and full bathrooms. For Direct Loan Developments, for purposes of determining the appropriate distribution of accessible Units across Unit Types, the definition of Unit Type will be used.

(F) Alternative methods of calculating the number of accessible Units required in a Development

must be approved by the Department prior to award or allocation.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

SUBCHAPTER C APPLICATION SUBMISSION REQUIREMENTS, INELIGIBILITY CRITERIA, BOARD DECISIONS AND WAIVER OF RULES

10 TAC §§11.201 - 11.207

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§11.201. Procedural Requirements for Application Submission.

This subchapter establishes 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 and the re-submitted Application relates to the same Development Site, consistent with §11.9(e)(3) (relating to Criteria promoting the efficient use of limited resources and applicant accountability). Applicants are subject to the schedule of fees as set forth in §11.901 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 §11.901 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; provided, however, that errors in the calculation of applicable fees may be cured via an Administrative Deficiency. The deficiency period for curing fee errors will be 5:00 p.m. on the third business day following the date of the deficiency notice and may not be extended. Failure to cure such an error timely will be grounds for termination.

(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 checks or original Carryover Allocation Agreements are physically delivered to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. All Applications and all related materials are to be delivered electronically pursuant to the Multifamily Programs Procedures Manual. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Applicants must ensure that all documents are legible, properly organized and tabbed, and that materials are fully readable by the Department.

(C) The Applicant must timely upload a PDF copy and Excel copy of the complete Application to the

Department's secure web transfer server. The PDF copy and Excel copy of the Application must match, if variations exist between the two copies, an Administrative Deficiency will be issued for the Applicant to identify which document to rely on. Each copy must be in a single file and individually bookmarked as further described in the Multifamily Programs Procedures Manual. Additional files required for Application submission outside the Uniform Application must also be uploaded to the secure web transfer server. It is the responsibility of the Applicant to confirm the upload to the Department's secure web transfer server was successful and to do so in advance of the deadline. Where there are instances of computer problems, mystery glitches, etc. that prevent the Application from being received by the Department prior to the deadline the Application may be terminated.

(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 must be submitted to the Department as described in either subparagraph (A) or (B) of this paragraph. Applications will be required to satisfy the requirements of this chapter and applicable Department rules that coincide with the year the Certificate of Reservation is issued. Those Applications that receive a Traditional Carryforward Designation will be subject to the QAP and applicable Department rules in place at the time the Application is received by the Department, unless determined otherwise by staff.

(A) Lottery Applications. At the option of the bond issuer, an Applicant may participate in the TBRB lottery for private activity bond volume cap. Applicants should refer to the TBRB website or discuss with their issuer or TBRB staff, the deadlines regarding lottery participation and the timing for the issuance of the Certificate of Reservation based on lottery results. Depending on the Priority designation of the application filed with TBRB, the Application submission requirements to the Department under clause (i) or (ii) of this subparagraph must be met. For those that participate in the Lottery but are not successful (i.e. a Certificate of Reservation will not be issued in January, but at some other time), the Application may not be submitted until a Certificate of Reservation has been issued (i.e. Priority 3 applications) or TBRB has sent an email stating the application is next in line (i.e. Priority 1 or 2), but the Certificate of Reservation cannot be issued until the Application is submitted.

(i) Priority 1 or 2 applications: If the Certificate of Reservation will be issued in January, the Applicant may submit the complete Application, including all required Third Party Reports, accompanied by the Application Fee described in §11.901 of this chapter as early as the beginning of December, to be tentatively scheduled for the March Board meeting or March target date for the issuance of the Determination Notice, as applicable. The Application must be submitted using the Draft Uniform Application released by the Department for the upcoming program year. The Applicant may choose to only submit the complete Application (excluding all required Third Party Reports), for purposes of meeting TBRB requirements to have the Certificate of Reservation issued. In this case, the Application will not be scheduled for a Board meeting or target date for the issuance of the Determination Notice, as applicable, until such time the Third Party Reports have been submitted, which should be on the fifth of the month. The Application may be scheduled for a Board meeting at which the decision to have the Determination Notice ~~administratively~~ issued would be made, or

the target date for the issuance of the Determination Notice, as applicable, approximately 90 days following the submission of such Third Party Reports. If the fifth day falls on a weekend or holiday, the submission deadline shall be on the next business day. For Third Party Reports that are submitted after the fifth of the month, it will be staff's discretion as to which Board meeting the Application will be presented, or target date for the issuance of the Determination Notice, as applicable.

(ii) Priority 3 applications: Once the Certificate of Reservation has been issued, the same Application submission requirements as indicated in clause (i) of this subparagraph apply. Specifically, an Applicant may submit the Application including or excluding the Third Party Reports, however, only after the Application is considered complete (i.e. Application Fee and all Third Party Reports) will staff schedule the Application for a Board meeting or target date for the issuance of the Determination Notice. The timing of when a Priority 3 Application is submitted to the Department is up to the Applicant and if not submitted on the fifth of the month, it will be staff's discretion as to which Board meeting the Application will be presented, or target date for the administrative issuance of the Determination Notice, as applicable.

(B) Non-Lottery Applications.

(i) Applications designated as Priority 1 or 2 by the TBRB must submit the Application Fee described in §11.901 of this chapter and the complete Application, with the exception of the Third Party Reports, before the Certificate of Reservation can be issued by the TBRB. The Third Party Reports, if not submitted with the Application to meet the TBRB submission requirement, must then be submitted on the fifth day of the month and the Application may be scheduled for a Board meeting at which the decision to have the Determination Notice issued would be made, or the target date for the administrative issuance of the Determination Notice, as applicable, approximately 90 days following such submission deadline. If the fifth day falls on a weekend or holiday, the submission deadline shall be on the next business day. Applicants may not ~~be allowed to~~ submit the Application until staff receives notice from TBRB that the application is next in line to receive a Certificate of Reservation; or

(ii) An Application designated as Priority 3 will not be accepted until after the TBRB has issued a Certificate of Reservation and may be submitted on the fifth day of the month. Priority 3 Application submissions must be complete, including all Third Party Reports and the required Application Fee described in §11.901 of this chapter, before they will be considered accepted by the Department and meeting the submission deadline for the applicable Board meeting date or administrative issuance of the Determination Notice, as applicable.

(iii) If, as of November, an Applicant is unable to obtain a Certificate of Reservation from the current program year because there is no private activity bond volume cap, an Applicant may submit a complete Application without a bond reservation, provided that, a copy of the inducement resolution is included in the Application, and a Certificate of Reservation is issued as soon as possible by BRB staff in January 2023. The determination as to whether a 2022 Application can be submitted and supplemented with 2023 forms and certifications, will be at the discretion of staff. Applicants are encouraged to communicate with staff any issues and timing considerations unique to a Development as early in the process as possible. This process is only applicable to those applications that have also been submitted as part of the 2023 PAB Lottery and receive a favorable lottery number

such that a Certificate of Reservation will be issued in January 2023. If a Certificate of Reservation is not issued in January 2023, whether part of the PAB Lottery or not, then the submitted Application will be considered withdrawn by staff and will not continue to be processed.

(C) The Department will require at least 90 days to review an Application unless staff can complete its evaluation in sufficient time for earlier consideration. An Applicant should expect this timeline to apply regardless of whether the Board will need to approve the issuance of the Determination Notice or it is determined that staff can issue the Determination Notice administratively for a particular Application. Applicants should be aware that unusual financing structures, portfolio transactions, the need to resolve Administrative Deficiencies and changes made by an Applicant after the Application has been reviewed by staff may require additional time to review. Moreover, such review period may be longer depending on the volume of Applications under review and statutory program timing constraints associated with such Applications. The prioritization of Applications will be subject to the review priority established in paragraph (5~~6~~) of this subsection.

(D) Withdrawal of Certificate of Reservation. Applicants are required to notify the Department before 5:00 p.m. on the business day after the Certificate of Reservation is withdrawn if the Application is still under review by the Department. If, by the fifth business day following the withdrawal, a new Certificate of Reservation is not issued, the Application will be suspended. If a new Certificate of Reservation is not issued by 5:00 p.m. on the fifth business day following the date of the suspension, the Application will be terminated. Applicants must ensure once a Certificate of Reservation is issued, the Application as submitted is complete and all respective parts of the Development are in process such that closing under the Certificate of Reservation is achievable. Once a new Certificate of Reservation is issued, it will be at the Department's discretion to determine whether the existing Application can still be utilized for purposes of review or if a new Application, including payment of another Application Fee, must be submitted due to material changes. The Department will not prioritize the processing of the new Application over other Applications under review once a new Certificate of Reservation is issued, regardless of the stage of review the Application was in prior to termination, or that it maintain the originally selected Board meeting or targeted administrative issuance date for the Determination Notice, as applicable.

(E) Direct Loan Applications must be submitted in accordance with the requirements in this chapter, ~~10 TAC~~ §13.5 (relating to the Application and Award Process), and the applicable Notice of Funding Availability (NOFA).

(3) 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. To the extent a Direct Loan award is returned after Board approval, penalties may be imposed on the Applicant and Affiliates in accordance with §13.11(a) (relating to Post Award Requirements).

(4) Evaluation Process. 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 conducted based upon the likelihood that an Application will be competitive for an award based upon the region, 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 and its relative position to other Applications, 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. The Real Estate Analysis division 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 §11.302 of this chapter (relating to Underwriting Rules and Guidelines) and §13.6 of this title (relating to Multifamily Direct Loan Rule) as applicable. The Department may have an external party perform all or part of the underwriting evaluation and components thereof 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 pursuant to §11.901(5) of this chapter (relating to Fee Schedule, Appeals and other Provisions). The reviews by the Multifamily Finance Division and the Real Estate Analysis Division will be conducted to meet the requirements of the Program or NOFA under which the Application was submitted. Applications will undergo a previous participation review in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation) and a Development Site may be evaluated by the Department or its agents through a physical site inspection or site visit, (which may include neighboring areas), independent of or concurrent with a site visit that may be performed in conjunction with §11.101(a)(3) (relating to Neighborhood Risk Factors). The Department may provide a scoring notice reflecting such score to the Applicant which will trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't~~.~~ Code §2306.6715 and §11.902 of this chapter (relating to Appeals Process). For an Application for which the selection criteria are reviewed, the scoring notice for the Application will be sent to the Applicant no later than 21 days prior to the final Board approval of awards.

(5) Order of review of Applications under various Programs. This paragraph identifies how ties or other matters will be handled when dealing with de-concentration requirements, capture rate calculations, and general order of review 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; or in instances where there is a Traditional Carryforward Designation associated with an Application the Department will utilize the date the complete HTC Application associated with the Traditional Carryforward Designation is submitted to the Department;~~ and~~

(ii) for all other Developments, the date the Application is considered received by the Department; and

(iii) notwithstanding the foregoing, after July 31 of the current program year, 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. Order of reviews of 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.

(6) Deficiency Process. The purpose of the deficiency process is to allow an Applicant to provide clarification, explanation, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in an efficient and effective review of the Application. Deficiencies may be Administrative or Material, in either case they will be treated similarly in that Applicants may receive a deficiency notice and have an opportunity to respond. Applicants are encouraged to utilize manuals or other materials produced by staff, as additional guidance in conjunction with the rules to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, or meeting of threshold and eligibility requirements. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the deficiency process. Because the review of an Application occurs in several phases, deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail to the Applicant and one other contact party if identified in the Application. It is the Applicant's responsibility to ensure that e-mails sent from TDHCA staff to the Applicant or contact are not electronically blocked or redirected by a security feature as they will be considered to be received once they are sent. 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. Responses are required to be submitted electronically as a PDF or multiple PDF files and must be uploaded to the Application's ServU http file. Emailed responses will not be accepted. 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 they are Material Deficiencies 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 a 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) It is critical that the use of the deficiency process not unduly slow the review process, and since the process is intended to clarify or explain matters or obtain at the Department's request missing information, there is an expectation that a party responding to an Administrative Deficiency will be able to respond immediately. It is the responsibility of a person who receives a deficiency to address the matter in a timely manner so that staff has the ability to review the response by the close of business on the date by which resolution must be complete and the deficiency fully resolved. Merely submitting materials prior to that time places the responsibility on the responding party that if the materials do not fully resolve the matter there may be adverse consequences such as point deductions or termination. Extensions relating to Administrative Deficiency deadlines may only be extended up to five days if documentation needed to resolve the item is needed from a Third Party, the documentation involves Third Party signatures needed on certifications in the Application, or an extension is requested as a reasonable accommodation. A Deficiency response may not contain documentation that did not exist prior to submission of the pre- application or Full Application, as applicable.

(B) Deficiencies for Competitive HTC Applications. Unless an extension has been timely requested

and granted prior to the deadline, if a deficiency is not fully 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 five (5) points shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. Points deducted for failure to timely respond to a deficiency will not impact the Pre-Application score. If 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, subject to the Applicant's right to appeal. 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) Applicants may not use the Deficiency Process to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. To the extent that the review of deficiency documentation or the imposing of point reductions for late responses alters the score assigned to the Application, such score will be reflected in the updated application log published on the Department's website or a Scoring Notice may be issued.

(C) Deficiencies for Tax-Exempt Bond Developments. Unless an extension has been requested prior to the deadline, deficiencies must be resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice. Applications with unresolved deficiencies after 5:00 p.m. on the fifth business day following the date of the deficiency notice will be suspended from further processing and the Applicant will be provided with notice to that effect. If, on the fifth business day following the date of the suspension notice, there are deficiencies that remain unresolved, the Application will be terminated and the Applicant will be provided notice to that effect. Should an Applicant still desire to move forward with the Development, staff will require a completely new Application be submitted, along with a new Application Fee pursuant to §11.901 of this chapter. All of the deficiencies noted in the original deficiency notice must be incorporated into the re-submitted Application. Staff will proceed with a new review of the Application, but it will not be prioritized over other Applications that are under review or were submitted prior to its re-submission.

(D) Deficiencies for Direct Loan-only Applications. Deficiencies must be resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice. Applications with unresolved deficiencies after 5:00 p.m. on the fifth business day following the date of the deficiency notice will be suspended from further processing and the Applicant will be provided with notice to that effect. If, on the fifth business day following the date of the suspension notice, there are deficiencies that remain unresolved, the Application may be terminated and the Applicant will be provided notice to that effect. For purposes of priority under the Direct Loan set-asides, if the outstanding item(s) are resolved during the suspension period, the date by which the final deficient item is submitted shall be the new received date pursuant to §13.5(c) of this chapter (relating to Multifamily Direct Loan Rule). Applicants should be prepared for additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section. Should an Applicant still desire to move forward with the Development after Termination, a completely new Application must be submitted, along with a new Application Fee, as applicable, pursuant to rule. All of the deficiencies noted in the original deficiency notice must be incorporated into the re-submitted Application, which

will have a new Application Acceptance Date.

(7) Limited Reviews. If, after the submission of the Application, an Applicant identifies an error in the Application that could likely be the subject of a Deficiency, the Applicant may request a limited 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 review may only cover the specific issue and not the entire Application. If the limited review results in the identification of an issue that requires correction or clarification, staff will request such through the Deficiency process as stated in paragraph (6) of this section, if deemed appropriate. A limited 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.

(8) 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 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 §11.2 of this chapter and no later than May 1 of the current year for Competitive HTC Applications. The Neighborhood Organization expressing opposition will be given seven 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 by staff will be provided to a fact finder, chosen by the Department, for review and a determination. The fact finder will not make determinations as to the accuracy of the statements presented, but only regarding 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.

§11.202. 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. Such matters may be brought to the attention of staff by anyone, including members of the general public. The items listed in this section include those requirements in Code, §42, Tex. Gov't 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, federal statutes or regulations, or a specific program NOFA. 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. One or more of the matters

enumerated in paragraph (1) of this section may also serve as a basis for debarment, or the assessment of administrative penalties, and nothing herein shall limit the Department's ability to pursue any such matter. Failure to provide disclosure may be cause for termination.

(1) Applicants. An Applicant may be considered ineligible if any of the criteria in subparagraphs (A) - (N) of this paragraph apply to those identified on the organizational chart for the Applicant, Developer and Guarantor. An Applicant is ineligible if the Applicant, Developer, or Guarantor:

(A) Has been or is barred, suspended, or terminated from participation in a state or Federal program, including those listed in the U.S. government's System for Award Management (SAM); (§2306.0504)

(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 15 years preceding the received date of Application or Pre-Application submission (if applicable);

(C) Is, at the time of Application, subject to an order in connection with an enforcement or disciplinary action under state or federal securities law or by the NASD; subject to a federal tax lien (other than a contested lien for which provision has been made); 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 materially breached a contract with a public agency, and, if such breach is permitted to be cured under the contract, has been given notice of the breach and a reasonable opportunity to cure, and failed to cure that breach within the time specified in the notice of 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 based on a previous participation review performed in accordance with Chapter 1 Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee);

(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, and for which no repayment plan has been approved by the Department;

(H) Has failed to cure any past due fees owed to the Department within the time frame provided by notice from the Department and at least 10 days prior to the Board meeting at which the decision for an award is to be made;

(I) Would be prohibited by a state or federal revolving door or other standard of conduct or conflict of interest statute, including Tex. Gov't Code §2306.6733, or a provision of Tex. Gov't Code, Chapter

572, from participating in the Application in the manner and capacity they are participating;

(J) Has, without prior approval from the Department, had previous Contracts or Commitments that have been partially or fully Deobligated during the 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 Person is on notice that such Deobligation results in ineligibility under this chapter;

(K) Has provided false or misleading documentation or made other intentional or negligent material misrepresentations or omissions in or in connection with an Application (and certifications contained therein), Commitment, or Determination Notice for a Development;

(L) Was the Owner or Affiliate of the Owner of a Department assisted rental Development for which the federal affordability requirements were prematurely terminated and the affordability requirements have not been re-affirmed or Department 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, that has terminated voluntarily or involuntarily within the past 10 years, or plans to or is negotiating to terminate, their relationship with any other affordable housing development. 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 referred to the Board for a determination of a person's fitness to be involved as a Principal with respect to an Application, which may include a staff recommendation, using the factors described in clauses (i) - (v) of this subparagraph as considerations:

(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 proposed 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) Fails to disclose in the Application any voluntary compliance agreement or similar agreement with any governmental agency that is the result of negotiation regarding noncompliance of any affordable housing Development with any requirements. Any such agreement impacting the proposed Development or any other affordable housing Development controlled by the Applicant must be disclosed.

(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 Tex. Gov't 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 Tex. Gov't 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;

(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 person covered by Tex. Gov't Code §2306.6703(a)(1);

(ii) if the Application is represented or communicated about by a Person that would prompt the violations covered by Tex. Gov't Code §2306.6733; or

(iii) the Applicant proposes to replace in less than 15 years any private activity bond financing of the Development described by the Application, unless the exceptions in Tex. Gov't Code §2306.6703(a)(2) are met.

§11.203. 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 months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments and Direct Loan Applications, notifications must not be older than three months prior to the date the complete Application is submitted. If notifications were made in order to satisfy requirements of pre-application submission (if applicable to the program) for the same Application, then no additional notification is required at Application. However, re-notification is required by all Applicants who have submitted a change from pre-application to Application that reflects a total Unit increase of greater than 10% or a 5% increase in density (calculated as units per acre) as a result of a change in the size of the Development Site. In addition, should the jurisdiction of the official holding any position or role described in paragraph (2) of this section change between the submission of a pre- application and the submission of an Application, Applicants are required to notify the new entity no later than

the Full Application Delivery Date.

(1) Neighborhood Organization Notifications.

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the beginning of the Application Acceptance Period and whose boundaries include the entire proposed Development Site. As used in this section, "on record with the state" means on record with the Secretary of State.

(B) The Applicant must list, in the certification form provided in the pre-application and Application, all Neighborhood Organizations on record with the county or state as of 30 days prior to the beginning of the Application Acceptance Period and whose boundaries include the proposed Development Site.

(2) Notification Recipients. No later than the date the Application is submitted, notification must be sent to all of the entities identified in subparagraphs (A) - (H) of this paragraph. Developments located in an Extra Territorial Jurisdiction (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. A template for the notification is included 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 required 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 in office at the time the Application is submitted. Note that between the time of pre-application (if made) and full Application, the boundaries of their jurisdictions may change. Meetings and discussions do not constitute notification. Recipients include:

(A) Neighborhood Organizations on record with the state or county as of 30 days prior to the beginning of the Application Acceptance Period whose boundaries include the entire 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) - (viii) 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, high-rise etc.);

(vi) the total number of Units proposed and total number of Low-Income Units proposed;

(vii) the residential density of the Development, i.e., the number of Units per acre; and

(viii) information on how and when an interested party or Neighborhood Organization can provide input to the Department.

(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 target, provide a preference, or serve a Target Population exclusively, unless such population limitation, targeting, or preference is documented in the Application, and is or will be in full compliance with all applicable state and federal laws, including state and federal fair housing laws; and

(C) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

§11.204. Required Documentation for Application Submission.

The purpose of this section is to identify the threshold documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. 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.

(1) Certification, Acknowledgement and Consent of Development Owner. A certification of the

information in this subchapter as well as Subchapter B of this chapter must be executed by the Development Owner and addresses 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 and that they have given it with all required authority and with actual knowledge of the matters certified.

(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 Tex. Gov't Code, Chapter 552. Any person signing the Certification acknowledges that they have the authority to release all materials for publication on the Department's website, that the Department may publish them on the Department's website and release them in response to a request for public information, and make other use of the information as authorized by law.

(C) All representations, undertakings and commitments made by Applicant in the Application process 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 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 residents of the Development, including enforcement by administrative penalties for failure to perform (consistent with Chapter 2, Subchapter C of this title relating to Administrative Penalties), 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% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Tex. Gov't Code §2306.6734.

(G) The Development Owner will specifically market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will specifically 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.

(I) If the Development has an existing LURA with the Department, the Development Owner will comply with the existing restrictions.

(2) Applicant Eligibility Certification. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by any individuals required to be listed on the organizational chart and also meeting the definition of Control. The certification must identify the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §11.202 of this chapter (relating to Ineligible Applicants and Applications).

(3) Engineer/Architect Certification Form. The certification, addressing all of the accessibility requirements applicable to the Development Site, must be executed by the Development engineer or accredited architect after careful review of the Department's accessibility requirements, and including Tex. Gov't Code §2306.6722 and §2306.6730.

(4) Notice, Hearing, and Resolution for Tax-Exempt Bond Developments. In accordance with Tex. Gov't Code, §2306.67071, the following actions must take place with respect to the filing of an Application and any Department consideration 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 §11.203 of this chapter (relating to Public Notifications (§2306.6705(9)).

(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. 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 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 §11.2(b) of this chapter (relating to Tax-Exempt Bond Dates and Deadlines). 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 resolution may be determined by staff to be invalid. The resolution(s) must certify that:

(i) notice has been provided to the Governing Body in accordance with Tex. Gov't Code §2306.67071(a);

(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 Tex. Gov't Code §2306.67071(b); 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.

(A) 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 Tex. Gov't 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.

(B) Certain areas located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area can request a Rural designation from the Department for purposes of receiving an allocation Housing Tax Credits (§2306.6740). In order to apply for such a designation, a letter must be submitted from a duly authorized official of the political subdivision or census designated place addressing the factors outlined in clauses (i) - (vi) of this subparagraph. Photographs and other supporting documentation are strongly encouraged. In order for the area to be designated Rural by the Department for the current Application Round, such requests must be made no later than December 15 of the previous year. If staff is able to confirm the findings outlined in the request, the Rural designation will be granted without further action and will remain in effect until such time that the population as described in clause (i) of this subparagraph exceeds 25,000. In the event that

staff is unable to confirm the information contained in the request, the Applicant will be given an opportunity to supplement their case. If, after receiving any supplemental information, staff still cannot confirm the rural nature of the Application, a recommendation for denial will be presented to the Board. The factors include:

(i) the population of the political subdivision or census designated place does not exceed 25,000;

(ii) the characteristics of the political subdivision or census designated place and how those differ from the characteristics of the area(s) with which it shares a contiguous boundary;

(iii) the percentage of the total border of the political subdivision or census designated place that is contiguous with other political subdivisions or census designated places designated as urban. For purposes of this assessment, less than 50% contiguity with urban designated places is presumptively rural in nature;

(iv) the political subdivision or census designated place contains a significant number of unimproved roads or relies on unimproved roads to connect it to other places;

(v) the political subdivision or census designated place lacks major amenities commonly associated with urban or suburban areas; and

(vi) the boundaries of the political subdivision or census designated place contain, or are surrounded by, significant areas of undeveloped or agricultural land. For purposes of this assessment, significant being more than one-third of the total surface area of political subdivision/census designated place, or a minimum of 1,000 acres immediately contiguous to the border.

(6) Experience Requirement. Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application, unless an experience certificate was issued by the Department in the years 2014~~5~~-2021, which may be submitted as acceptable evidence of this requirement. Experience of multiple parties may not be aggregated to meet this requirement.

(A) A natural Person, with control of the Development who intends and has the ability to remain in control through placement in service, who is also a Principal of the Developer, Development Owner, or General Partner must establish that they have experience that has included the development and placement in service of 150 units or more. Applicants requesting Multifamily Direct Loan funds only may meet the alternative requirement at §13.5(h)(1) of this title (relating to Experience). An agreement between a HUB listed as a participant on a previous Application and the person in control of that same Application does not meet this requirement. 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 a Principal of the Development Owner, General Partner, or Developer has the required experience.

(B) The names on the forms and agreements in subparagraph (A)(i) - (ix) of this paragraph must reflect that the individual seeking to provide experience is a Principal of the Development Owner, General Partner, or Developer as listed in the Application. For purposes of this requirement any individual attempting to use the experience of another individual or entity must demonstrate they had the authority to act on their behalf that substantiates the minimum 150 unit requirement.

(C) For competitive HTC Applications, if a Principal is determined by the Department to not have the required experience, a replacement Principal will not be allowed.

(D) 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 or elected in accordance with this Chapter or Chapter 13 of this title (relating to Multifamily Direct Loan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with Code §42(g) if the Development will receive housing tax credits. The income and corresponding rent restrictions that impact the Units also restricted by the Department will be reflected in the LURA. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) - (iv) of this subparagraph.

(i) ~~f~~Financing is in place as evidenced by:

(I) ~~A~~a valid and binding loan agreement; and

(II) ~~A~~a valid recorded deed(s) of trust lien on the Development in the name of the Development

Owner as grantor in favor of the party providing such financing.; and

(ii) tTerm sheets for interim and permanent loans issued by a lending institution or mortgage company must:

(I) Hhave been signed or otherwise acknowledged by the lender;

(II) Bbe addressed to the Development Owner or Affiliate;

(III) Ffor a permanent loan, include a minimum loan term of 15 years with at least a 30 year amortization or for non-amortizing loan structures a term of not less than 30 years;

(IV) iinclude either a committed and locked interest rate, or the estimated interest rate;

(V) iinclude all required Guarantors, if known;

(VI) iinclude the principal amount of the loan;

(VII) iinclude an acknowledgement of the amounts and terms of all other anticipated sources of funds and if the Application reflects an intent to elect income averaging there must be an acknowledgement to that effect in the term sheet; and

(VIII) iinclude and address any other material 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;.

(iii) For Developments proposing to refinance an existing USDA Section 514, 515, or 516 loan, a letter from the USDA confirming the outstanding loan balance on a specified date and confirming that the Preliminary Assessment Tool has been submitted by the Applicant to USDA. The loan amount that is reported on the Schedule of Sources (tab 31 in the MF Uniform Application) and that is used to determine the acquisition cost must be the Applicant's estimate of the projected outstanding loan balance at the time of closing as calculated on the USDA Principal Balance Amortization exhibit.

(iv) For Direct Loan Applications or Tax-Exempt Bond Developments with TDHCA as the issuer that utilize FHA financing, the Application shall include the applicable pages from the HUD Application for Multifamily Housing Project. If the HUD Application has not been submitted at the time the Application is submitted then a statement to that effect should be included in the Application along with an estimated date for submission. Applicants should be aware that staff's underwriting of an Application will not be finalized and presented to the Board until staff has evaluated the HUD Application relative to the Application.

(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified and described in the Application. Applicants must provide evidence that an application for such gap financing has been made to an available fund source. Acceptable documentation may include a letter from the funding entity confirming receipt of an application or 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. A term loan request must comply with the applicable terms of the NOFA under which an Applicant is applying.

(C) Owner Contributions. If the Development will be financed in part with a capital contribution or debt by the General Partner, Managing General Partner, any other partner or investor that is not a partner providing the syndication equity, a Guarantor or a Principal in an amount that exceeds 5% 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 depository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds are and will remain readily available at Commitment and until the required investment is completed. Regardless of the amount, all capital contributions other than syndication equity will be deemed to be a part of, and therefore added to, the Deferred Developer Fee for feasibility purposes under §11.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless the contribution is a seller note equal to or less than the acquisition price of the subject Development, 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 documented history of fundraising sufficient 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) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis; and

(v) include an acknowledgement of the amounts and terms of all other anticipated sources of funds and if the Application reflects an intent to elect income averaging there must be an acknowledgement to that effect in the term sheet.

(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes all aspects of the financing plan for the Development, including as applicable the sources and uses of funds; construction, permanent and bridge loans, rents, operating subsidies, project-based assistance, and replacement reserves; and the status (dates and deadlines) for applications, approvals and closings, etc. associated with the term sheets for all funding sources. For Applicants requesting Direct Loan funds, Match, as applicable, 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 Direct Loan funds. The information provided must be consistent with all other documentation in the Application.

(8) Operating and Development Cost Documentation.

(A) Fifteen-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 title (relating to Utility Allowances), including deadlines for submission. Where the Applicant uses any method that requires Department review, documentation indicating that the requested method has been granted by the Department must be included in 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 include a description. "Miscellaneous" or other nondescript designations are not acceptable.

(D) Rent Schedule. This exhibit, as provided in the Application, must meet the requirements of clauses (i) – (vi) of this subparagraph. The income and corresponding rent restrictions will be reflected in the LURA. The requirements are:

(i) indicate the type of Unit restriction based on the Unit's rent and income restrictions;

(ii) reflect the rent and utility limits available at the time the Application is submitted;

(iii) reflect gross rents that cannot exceed the maximum rent limits unless documentation of project-based rental assistance is provided and rents are consistent with such assistance and applicable legal requirements;

(iv) have a Unit mix and net rentable square footages that are consistent with the site plan and architectural drawings;

(v) if applying for Direct Loan funds:

(I) Direct Loan-restricted Units will generally be designated "floating" unless specifically disallowed under the program specific rules;

(II) if HOME, TCAP RF, and/or NSP PI are the anticipated fund source, the Application must have at least 90% of the Direct Loan-restricted Units be available to households or families whose incomes do not exceed 60% of the Area Median Income;

(III) in which HOME or TCAP RF are the anticipated fund source have at least 20% of the Direct Loan-restricted Units available to households or families whose incomes do not exceed 50% of the Area Median Income;

(IV) in which NHTF is the anticipated fund source, have 100% of the Direct Loan-restricted Units available to households or families whose incomes do not exceed the greater of 30% of the Area Median Income or whose income is at or below the poverty line; and

(V) in which NSP PI is the anticipated fund source, have at least 25% of the Direct Loan-restricted Units available to households or families whose incomes do not exceed 50% of the Area Median Income; and

(vi) if proposing to elect income averaging, Units restricted by any fund source other than housing tax credits must be specifically identified, and all restricted Units, regardless of fund source, must be included in the average calculation.

(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 (excluding site amenities), if any, prepared by a Third Party engineer. If Site Work costs (excluding site amenities) 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 an 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 and the source of their cost estimate. 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. 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 Application includes a request for Direct Loan funds, Applicants must follow the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and other HUD requirements including Section 104(d) of the Housing and Community Development Act. HUD Handbook 1378 provides guidance and template documents. Failure to follow URA or 104(d)

requirements will make the proposed Development ineligible for Direct Loan funds and may lead to penalty under §13.11(b) of this title (relating to Multifamily Direct Loan Rule). 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 12 consecutive months ending not more than three months from the first day of the Application Acceptance Period; or

(II) The two most recent consecutive annual operating statement summaries; or

(III) The most recent consecutive six 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 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 any vacant units;

(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 all appropriate legal or governmental agencies or bodies. (§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) For all Developments a site plan must be submitted that includes the items identified in clauses (i) - (xii) of this subparagraph:

(i) states the size of the site on its face;

(ii) includes a Unit and building type table matrix that is consistent with the Rent Schedule and

Building/Unit Configuration forms provided in the Application;

(iii) includes a table matrix specifying the square footage of Common Area space on a building by building basis;

(iv) identifies all residential and common buildings in place on the Development Site and labels them consistently with the Rent Schedule and Building/Unit Type Configuration forms provided in the Application;

(v) shows the locations (by Unit and floor) of mobility and hearing/visual accessible Units (unless included in residential building floor plans);

(vi) clearly delineates the flood plain boundary lines or states there is no floodplain;

(vii) indicates placement of detention/retention pond(s) or states there are no detention ponds;

(viii) describes, if applicable, how flood mitigation or other required mitigation will be accomplished;

(ix) indicates the location and number of parking spaces, garages, and carports;

(x) indicates the location and number of accessible parking spaces, garages, and carports, including van accessible spaces;

(xi) includes information regarding local parking requirements; and

(xii) indicates compliant accessible routes or if a route is not accessible a cite to the provision in the Fair Housing Design Manual providing for its exemption.

(B) Building floor plans must be submitted for each building type. Building floor plans must include the locations of the accessible Units and must also include square footage calculations for balconies, breezeways, corridors and any other areas not included in net rentable area.~~;~~

(C) Unit floor plans for each Unit Type must be included in the Application and must include the square footage. Unit floor plans must be submitted for the accessible Units. Applications for Adaptive Reuse are only required to include Unit floor plans for each distinct floor plan such as one-Bedroom, or two-Bedroom, and for all floor plans that vary in Net Rentable Area by 10% from the typical floor plan.~~; and~~

(D) Elevations must be submitted for each side of each building type (or include a statement that all other sides are of similar composition as the front) 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 allows for an ability to assign the Site Control to the Development Owner. All of the sellers of the proposed Property for the 36 month period 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 of any Affiliated property acquisition(s) 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 take into account whether any such encumbrance is reasonable within the legal and financial ability of the Development Owner to address without delaying development on the timeline contemplated in the Application. To meet the requirements of subparagraph (B) of this paragraph, Tax-Exempt Bond Developments that do not include a request for Direct Loan or include the Department as the bond issuer, must certify in the Application that the Site Control submitted with the TBRB application for the Certificate of Reservation to be issued is still valid.

(B) In order to establish Site Control, one of the items described in clauses (i) - (iii) of this subparagraph must be provided. In the case of land donations, Applicants must demonstrate that the entity donating the land has Site Control as evidenced through one of the items described in clauses (i) - (iii) of this subparagraph or other documentation acceptable to the Department. Site Control items include:

(i) a recorded warranty deed vesting indefeasible title in the Development Owner or, if transferrable to the Development Owner, an Affiliate of the Owner, with corresponding executed settlement statement (or functional equivalent for an existing lease with at least 45 years remaining); or

(ii) a contract or option for lease with a minimum term of 45 years that includes a price; address 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 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 §11.302 of this chapter (relating to Underwriting Rules and Guidelines), then the documentation required as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.

(D) If ingress and egress to a public right of way are not part of the Property described in the site control documentation, the Applicant must provide evidence of an easement, leasehold, or similar documented access, along with evidence that the fee title owner of the property agrees that the LURA may extend to the access easement by the time of Commitment, Determination Notice or Contract (as applicable).

(E) If control of the entire proposed Development Site requires that a plat or right of way be vacated

to remove a right of way or similar dedication, evidence that the vacation/re-platting process has started must be included in the Application, and evidence of control of the entire Development Site must be provided by the time of Commitment or Contract (as applicable).

(11) Zoning. (§2306.6705(5)) Acceptable evidence of zoning for all Developments must include one of subparagraphs (A) - (D) of this paragraph. In instances where annexation of a Development Site occurs while the Application is under review, the Applicant must submit evidence of appropriate zoning with the Commitment or Determination Notice. Letters evidencing zoning status must be no more than 6-months old at Application submission, except where such evidence is for an area where there is no zoning and such letters must be updated annually by the political subdivision.

(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.~~; or~~

(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.~~; or~~

(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 has made formal application for a required zoning change and that the jurisdiction has received a release whereby the Applicant has agreed to hold the political subdivision and all other parties harmless in the event the appropriate zoning is not granted. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice.~~; or~~

(D) Zoning for Rehabilitation Developments. In an area with zoning, 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) - (v) of this subparagraph:

(i) a detailed narrative of the nature of non-conformance;

(ii) the applicable destruction threshold;

(iii) that it will allow the non-conformance;

(iv) Owner's rights to reconstruct in the event of damage; and

(v) 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 months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, 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. Tax-Exempt Bond Developments that do not include a request for Direct Loan or include the Department as the bond issuer are exempt from this requirement.

(A) The title commitment must list the name of the Development Owner as the proposed insured and list 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 and Previous Participation.

(A) The Department assumes that the Applicant will be able to form any one or more business entities, such as a limited partnership, that are to be engaged in the ownership of a Development as represented in the Application, and that all necessary rights, powers, and privileges including, but not limited to, Site Control will be transferable to that entity. The formation of the ownership entity, qualification to do business (if needed), and transfer of any such rights, powers, and privileges must be accomplished as required in this chapter and ~~10 TAC~~ Chapters 12 and 13, as applicable.

(B) Organizational Charts. A chart must be submitted that clearly illustrates the organizational structure of the proposed Development Owner and of any Developer and Guarantor, identifying all Principals thereof and providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable, whether directly or through one or more subsidiaries, whether or not they have Control. Persons having Control should be specifically identified on the chart. Individual board members and executive directors of nonprofit entities, governmental bodies, and corporations, as applicable, 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. In the case of Housing Tax Credit Applications only in which private equity fund investors are passive investors in the sponsorship entity, the fund manager, managing member or authorized representative of the fund who has the ability to Control, should be identified on the organizational chart, and a full list of investors is not required. The List of Organizations form, as provided in the Application, must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development.

(C) Previous Participation. Evidence must be submitted that each individual and entity shown on the organizational charts described in subparagraph (B) of this paragraph has provided a copy of the completed previous participation information to the Department. Individual Principals of such entities identified on the organizational chart and on the List of Organizations form, must provide the previous participation information, unless excluded from such requirement pursuant to Chapter 1 Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee). The information must include a list of all Developments that are, or were, previously under ownership or Control of the Applicant 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 individuals providing previous participation information must authorize the parties overseeing such assistance

to release compliance histories to the Department.

(D) Direct Loan. In addition to the information required in (B) and (C) of this subparagraph, if the Applicant is applying for Direct Loan funds then the Applicant must also include the definitions of Person, Affiliate, Principal, and Control found in 2 CFR Part 180 and 2424, when completing the organizational chart and the Previous Participation information.

(14) Nonprofit Ownership. Applications that involve a §501(c)(3) or (4) nonprofit, housing finance corporation or public facility corporation as the General Partner or Owner shall submit the documentation identified in subparagraph (A) or (B) of this paragraph, as applicable. Additionally, a resolution approved at a regular meeting of the majority of the board of directors of the nonprofit, indicating their awareness of the organization's participation in each specific Application, and naming all members of the board and employees who may act on its behalf, must be provided. For Tax-Exempt Bond Developments, a copy of the executed inducement resolution will meet the resolution requirement in this paragraph.

(A) Competitive HTC Applications for the Nonprofit Set-Aside. 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 clauses (i) to (v) of 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 Nonprofit 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. Required documents include:

(i) An IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code;

(ii) The Nonprofit Participation exhibit as provided in the Application, including a list of the names and contact information for all board members, directors, and officers;

(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 Code, §42(h)(5) 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. If the Application includes a request for Community Housing Development Corporation (CHDO) funds, no member of the board may receive compensation, including the chief staff member;

(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; and

(VI) That the nonprofit organization has the ability to do business as a nonprofit in Texas;

(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, housing finance corporation or public facility corporation as the General Partner or Owner must submit an IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code; and the Nonprofit Participation exhibit as provided in the Application. If the Application involves a nonprofit that is not exempt from taxation under §501(c)(3) or (4) of the Code, then they must disclose in the Application the basis of their nonprofit status. Housing finance corporations or public facility corporations that do not have such IRS determination letter shall submit documentation evidencing creation under their respective chapters of the Texas Local Government Code and corresponding citation for an exemption from taxation.

(15) 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 and must meet all of the criteria provided in subparagraphs (A) to (F) of this paragraph. Acquisition and Rehabilitation Applications are exempt~~ed~~ from this requirement. If an Application involves Acquisition and Rehabilitation along with other activities, the Feasibility Report is required for the entire Development. Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, only subparagraph (D) is required to be submitted.

(A) For all Applications, careful focus and attention should be made regarding any atypical items materially impacting costs or the successful and timely execution of the Development plan. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(B) An Executive Summary must provide 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. It should specifically describe any atypical or unusual factors that will impact site design or costs, including but

not limited to: Critical Water Quality Zones, habitat protection requirements, construction for environmental conditions (wind, hurricane, flood), and local design restrictions.

(C) The Report 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). Where ordinances or similar information is required, provide website links rather than copies of the ordinance. Additionally, it should contain:

(i) a summary of zoning requirements;

(ii) subdivision requirements;

(iii) property identification number(s) and millage rates for all taxing jurisdictions;

(iv) development ordinances;

(v) fire department requirements;

(vi) site ingress and egress requirements; and

(vii) building codes, and local design requirements impacting the Development.

(D) Survey 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). Surveys (excluding those for Rehabilitation Developments) may not be older than 24 months from the beginning of the Application Acceptance Period.

(E) Preliminary site plan for New Construction or Adaptive Reuse Developments prepared by the civil engineer with a statement that the plan materially adheres to all applicable zoning, site development, and building code ordinances. The site plan must identify all structures, site amenities, parking spaces 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.

(F) 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.

§11.205. Required Third Party Reports.

The Environmental Site Assessment, Scope and Cost Review, Appraisal (if applicable), and the Market Analysis must be submitted no later than the Third Party Report Delivery Date as identified in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Direct Loan Development Dates and Deadlines). For Competitive HTC Applications, the Environmental Site Assessment, Scope and Cost

Review, Appraisal (if applicable), and the Primary Market Area map (with definition based on census tracts, and site coordinates in decimal degrees, area of PMA in square miles, and list of census tracts included) must be submitted no later than the Full Application Delivery Date as identified in §11.2(a) of this title (relating to Competitive HTC Deadlines Program Calendar) and the Market Analysis must be submitted no later than the Market Analysis Delivery Date as identified in §11.2(a) of this chapter.

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 §11.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines), must not be dated more than 12 months prior to the date of Application submission for non-Competitive Applications, or the first day of the Application Acceptance Period for Competitive HTC Applications. If this timeframe is exceeded, then a letter or updated report must be submitted, dated not more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications 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) Existing 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 that those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations, then evidence indicating that the mitigating recommendations have been carried out must be submitted at cost certification.

(2) Market Analysis. The Market Analysis, required for all Developments and prepared in accordance with the requirements of §11.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. If the report is older than six months, but not more than 12 months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, 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 months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications and must be accompanied by the original Market Analysis.

(A) The report must be prepared by a disinterested Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines).

(B) Applications in the USDA Set-Aside proposing Rehabilitation with residential structures at or above 80% occupancy at the time of Application submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §11.304 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) Scope and Cost Review (SCR). This report, required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Developments and prepared in accordance with the requirements of §11.306 of this chapter (relating to Scope and Cost Review Guidelines), must not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. If the report is older than six months, but not more than 12 months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, the report provider may provide a statement that reaffirms the findings of the original SCR. The statement may not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications and must be accompanied by the original SCR. For Developments which require a capital needs assessment from USDA the capital needs assessment may be substituted for the SCR and may be more than six 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 §11.306 of this chapter. All Rehabilitation Developments financed with Direct Loans must also submit a capital needs assessment estimating the useful life of each major system. This assessment must include a comparison between the local building code and the International Existing Building Code of the International Code Council. The report must be accompanied by the Department's SCR Supplement in the form of an excel workbook as published on the Department's website. For Rehabilitation (excluding Reconstruction) and Adaptive Reuse Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, a Scope and Cost Review prepared by a Third Party is not required. The application must include a Scope of Work Narrative as described in §11.306(k) of this chapter (relating to Scope and Cost Review Guidelines).

(4) Appraisal. This report, required for all Rehabilitation and Adaptive Reuse Developments and prepared in accordance with the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines), 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 months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. For Developments that require an appraisal from USDA, the appraisal may be more than six months old, as long as USDA has confirmed in writing that the existing appraisal is still acceptable. Notwithstanding the foregoing, if the

Application contains a Market Analysis and the appraisal is not required to fulfill purposes other than establishing the value of land or buildings, an appraisal is not required if no acquisition costs are entered in the development cost schedule.

§11.206. Board Decisions (§§2306.6725(c);2306.6731; and 42(m)(1)(A)(iv)).

The Board's decisions regarding awards or the issuance of Determination Notices, if applicable, shall be based upon the Department's staff and the Board's evaluation of the proposed Developments' consistency with, and fulfillment of, the criteria and requirements set forth in this chapter, Chapter 13 of this title (relating to the Multifamily Direct Loan Rule) and other applicable Department rules and other applicable state, federal and local legal requirements, whether established in statute, rule, ordinance, NOFA, official finding, or court order. 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 Housing Tax Credit or Direct Loan recommendation or terminate the Application based on the Applicant's inability to demonstrate compliance with program requirements.

§11.207. Waiver of Rules.

An Applicant may request a waiver from the Board in writing at or prior to the submission of the pre-application (if applicable) or the Application or subsequent to an award. Waiver requests on Competitive HTC Applications will not be accepted between submission of the Application and any award for the Application. Staff may identify and initiate a waiver request to remedy an error in the QAP or other Multifamily rules, provide necessary relief in response to a natural disaster, or address facets of an Application or Development that have not been contemplated. The Applicant must submit plans for mitigation or alternative solutions with the waiver request. Any such request for waiver submitted by an Applicant must be specific to an actual proposed Development and must be submitted to the Department in the format required in the Multifamily Programs Procedures Manual. Any waiver, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved. All waiver requests must meet the requirements of paragraphs (1) and (2) of this subsection.

(1) A waiver request made at or prior to pre-application or Application must establish that the need for the waiver is not within the control of the Applicant or is due to an overwhelming need. A recommendation for a waiver may be subject to the Applicant's provision of alternative design elements or amenities of a similar nature or that serve a similar purpose. Waiver requests for items that were elected to meet scoring criteria or where the Applicant was provided a menu of options to meet the requirement will not be considered to satisfy this paragraph, unless the Applicant demonstrates that all potential options have been exhausted.

(2) The waiver request must establish how, by granting the waiver, it better serves the policies and purposes articulated in Tex. Gov't Code §§2306.001, 2306.002, 2306.359, and 2306.6701, (which are general in nature and apply to the role of the Department and its programs, including the Housing

Tax Credit program) than not granting the waiver.

(3) The Board may not grant a waiver to provide directly or implicitly any Fforward Ccommitments, unless due to extenuating and unforeseen circumstances as determined by the Board,. The Board may not or to waive any requirement contained in statute. The Board may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the Qualified Allocation Plan to the extent authorized by a governor declared disaster proclamation suspending statutory or regulatory requirements.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

SUBCHAPTER D UNDERWRITING AND LOAN POLICY

10 TAC §§11.301 - 11.306

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§11.301. General Provisions.

This subchapter applies to the underwriting, Market Analysis, appraisal, Environmental Site Assessment, Direct Loan, and Scope and Cost Review standards employed by the Department. This subchapter provides rules for the underwriting review of an affordable housing Development's financial feasibility and economic viability that ensures the most efficient allocation of resources while promoting and preserving the public interest in ensuring the long-term health of an awarded Application and the Department's portfolio. In addition, this subchapter guides staff in making recommendations to the Executive Award and Review Advisory Committee (EARAC or the Committee), Executive Director, and the Board to help ensure procedural consistency in the determination of Development feasibility (Texas Government Code §§2306.081(c), 2306.185, and 2306.6710(d)). Due to the unique characteristics of each Development, the interpretation of the rules and guidelines described in this subchapter is subject to the discretion of the Department and final determination by the Board.

§11.302. Underwriting Rules and Guidelines.

(a) General Provisions. Pursuant to Tex. Gov't Code §2306.148 and §2306.185(b), the Board is authorized to adopt underwriting standards as set forth in this section. Furthermore, for Housing Credit Allocation, Code §42(m)(2), requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. Additionally, 24 CFR Parts 92 and 93, as further described in CPD Notice 15-11 require the Department to adopt rules and standards to determine the appropriate Multifamily Direct Loan feasibility. The rules adopted pursuant to the Tex. Gov't Code

and the Code are developed to result in an Underwriting Report (Report) used by the Board in decision making with the goal of assisting as many Texans as possible by providing no more financing than necessary based on an independent analysis of Development feasibility. The Report generated in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development.

(b) Report Contents. The Report provides a synopsis and reconciliation of the Application information submitted by the Applicant. For the purpose of this subchapter the term Application includes additional documentation submitted after the initial award of funds that is relevant to any subsequent reevaluation. The Report contents will be based upon information that is provided in accordance with and within the timeframes set forth in this chapter, ~~10 TAC~~ Chapters 11, 12, or 13, or in a Notice of Funds Availability (NOFA), as applicable.

(c) Recommendations in the Report. The conclusion of the Report, if being recommended, includes a recommended award of funds or Housing Credit Allocation Amount and states any feasibility or other conditions to be placed on the award. The award amount is based on the lesser of the amounts determined using the methods in paragraphs (1) to (3) of this subsection:

(1) Program Limit Method. For Housing Credit Allocations, this method is based upon calculation of Eligible Basis after applying all cost verification measures and program limits as described in this section. The Applicable Percentage used is defined in §11.1(d) of this chapter (relating to Definitions). For Department programs other than Housing Tax Credits, this method is based upon calculation of the funding limit in current program rules or NOFA at the time of underwriting.

(2) Gap Method. This method evaluates the amount of funds needed to fill the gap created by Total Housing Development Cost less total non-Department-sourced funds or Housing Tax Credits. In making this determination, the Underwriter resizes any anticipated Deferred Developer Fee downward (but not less than zero) before reducing the amount of Department funds or Housing Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Housing Tax Credits. In making this determination and based upon specific conditions set forth in the Report, the Underwriter may assume adjustments to the financing structure (including treatment of a Cash Flow loan as if fully amortizing over its term) or make adjustments to any Department financing, such that the cumulative Debt Coverage Ratio (DCR) conforms to the standards described in this section. For Housing Tax Credit Developments at cost certification, timing adjusters may be considered as a reduction to equity proceeds for this purpose. Timing adjusters must be consistent with and documented in the original partnership agreement (at admission of the equity partner) but relating to causes outside of the Developer's or Owner's control. The equity partner must provide a calculation of the amount of the adjuster to be used by the Underwriter.

(3) The Amount Requested. The amount of funds that is requested by the Applicant. For Housing Tax Credit Developments (exclusive of Tax-Exempt Bond Developments) this amount is limited to the amount requested in the original Application documentation.

(d) Operating Feasibility. The operating feasibility of a Development funded by the Department is tested by analyzing its Net Operating Income (NOI) to determine the Development's ability to pay

debt service and meet other financial obligations throughout the Affordability Period. NOI is determined by subtracting operating expenses, including replacement reserves and taxes, from rental and other income sources.

(1) Income. In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's income pro forma by determining the appropriate rental rate per unit based on subsidy contracts, program limitations including but not limited to Utility Allowances, actual rents supported by rent rolls and Market Rents and other market conditions. Miscellaneous income, vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are used unless well-documented support is provided and independently verified by the Underwriter.

(A) Rental Income. The Underwriter will review the Applicant's proposed rent schedule and determine if it is consistent with the representations made throughout the Application. The Underwriter will independently calculate a Pro Forma Rent for comparison to the Applicant's estimate in the Application.

(i) Market Rents. The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst and other market data sources. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Gross Program Rent at 60% AMI, or 80% if the Applicant will make the Income Average election. As an alternative, if the Applicant submits Market Rents that are up to 30% higher than the Gross Program Rent at 60% AMGI gross rent, or Gross Program Rent at 80% AMGI gross rent and the Applicant will make the Income Average election, and the Applicant submits an investor commissioned market study with the application, the Underwriter has the discretion to use the market rents supported by the investor commissioned market study in consideration of the independently determined rents. The Applicant must also provide a statement by the investor indicating that they have reviewed the market study and agree with its conclusions.

(ii) Gross Program Rent. The Underwriter will use the Gross Program Rents for the year that is most current at the time the underwriting begins. When underwriting for a simultaneously funded competitive round, all Applications are underwritten with the Gross Program Rents for the same year. If Gross Program Rents are adjusted by the Department after the close of the Application Acceptance Period, but prior to publication of the Report, the Underwriter may adjust the Effective Gross Income (EGI) to account for any increase or decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.

(iii) Contract Rents. The Underwriter will review rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The Underwriter will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the Applicant's proposed rents may be used as the Pro Forma Rent, with the recommendations of the

Report conditioned upon receipt of final approval of such an increase. Tenant-based vouchers or tenant-based rental assistance are not included as Income.

(iv) Utility Allowances. The Utility Allowances used in underwriting must be in compliance with all applicable federal guidance, and §10.614 of this title (relating to Utility Allowances). Utility Allowances must be calculated for individually metered tenant paid utilities.

(v) Net Program Rents. Gross Program Rent less Utility Allowance.

(vi) Actual Rents for existing Developments will be reviewed as supported by a current rent roll. For Unstabilized Developments, actual rents will be based on the most recent units leased with occupancy and leasing velocity considered. Actual rents may be adjusted by the Underwriter to reflect lease-up concessions and other market considerations.

(vii) Collected Rent. Represents the monthly rent amount collected for each Unit Type. For rent-assisted units, the Contract Rent is used. In absence of a Contract Rent, the lesser of the Net Program Rent, Market Rent or actual rent is used.

(B) Miscellaneous Income. All ancillary fees and miscellaneous secondary income, including but not limited to, late fees, storage fees, laundry income, interest on deposits, carport and garage rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a $5 to $30 per Unit per month range. Projected income from tenant-based rental assistance will not be considered. Exceptions may be made at the discretion of the Underwriter and must be supported by either the normalized operating history of the Development or other existing comparable properties within the same market area.

(i) The Applicant must show that a tenant will not be required to pay the additional fee or charge as a condition of renting a Unit and must show that the tenant has a reasonable alternative.

(ii) The Applicant's operating expense schedule should reflect an itemized offsetting line-item associated with miscellaneous income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.

(iii) Collection rates of exceptional fee items will generally be heavily discounted.

(iv) If an additional fee is charged for the optional use of an amenity, any cost associated with the construction, acquisition, or development of the hard assets needed to produce the amenity must be excluded from Eligible Basis.

(C) Vacancy and Collection Loss. The Underwriter generally uses a normalized vacancy rate of 7.5% (5% vacancy plus 2.5% for collection loss). The Underwriter may use other assumptions based on conditions in the immediate market area. 100% project-based rental subsidy developments and other well documented cases may be underwritten at a combined 5% vacancy rate at the discretion of the Underwriter if the immediate market area's historical performance reflected in the Market Analysis is consistently higher than a 95% occupancy rate.

(D) Effective Gross Income (EGI). EGI is the total of Collected Rent for all Units plus Miscellaneous

Income less Vacancy and Collection Loss. If the Applicant's pro forma EGI is within 5% of the EGI independently calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating the underwritten DCR the Underwriter's pro forma will be used unless the Applicant's pro forma meets the requirements of paragraph (3) of this subsection.

(2) Expenses. In determining the first year stabilized operating expense pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate based upon the characteristics of each Development, including the location, utility structure, type, the size and number of Units, and the Applicant's management plan. Historical, stabilized and certified financial statements of an existing Development or Third Party quotes specific to a Development will reflect the strongest data points to predict future performance. The Underwriter may review actual operations on the Applicant's other properties monitored by the Department, if any, or review the proposed management company's comparable properties. The Department's database of properties located in the same market area or region as the proposed Development also provides data points; expense data from the Department's database is available on the Department's website. Data from the Institute of Real Estate Management's (IREM) most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as PHA Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(A) General and Administrative Expense. (G&A)--Accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. G&A does not include partnership related expenses such as asset management, accounting or audit fees. Costs of tenant services are not included in G&A.

(B) Management Fee. Fee paid to the property management company to oversee the operation of the Property and is most often based upon a percentage of EGI as documented in an existing property management agreement or proposal. The Underwriter will use the Applicant’s proposed Management Fee if it is within the range of 4% to 6% of EGI. A proposed fee outside of this range must be documented.

(C) Payroll Expense. Compensation, insurance benefits, and payroll taxes for on-site office, leasing and maintenance staff. Payroll does not include Third-Party security or tenant services contracts. Staffing specific to tenant services, security or other staffing not related to customary property operations should be itemized and included in other expenses or tenant services expense.

(D) Repairs and Maintenance Expense. Materials and supplies for the repairs and maintenance of the Development including Third-Party maintenance contracts. This line-item does not include costs that are customarily capitalized that would result from major replacements or renovations.

(E) Utilities Expense. Gas and electric energy expenses paid by the Development. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(F) Water, Sewer, and Trash Expense (WST). Includes all water, sewer and trash expenses paid by the Development.

(G) Insurance Expense. Cost of Insurance coverage for the buildings, contents, and general liability, but not health or workman's compensation insurance.

(H) Property Tax. Includes real property and personal property taxes but not payroll taxes.

(i) An assessed value will be calculated based on the capitalization rate published by the county taxing authority. If the county taxing authority does not publish a capitalization rate, a capitalization rate of 10% or a comparable assessed value may be used.

(ii) Other assessed values or property tax estimates may be used based on development specific factors as determined by the Underwriter.

(iii) If the Applicant proposes a property tax exemption or Payment in Lieu of Taxes (PILOT) agreement the Applicant must provide documentation in accordance with §10.402(d) of this title (relating to Documentation Submission Requirements at Commitment of Funds). At the underwriter's discretion, such documentation may be required prior to Commitment or Determination Notice if deemed necessary.

(I) Replacement Reserves. Periodic deposits to a reserve account to pay for the future replacement or major repair of building systems and components (generally items considered capitalized costs). The Underwriter will use a minimum reserve of $250 per Unit for New Construction and Reconstruction Developments and $300 per Unit for all other Developments. The Underwriter may require an amount above $300 for the Development based on information provided in the Scope and Cost Review (SCR) or, for existing USDA developments, an amount approved by USDA. The Applicant's assumption for reserves may be adjusted by the Underwriter if the amount provided by the Applicant is insufficient to fund capital needs as documented by the SCR during the first fifteen (15) years of the long term pro forma. Higher reserves may be used if documented by a primary lender or syndicator.

(J) Other Operating Expenses. The Underwriter will include other reasonable, customary and documented property-level operating expenses such as audit fees, security expense, telecommunication expenses (tenant reimbursements must be reflected in EGI) and TDHCA's compliance fees. For Developments financed by USDA, a Return to Owner (RTO) may be included as an operating expense in an amount consistent with the maximum approved by USDA or an amount determined by the Underwriter. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees.

(K) Resident Services. Resident services are not included as an operating expense or included in the DCR calculation unless:

(i) There is a documented financial obligation on behalf of the Owner with a unit of state or local government to provide resident supportive services at a specified dollar amount. The financial obligation must be identified by the permanent lender in their term sheet and the dollar amount of the financial obligation must be included in the DCR calculation on the permanent lender's 15-year

pro forma at Application. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred; or

(ii) The Applicant demonstrates a history of providing comparable supportive services and expenses at existing affiliated properties within the local area. Except for Supportive Housing Developments, the estimated expense of supportive services must be identified by the permanent lender in their term sheet and included in the DCR calculation on the 15-year pro forma. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred; and

(iii) On-site staffing or pro ration of staffing for coordination of services only, and not the provision of services, can be included as a supportive services expense without permanent lender documentation.

(L) Total Operating Expenses. The total of expense items described in ~~10 TAC~~ §11.302(d)(2) subparagraphs (A) - (K) of this paragraph (relating to Operating Feasibility). If the Applicant's total expense estimate is within 5% of the final total expense figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR, the Underwriter's independent calculation will be used unless the Applicant's first year stabilized pro forma meets the requirements of paragraph (3) of this subsection.

(3) Net Operating Income (NOI). The difference between the EGI and total operating expenses. If the Applicant's first year stabilized NOI figure is within 5% of the NOI calculated by the Underwriter, the Applicant's NOI is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR, the Underwriter's calculation of NOI will be used unless the Applicant's first year stabilized EGI, total operating expenses, and NOI are each within 5% of the Underwriter's estimates. For Housing Tax Credit Developments at cost certification, actual NOI will be used as adjusted for stabilization of rents and extraordinary lease-up expenses. Permanent lender and equity partner stabilization requirements documented in the loan and partnership agreements will be considered in determining the appropriate adjustments and the NOI used by the Underwriter. For Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, the Underwriter will not develop independent estimates of EGI, Total Operating Expenses, or NOI. The Applicant’s NOI will generally be characterized as reasonable, subject to review for compliance with Underwriting Rules and Guidelines.

(4) Debt Coverage Ratio. DCR is calculated by dividing NOI by the sum of the debt service payments on all permanent or foreclosable lien(s) with scheduled and periodic payment requirements, including any required debt service on a Direct Loan subject to the applicable Notice of Funding Availability (NOFA) or other program requirements, and any on-going loan related fees such as credit enhancement fees or loan servicing fees. If executed loan documents do not exist, loan terms including principal and interest payments are calculated based on the terms indicated in the most current term sheet(s). Otherwise, actual terms indicated in the executed loan documents will be used. Term sheet(s) must indicate the minimum DCR required by the lender for initial underwriting as well as for stabilization purposes. Unusual or non-traditional financing structures may also be considered.

(A) Interest Rate. The rate documented in the term sheet(s) or loan document(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide the base rate index or methodology for determining the variable rate index and any component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate assumption, or the Applicant must submit a separate statement from the lender with an estimate of the interest rate as of the date of such statement. At initial underwriting, the Underwriter may adjust the underwritten interest rate assumption based on market data collected on similarly structured transactions or rate index history. Private Mortgage Insurance premiums and similar fees are not included in the interest rate but calculated on outstanding principal balance and added to the total debt service payment.

(B) Amortization Period. For purposes of calculating DCR, the permanent lender's amortization period will be used if not less than 30 years and not more than 40 years. Up to 50 years may be used for federally sourced or insured loans. For permanent lender debt with amortization periods less than 30 years, 30 years will be used. For permanent lender debt with amortization periods greater than 40 years, 40 years will be used. For non-Housing Tax Credit transactions a lesser amortization period may be used if the Direct Loans will be fully amortized over the same period as the permanent lender debt.

(C) Repayment Period. For purposes of projecting the DCR over a 30 year period for Developments with permanent financing structures with balloon payments in less than 30 years, the Underwriter will carry forward debt service based on a full amortization at the interest rate stated in the term sheet(s).

(D) Acceptable Debt Coverage Ratio Range. Except as set forth in clauses (i) or (ii) of this subparagraph, the acceptable first year stabilized pro forma DCR must be between a minimum of 1.15 and a maximum of 1.35 (maximum of 1.50 for Housing Tax Credit Developments at cost certification).

(i) If the DCR is less than the minimum, the recommendations of the Report may be based on a reduction to debt service and the Underwriter will make adjustments to the financing structure in the priority order presented in subclauses (I) - (IV) of this clause subject to Direct Loan NOFA requirements and program rules:

(I) A reduction to the interest rate of a Direct Loan;

(II) An increase in the amortization period of a Direct Loan;

(III) A reduction in the principal amount of a Direct Loan; and

(IV) An assumed reduction in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet(s) as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(ii) Except for Developments financed with a Direct Loan as the senior debt and the DCR is greater than the maximum, the recommendations of the Report may be based on an increase to debt service and the Underwriter will make adjustments to the assumed financing structure in the priority order

presented in subclauses (I) - (III) of this clause subject to Direct Loan NOFA requirements and program rules:

(I) an increase to the interest rate of a Direct Loan up to the lesser of the maximum interest rate pursuant to a Direct Loan NOFA or the interest rate on any senior permanent debt or if no senior permanent debt a market rate determined by the Underwriter based on current market interest rates;

(II) or a decrease in the amortization period on a Direct Loan but not less than 30 years; and

(III) an assumed increase in the permanent loan amount for non-Department proposed financing based upon the rates and terms in the permanent loan term sheet as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(iii) For Housing Tax Credit Developments, a reduction in the recommended Housing Credit Allocation Amount may be made based on the Gap Method described in subsection (c)(2) of this section as a result of an increased debt assumption, if any.

(iv) For Developments financed with a Direct Loan subordinate to FHA financing, DCR on the Direct Loan will be calculated using 75% of the Surplus Cash (or other amount if~~as defined by the applicable FHA program~~identified in a Direct Loan NOFA).

(v) The Underwriter may limit total debt service that is senior to a Direct Loan to produce an acceptable DCR on the Direct Loan and may limit total debt service if the Direct Loan is the senior primary debt.

(5) Long Term Pro forma. The Underwriter will create a 30-year operating pro forma using the criteria provided in subparagraphs (A) to (C) of this paragraph:

(A) The Underwriter's or Applicant's first year stabilized pro forma as determined by paragraph (3) of this subsection.

(B) A 2% annual growth factor is utilized for income and a 3% annual growth factor is utilized for operating expenses except for management fees that are calculated based on a percentage of each year's EGI.

(C) Adjustments may be made to the long term pro forma if satisfactory support documentation is provided by the Applicant or as independently determined by the Underwriter.

(e) Total Housing Development Costs. The Department's estimate of the Total Housing Development Cost will be based on the Applicant's Development cost schedule to the extent that costs can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For New Construction Developments, the Underwriter's total cost estimate will be used unless the Applicant's Total Housing Development Cost is within 5% of the Underwriter's estimate. The Department's estimate of the Total Housing Development Cost for Rehabilitation Developments or Adaptive Reuse Developments will be based on the estimated cost provided in the SCR for the scope of work as defined by the Applicant and §11.306(a)(5) of this

chapter (relating to SCR Guidelines); the Underwriter may make adjustments to the SCR estimated costs. If the Applicant's cost estimate is utilized and the Applicant's line item costs are inconsistent with documentation provided in the Application or program rules, the Underwriter may make adjustments to the Applicant's Total Housing Development Cost. For Competitive Housing Tax Credit Applications, the Underwriter will adjust an Applicant's cost schedule line item to meet program rules. Underwriter will not make subsequent adjustments to the application to meet feasibility requirements as a result of the initial adjustment required to meet program rules.

(1) Acquisition Costs.

(A) Land, Reconstruction, and Adaptive Reuse Acquisition.

(i) For a non-identity of interest acquisition of land, or a Reconstruction or Adaptive Reuse Development, the underwritten acquisition cost will be the amount(s) reflected in the Site Control document(s) for the Property. At Cost Certification, the acquisition cost used will be the actual amount paid as verified by the settlement statement.

(ii) For an identify of interest acquisition of land, or a Reconstruction or Adaptive Reuse Development, the underwritten acquisition cost will be the lesser of the amount reflected in the Site Control documents for the property or the appraised value as determined by an appraisal that meets the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines). An appraisal is not required if the land or building are donated to the proposed Development, and no costs of acquisition appear on the Development Cost Schedule. An acquisition will be considered an identity of interest transaction when an Affiliate of the seller is an Affiliate of, or a Related Party to, any Owner at any level of the Development Team or a Related Party lender; and

(I) is the current owner in whole or in part of the Property; or

(II) has or had within the prior 36 months the legal or beneficial ownership of the property or any portion thereof or interest therein regardless of ownership percentage, control or profit participation prior to the first day of the Application Acceptance Period or in the case of a tax-exempt bond or 4% tax credit application the Application Date.

(iii) For all identity of interest acquisitions, the cost used at cost certification will be limited to the acquisition cost underwritten in the initial Underwriting of the Application.

(iv) In cases where more land will be acquired (by the Applicant or a Related Party) than will be utilized as the Development Site and the remainder acreage is not accessible for use by tenants or dedicated as permanent and maintained green space, the acquisition cost that will be allocated to the proposed Development Site will be based on an appraisal containing segregated values for the total acreage to be acquired, the acreage for the Development Site and the remainder acreage. The Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).

(B) Acquisition and Rehabilitation. The underwritten acquisition cost for an Acquisition and Rehabilitation Development will be the appraised value as determined by an appraisal that meets the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines).

(C) USDA Rehabilitation Developments. The underwritten acquisition cost for developments financed by USDA will be the transfer value approved by USDA.

(D) Eligible Basis on Acquisition of Buildings. Building acquisition cost included in Eligible Basis is limited to the appraised value of the buildings, exclusive of land value, as determined by the appraisal.

(2) Off-Site Costs. The Underwriter will only consider costs of Off-Site Construction that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(3) Site Work Costs. The Underwriter will only consider costs of Site Work, including site amenities, that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(4) Building Costs.

(A) New Construction and Reconstruction. The Underwriter will use the Marshall and Swift Residential Cost Handbook, other comparable published Third-Party cost estimating data sources, historical final cost certifications of previous Housing Tax Credit developments and other acceptable cost data available to the Underwriter to estimate Building Cost. Generally, the "Average Quality" multiple, townhouse, or single family costs, as appropriate, from the Marshall and Swift Residential Cost Handbook or other comparable published Third-Party data source, will be used based upon details provided in the Application and particularly building plans and elevations. Costs for multi-level parking structures must be supported by a cost estimate from a Third Party contractor with demonstrated experience in structured parking construction. The Underwriter will consider amenities, specifications and development types not included in the Average Quality standard. The Underwriter may consider a sales tax exemption for nonprofit General Contractors.

(B) Rehabilitation and Adaptive Reuse.

(i) The Applicant must provide a scope of work and narrative description of the work to be completed. The narrative should speak to all Off-Site Construction, Site Work, and building components including finishes and equipment, and development amenities. The narrative should be in sufficient detail so that the reader can understand the work and it must generally be arranged consistent with the line-items on the SCR Supplement and must also be consistent with the Development Cost Schedule of the Application.

(ii) The Underwriter will use cost data provided on the SCR Supplement if adequately described and substantiated in the SCR report as the basis for estimating Total Housing Development Costs.

(5) Contingency. Total contingency, including any soft cost contingency, will be limited to a maximum of 7% of Building Cost plus Site Work and Off-Site Construction for New Construction and Reconstruction Developments, and 10% of Building Cost plus Site Work and Off-Site Construction for Rehabilitation and Adaptive Reuse Developments. For Housing Tax Credit Developments, the percentage is applied to the sum of the eligible Building Cost, eligible Site Work costs and eligible Off-Site Construction costs in calculating the eligible contingency cost.

(6) General Contractor Fee. General Contractor fees include general requirements, contractor overhead, and contractor profit. General requirements include, but are not limited to, on-site supervision or construction management, off-site supervision and overhead, jobsite security, equipment rental, storage, temporary utilities, and other indirect costs. General Contractor fees are limited to a total of 14% on Developments with Hard Costs of $3 million or greater, the lesser of $420,000 or 16% on Developments with Hard Costs less than $3 million and greater than $2 million, and the lesser of $320,000 or 18% on Developments with Hard Costs at $2 million or less. Any contractor fees to Affiliates or Related Party subcontractors regardless of the percentage of the contract sum in the construction contract (s) will be treated collectively with the General Contractor Fee limitations. For Housing Tax Credit Developments, the percentages are applied to the sum of the Eligible Hard Costs in calculating the eligible contractor fees. For Developments also receiving financing from USDA, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or USDA requirements. Additional fees for ineligible costs will be limited to the same percentage of ineligible Hard Costs but will not be included in Eligible Basis.

(7) Developer Fee.

(A) For Housing Tax Credit Developments, the Developer Fee included in Eligible Basis cannot exceed 15% of the project's eligible costs, less Developer Fee, for Developments proposing 50 Units or more and 20% of the project's eligible costs, less Developer Fee, for Developments proposing 49 Units or less. If the Development is an additional phase, proposed by any Principal of the existing tax credit Development, the Developer Fee may not exceed 15%, regardless of the number of Units.

(B) For Housing Tax Credit Developments, any additional Developer Fee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs. Any Developer Fee above this limit will be excluded from Total Housing Development Costs. All fees to Affiliates or Related Parties for work or guarantees determined by the Underwriter to be typically completed or provided by the Developer or Principal(s) of the Developer will be considered part of Developer Fee.

(C) For Housing Tax Credit Developments, Eligible Developer Fee is multiplied by the appropriate Applicable Percentage depending on whether it is attributable to acquisition or rehabilitation basis.

(D) For non-Housing Tax Credit Developments, the percentage can be up to 7.5%, but is based upon Total Housing Development Cost less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in paragraph (8) of this subsection, reserves, and any identity of interest acquisition cost.

(8) Financing Costs. All fees required by the construction lender, permanent lender and equity partner must be indicated in the term sheets. Eligible construction period interest is limited to the lesser of actual eligible construction period interest, or the interest on one year's fully drawn construction period loan funds at the construction period interest rate indicated in the term sheet(s). For tax-exempt bond transactions up to 24 months of interest may be included. Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related Party or Affiliate construction loans is only included in Eligible Basis with documentation satisfactory to the Underwriter that the loan will be at a market interest rate, fees and loan terms and the Related Party

lender can demonstrate that it is routinely engaged in construction financing to unrelated parties.

(9) Reserves. Except for the underwriting of a Housing Tax Credit Development at cost certification, the Underwriter will utilize the amount presented in the Applicant's Development Cost Schedule up to twelve months of stabilized operating expenses plus debt service (up to twenty-four months for USDA or HUD-financed rehabilitation transactions). Reserve amounts exceeding these limits will be excluded from Total Housing Development Costs. Pursuant to §10.404(c) of this title (relating to Operative Reserve Accounts), and for the underwriting of a Housing Tax Credit Development at cost certification, operating reserves that will be maintained for a minimum period of five years and documented in the Owner's partnership agreement or the permanent lender's loan documents will be included as a development cost.

(10) Soft Costs. Eligible soft costs are generally costs that can be capitalized in the basis of the Development for tax purposes. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Code. Generally the Applicant's costs are used however the Underwriter will use comparative data and Third Party CPA certification as to the capitalization of the costs to determine the reasonableness of all soft costs. For Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, the Underwriter will not develop independent estimates for Building Cost or Soft Costs. The Applicant’s Total Housing Development Cost and Total Eligible Cost will generally be characterized as reasonable, subject to review for compliance with Underwriting Rules and Guidelines.

(11) Additional Tenant Amenities. For Housing Tax Credit Developments and after submission of the cost certification package, the Underwriter may consider costs of additional building and site amenities (suitable for the Target Population being served) proposed by the Owner in an amount not to exceed 1.5% of the originally underwritten Hard Costs. The additional amenities must be included in the LURA.

(12) Special Reserve Account. For Housing Tax Credit Developments at cost certification, the Underwriter may include a deposit of up to $2,500 per Unit into a Special Reserve Account as a Development Cost.

(f) Development Team Capacity and Development Plan.

(1) The Underwriter will evaluate and report on the overall capacity of the Development Team by reviewing aspects, including but not limited to those identified in subparagraphs (A) - (D) of this paragraph:

(A) Personal credit reports for development sponsors, Developer Fee recipients and those individuals anticipated to provide guarantee(s) in cases when warranted. The Underwriter may evaluate the credit report and identify any bankruptcy, state or federal tax liens or other relevant credit risks for compliance with eligibility and debarment requirements as found in Chapter 2 of this title (relating to Enforcement);

(B) Quality of construction, Rehabilitation, and ongoing maintenance of previously awarded housing

developments by review of construction inspection reports, compliance on-site visits, findings of UPCS violations and other information available to the Underwriter;

(C) For Housing Tax Credit Developments, repeated or ongoing failure to timely submit cost certifications, requests for and clearance of final inspections, and timely response to deficiencies in the cost certification process; and

(D) Adherence to obligations on existing or prior Department funded developments with respect to program rules and documentation.

(2) While all components of the Development plan may technically meet the other individual requirements of this section, a confluence of serious concerns and unmitigated risks identified during the underwriting process may result in an Application being determined to be infeasible by the Underwriter. Any recommendation made under this subsection to deny an Application for a Grant, Direct Loan or Housing Credit Allocation is subject to Appeal as further provided for in §11.902 of this chapter (relating to Appeals).

(g) Other Underwriting Considerations. The Underwriter will evaluate additional feasibility elements as described in paragraphs (1) - (4) of this subsection.

(1) Interim Operating Income. Interim operating income listed as a source of funds must be supported by a detailed lease-up schedule and analysis.

(2) Floodplains. The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:

(A) The Applicant must pursue and receive a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR-F); or

(B) The Applicant must identify the cost of flood insurance for the buildings ~~and for the tenant's contents for buildings~~ within the 100-year floodplain and certify that the flood insurance will be obtained; and

(C) The Development must be proposed to be designed to comply with the QAP, Program Rules and NOFA, and applicable Federal or state requirements.

(3) Proximity to Other Developments. The Underwriter will identify in the Report any Developments funded or known and anticipated to be eligible for funding within one linear mile of the subject. Distance is measured in a straight line from nearest boundary point to nearest boundary point.

(4) Direct Loans. In accordance with the requirements of 24 CFR §§92.250 and 93.300(b), a request for a Direct Loan will not be recommended for approval if the first year stabilized pro forma Cash Flow, after deducting any payment due to the Developer on a deferred developer fee loan and scheduled payments on cash flow loans, divided by the Development Owner's equity exceeds 10%, or a higher amount not to exceed 12% may be approved by the underwriter for unique ownership

capital structures or as allowed by a federally insured loan program. For this purpose, Cash Flow may be adjusted downward by the Applicant electing to commit any Cash Flow in excess of the limitation to a special reserve account, in accordance with ~~10 TAC~~ §10.404(d). For capital structures without Development Owner equity, a maximum of 75% of on-going Cash Flow, after deducting any payment due to the Developer on a deferred developer fee loan and scheduled payments on cash flow loans, may be distributed to the Development Owner and the remaining 25% must be deposited to a special reserve account, in accordance with ~~10 TAC~~ §10.404(d). If the Direct Loan is not recommended for approval, the remaining feasibility considerations under this section will be based on a revised sources schedule that does not contain the Direct Loan. This standard will also be used when the Development Owner is seeking approval for a request for a subordination agreement or a refinance.

(h) Work Out Development. As also described in §11.302(h), Developments that are underwritten subsequent to Board approval in order to refinance or gain relief from restrictions may be considered infeasible based on the guidelines in this section, but may be characterized as "the best available option" or "acceptable available option" depending on the circumstances and subject to the discretion of the Underwriter as long as the option analyzed and recommended is more likely to achieve a better financial outcome for the property and the Department than the status quo.

(i) Feasibility Conclusion. A Development will be characterized as infeasible if paragraph (1) or (2) of this subsection applies. The Development will be characterized as infeasible if one or more of paragraphs (3) or (4) of this subsection applies unless paragraph (5~~6~~)(B) of this subsection also applies.

(1) Gross Capture Rate, AMGI Band Capture Rates, and Individual Unit Capture Rate. The method for determining capture rates for a Development is defined in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines). The Underwriter will independently verify all components and conclusions of the capture rates and may, at their discretion, use independently acquired demographic data to calculate demand and may make a determination of the capture rates based upon an analysis of the Sub-market. The Development:

(A) Is characterized as an Elderly Development and the Gross Capture Rate or any AMGI bad capture rate exceeds 10%; or

(B) Is outside a Rural Area and targets the general population, and the Gross Capture Rate or any AMGI band capture rate exceeds 10% (or 15% for Tax-Exempt Bond Developments located in an MSA (as defined in the HTC Site Demographics Characteristics Report) with a population greater than one million if the average physical occupancy is 92.5% or greater for all stabilized affordable housing developments located within a 20 minute drive time, as supported by the Market Analyst, from the subject Development); or

(C) Is in a Rural Area and targets the general population, and:

(i) contains total Units of 120 or less, and the Gross Capture Rate or any AMGI band capture rate exceeds 30%; or

(ii) contains more than 120 total Units, and the Gross Capture Rate or any AMGI band capture rate exceeds 10%; or

(D) Is Supportive Housing and the Gross Capture Rate or any AMGI band capture rate exceeds 30%; or

(E) Has an Individual Unit Capture Rate for any Unit Type greater than 65%; and.

(F) Developments meeting the requirements of subparagraph (A), (B), (C), (D) or (E) of this paragraph may avoid being characterized as infeasible if clause (i) or (ii) of this subparagraph apply:.

(i) Replacement Housing. The proposed Development is comprised of affordable housing which replaces previously existing affordable housing within the Primary Market Area as defined in §11.303 of this chapter (relating to Market Analysis Rules and Guidelines) on a Unit for Unit basis, and gives the displaced tenants of the previously existing affordable housing a leasing preference; or.

(ii) Existing Housing. The proposed Development is comprised of existing affordable housing, whether defined by an existing land use and rent restriction agreement or if the subject rents are at or below 50% AMGI rents, which is at least 50% occupied and gives displaced existing tenants a leasing preference as stated in a relocation plan.

(2) Deferred Developer Fee. Applicants requesting an allocation of tax credits where the estimated Deferred Developer Fee, based on the underwritten capitalization structure, is not repayable from Cash Flow within the first 15 years of the long term pro forma as described in subsection (d)(5) of this section.

(3) Initial Feasibility.

(A) Except when underwritten at cost certification, the first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68% for Rural Developments 36 Units or less, and 65% for all other Developments.

(B) The first year DCR is below 1.15 (1.00 for USDA Developments).

(4) Long Term Feasibility. The Long Term Pro forma reflects:

(A) A Debt Coverage Ratio below 1.15 at any time during years two through fifteen; or

(B) Negative Cash Flow at any time throughout the term of a Direct Loan, or at any time during years two through fifteen for applications that do not include a request for a Direct Loan.

(5) Exceptions. The infeasibility conclusions will not apply if:

(A) The Executive Director of the Department finds that documentation submitted by the Applicant at the request of the Underwriter will support unique circumstances that will provide mitigation.

(B) Developments not meeting the requirements of one or more of paragraphs (3)(A) or (4) of this subsection will be re-characterized as feasible if one or more of clauses (i) - (v) of this subparagraph apply. A Development financed with a Direct Loan will not be re-characterized as feasible with respect to (4)(B). The Development:

(i) ~~the Development~~ will receive Project-based Section 8 Rental Assistance or the HUD Rental Assistance Demonstration Program for at least 50% of the Units and a firm commitment, with terms including Contract Rent and number of Units, is submitted at Application;~~,~~

(ii) ~~the Development~~ will receive rental assistance for at least 50% of the Units in association with USDA financing;~~.~~

(iii) ~~the Development~~ will be characterized as public housing as defined by HUD for at least 50% of the Units;~~.~~

(iv) ~~the Development~~ meets the requirements under §11.1(12~~4~~6)(E)(i) as Supportive Housing and there is an irrevocable commitment, as evidenced by resolution from the sponsor's governing board, to fund operating deficits over the entire Affordability Period;; or

(v) ~~the Development~~ has other long term project based restrictions on rents for at least 50% of the Units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10% lower than both the Net Program Rent and Market Rent.

§11.303. Market Analysis Rules and Guidelines.

(a) General Provision. A Market Analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The analysis must determine the feasibility of the subject Development rental rates or sales price, and state conclusions as to the impact of the Development with respect to the determined housing needs. The Market Analysis must include a statement that the report preparer has read and understood the requirements of this section. The Market Analysis must also include a statement that the person or company preparing the Market Analysis is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the Market Analysis, and that the fee is in no way contingent upon the outcome of the Market Analysis. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(b) Self-Contained. A Market Analysis prepared for the Department must allow the reader to understand the market data presented, the analysis of the data, and the conclusions derived from such data. All data presented should reflect the most current information available and the report must provide a parenthetical (in-text) citation or footnote describing the data source. The analysis must clearly lead the reader to the same or similar conclusions reached by the Market Analyst. All steps leading to a calculated figure must be presented in the body of the report.

(c) Market Analyst Qualifications. A Market Analysis submitted to the Department must be prepared and certified by an approved Qualified Market Analyst. (§2306.67055) The Department will maintain an approved Market Analyst list based on the guidelines set forth in paragraphs (1) - (2) of this subsection.

(1) The approved Qualified Market Analyst list will be updated and published annually on or about November 1st. If not listed as an approved Qualified Market Analyst by the Department, a Market

Analyst may request approval by submitting items in subparagraphs (A) - (F) of this paragraph at least 30 calendar days prior to the first day of the competitive tax credit Application Acceptance Period or 30 calendar days prior to submission of any other application for funding for which the Market Analyst must be approved. An already approved Qualified Market Analyst will remain on the list so long as at least one (1) Market Analysis has been submitted to the Department in the previous 12 months or items (A), (B), (C) and (E) are submitted prior to October 1st. Otherwise, the Market Analyst will automatically be removed from the list. Submission items include:

(A) Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships);

(B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis. A firm with multiple offices or locations must indicate all members expected to be providing Market Analysis;

(C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis;

(D) General information regarding the firm's experience including references, the number of previous similar assignments and timeframes in which previous assignments were completed;

(E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the Application Round in which each Market Analysis is submitted; and

(F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted.

(2) During the underwriting process each Market Analysis will be reviewed and any discrepancies with the rules and guidelines set forth in this section may be identified and require timely correction. Subsequent to the completion of the Application Round and as time permits, staff or a review appraiser will re-review a sample set of submitted market analyses to ensure that the Department's Market Analysis Rules and Guidelines are met. If it is found that a Market Analyst has not conformed to the Department's Market Analysis Rules and Guidelines, as certified to, the Market Analyst will be notified of the discrepancies in the Market Analysis and will be removed from the approved Qualified Market Analyst list.

(A) In and of itself, removal from the list of approved Market Analysts will not invalidate a Market Analysis commissioned prior to the removal date and at least 90 days prior to the first day of the applicable Application Acceptance Period.

(B) To be reinstated as an approved Qualified Market Analyst, the Market Analyst must amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the updated or new sample Market Analysis is submitted.

(d) Market Analysis Contents. A Market Analysis for a rental Development prepared for the Department must be organized in a format that follows a logical progression and must include, at minimum, items addressed in paragraphs (1) - (13) of this subsection.

(1) Title Page. Include Development address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of Market Analyst.

(2) Letter of Transmittal. The date of the letter must be the date the report was completed. Include Development's address or location, description of Development, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject Property, and signatures of all Market Analysts authorized to work on the assignment. Include a statement that the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

(4) Market Analysis Summary. Include the Department's Market Analysis Summary exhibit.

(5) Assumptions and Limiting Conditions. Include a description of all assumptions, both general and specific, made by the Market Analyst concerning the Property.

(6) Identification of the Real Estate. Provide a statement to acquaint the reader with the Development. Such information includes street address, tax assessor's parcel number(s), and Development characteristics.

(7) Statement of Ownership. Disclose the current owners of record and provide a three year history of ownership for the subject Development.

(8) Primary Market Area. A limited geographic area from which the Development is expected to draw most of its demand. The size and shape of the PMA should be reflective of proximity to employment centers, services and amenities and contain the most significant areas from which to draw demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one PMA definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)

(A) The PMA will be defined by the Market Analyst as:

(i) geographic size based on a base year population no larger than necessary to provide sufficient demand but no more than 100,000 people;

(ii) boundaries based on U.S. census tracts; and

(iii) the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract.

(B) The Market Analyst's definition of the PMA must include:

(i) a detailed narrative specific to the PMA explaining:

(I) How the boundaries of the PMA were determined with respect to census tracts chosen and factors for including or excluding certain census tracts in proximity to the Development;

(II) Whether a more logical market area within the PMA exists but is not definable by census tracts and how this subsection of the PMA supports the rationale for the defined PMA;

(III) What are the specific attributes of the Development's location within the PMA that would draw prospective tenants from other areas of the PMA to relocate to the Development;

(IV) What are the specific attributes, if known, of the Development itself that would draw prospective tenants currently residing in other areas of the PMA to relocate to the Development;

(V) If the PMA crosses county lines, discuss the different income and rent limits in each county and how these differing amounts would affect the demand for the Development;

(VI) For rural Developments, discuss the relative draw (services, jobs, medical facilities, recreation, schools, etc.) of the Development's immediate local area (city or populous area if no city) in comparison to its neighboring local areas (cities, or populous areas if no cities), in and around the PMA. A rural PMA should not include significantly larger more populous areas unless the analyst can provide substantiation and rationale that the tenants would migrate to the Development's location from the larger cities;

(VII) Discuss and quantify current and planned single-family and non-residential construction (include permit data if available); and

(VIII) Other housing issues in general, if pertinent;

(ii) a complete demographic report for the defined PMA;

(iii) a scaled distance map indicating the PMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order with labels as well as the location of the subject Development and all comparable Developments. The map must indicate the total square miles of PMA; and

(iv) a proximity table indicating distance from the Development to employment centers, medical facilities, schools, entertainment and any other amenities relevant to the potential residents and include drive time estimates.

(C) Comparable Units. Identify developments in the PMA with Comparable Units. In PMAs lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable and qualitative location adjustments. Provide a data sheet for each comparable development consisting of:

(i) development name;

(ii) address;

(iii) year of construction and year of Rehabilitation, if applicable;

(iv) property condition;

(v) Target Population;

(vi) unit mix specifying number of Bedrooms, number of baths, Net Rentable Area including:; ~~and~~

(I) monthly rent and Utility Allowance; or

(II) sales price with terms, marketing period and date of sale;

(vii) description of concessions;

(viii) list of unit amenities;

(ix) utility structure;

(x) list of common amenities;

(xi) narrative comparison of its proximity to employment centers and services relative to targeted tenant population of the subject property; and

(xii) for rental developments only, the occupancy and turnover.

(9) Market Information.

(A) Identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph, if applicable:

(i) total housing;

(ii) all multi-family rental developments, including unrestricted and market-rate developments, whether existing, under construction or proposed;

(iii) Affordable housing;

(iv) Comparable Units;

(v) Unstabilized Comparable Units; and

(vi) proposed Comparable Units.

(B) Occupancy. The occupancy rate indicated in the Market Analysis may be used to support both the overall demand conclusion for the proposed Development and the vacancy rate assumption used

in underwriting the Development described in §11.302(d)(1)(C) of this chapter (relating to Operating Feasibility~~Vacancy and Collection Loss~~). State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:

(i) number of Bedrooms;

(ii) quality of construction (class);

(iii) Target Population; and

(iv) Comparable Units.

(C) Absorption. State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.

(D) Demographic Reports must include:~~.~~

(i) All demographic reports must include population and household data for a five year period with the year of Application submission as the base year;

(ii) All demographic reports must provide sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations;

(iii) For Elderly Developments, all demographic reports must provide a detailed breakdown of households by age and by income; and

(iv) A complete copy of all demographic reports relied upon for the demand analysis, including the reference index that indicates the census tracts on which the report is based.

(E) Demand. Provide a comprehensive evaluation of the need for the proposed housing for the Development as a whole and each -Unit Type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available. A complete demand and capture rate analysis is required in every Market Study, regardless of the current occupancy level of an existing Development.

(i) Demographics. The Market Analyst should use demographic data specific to the characteristics of the households that will be living in the proposed Development. For example, the Market Analyst should use demographic data specific to the elderly populations (and any other qualifying residents for Elderly Developments) to be served by an Elderly Development, if available, and should avoid making adjustments from more general demographic data. If adjustment rates are used based on more general data for any of the criteria described in subclauses (I) - (V) of this clause, they should be clearly identified and documented as to their source in the report.

(I) Population. Provide population and household figures, supported by actual demographics, for a five year period with the year of Application submission as the base year.

(II) Target. If applicable, adjust the household projections for the qualifying demographic

characteristics such as the minimum age of the population to be served by the proposed Development.

(III) Household Size-Appropriate. Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit Type by number of Bedrooms proposed and rent restriction category based on 2 persons per Bedroom or one person for Efficiency Units.

(IV) Income Eligible. Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit Type by number of Bedrooms proposed and rent restriction category with:

(-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 40% for the general population and 50% for elderly households; and

(-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size based on 2 persons per Bedroom (round up) or one person for Efficiency Units.

(V) Tenure-Appropriate. Adjust the income-eligible household projections for tenure (renter or owner). If tenure appropriate income eligible target household data is available, a tenure appropriate adjustment is not necessary.

(ii) Gross Demand. Gross Demand is defined as the sum of Potential Demand from the PMA, Demand from Other Sources, and External Demand.

(iii) Potential Demand. Potential Demand is defined as the number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placed in service date.

(I) Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size.

(II) For Developments targeting the general population:

(-a-) minimum eligible income is based on a 40% rent to income ratio;

(-b-) appropriate household size is defined as two persons per Bedroom (rounded up); and

(-c-) the tenure-appropriate population for a rental Development is limited to the population of renter households.

(III) For Developments consisting solely of single family residences on separate lots with all Units having three or more Bedrooms:

(-a-) minimum eligible income is based on a 40% rent to income ratio;

(-b-) appropriate household size is defined as two persons per Bedroom (rounded up); and

(-c-) Gross Demand includes both renter and owner households.

(IV) For Elderly Developments:

(-a-) minimum eligible income is based on a 50% rent to income ratio; and

(-b-) Gross Demand includes all household sizes and both renter and owner households within the age range (and any other qualifying characteristics) to be served by the Elderly Development.

(V) For Supportive Housing:

(-a-) minimum eligible income is $1; and

(-b-) households meeting the occupancy qualifications of the Development (data to quantify this demand may be based on statistics beyond the defined PMA but not outside the historical service area of the Applicant).

(VI) For Developments with rent assisted units (Project Based Vouchers, Project-Based Rental Assistance, Public Housing Units):

(-a-) minimum eligible income for the assisted units is $1; and

(-b-) maximum eligible income for the assisted units is the minimum eligible income of the corresponding affordable unit.

(iv) For External Demand, ~~:~~ ~~A~~assume an additional 10% of Potential Demand from the PMA to represent demand coming from outside the PMA.

(v) For Demand from Other Sources:

(I) the source of additional demand and the methodology used to calculate the additional demand must be clearly stated;

(II) consideration of Demand from Other Sources is at the discretion of the Underwriter;

(III) Demand from Other Sources must be limited to households that are not included in Potential Demand; and

(IV) if households with Section 8 vouchers are identified as a source of demand, the Market Study must include:

(-a-) documentation of the number of vouchers administered by the local Housing Authority; and

(-b-) a complete demographic report for the area in which the vouchers are distributed.

(F) Employment. Provide a comprehensive analysis of employment trends and forecasts in the Primary Market Area. Analysis must discuss existing or planned employment opportunities with qualifying income ranges.

(10) Conclusions. Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served by the Development in terms of items in subparagraphs (A) - (J) of this paragraph. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.

(A) Unit Mix. Provide a best possible unit mix conclusion based on the occupancy rates by Bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate household demand by Unit Type and income type within the PMA.

(B) Rents. Provide a separate Market Rent conclusion for each proposed Unit Type by number of Bedrooms and rent restriction category. Conclusions of Market Rent below the maximum Net Program Rent limit must be well documented as the conclusions may impact the feasibility of the Development under §11.302(i) of this chapter (relating to Feasibility Conclusion). In support of the Market Rent conclusions, provide a separate attribute adjustment matrix for each proposed Unit Type by number of Bedrooms and rental restriction category.

(i) The Department recommends use of HUD Form 92273.

(ii) A minimum of three developments must be represented on each attribute adjustment matrix.

(iii) Adjustments for concessions must be included, if applicable.

(iv) Adjustments for proximity and drive times to employment centers and services narrated in the Comparable Unit description, and the rationale for the amount of the adjustments must be included.

(v) Total adjustments in excess of 15% must be supported with additional narrative.

(vi) Total adjustments in excess of 25% indicate the Units are not comparable for the purposes of determining Market Rent conclusions.

(C) Effective Gross Income. Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.

(D) For Demand:

(i) state the Gross Demand for each Unit Type by number of Bedrooms proposed and rent restriction category (e.g. one-Bedroom Units restricted at 50% of AMGI; two-Bedroom Units restricted at 60% of AMGI); ~~and~~

(ii) state the Gross Demand for the proposed Development as a whole. If some households are eligible for more than one Unit Type due to overlapping eligible ranges for income or household size, Gross Demand should be adjusted to avoid including households more than once; and~~.~~

(iii) state the Gross Demand generated from each AMGI band. If some household incomes are included in more than one AMGI band, Gross Demand should be adjusted to avoid including households more than once.

(E) Relevant Supply. The Relevant Supply of proposed and Unstabilized Comparable Units includes:

(i) the proposed subject Units to be absorbed;

(ii) Comparable Units in an Application with priority over the subject pursuant to §11.201(5) of this chapter (relating to Procedural Requirements for Application Submission);

(iii) Comparable Units in previously approved Developments in the PMA that have not achieved 90% occupancy for a minimum of 90 days; and

(iv) proposed and Unstabilized Comparable Units that are located in close proximity to the subject PMA if they are likely to share eligible demand or if the PMAs have overlapping census tracts. Underwriter may require Market Analyst to run a combined PMA including eligible demand and Relevant Supply from the combined census tracts; the Gross Capture Rate generated from the combined PMA must meet the feasibility criteria as defined in §11.302(i) (relating to Feasibility Conclusion).

(F) Gross Capture Rate. The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand. Refer to §11.302(i) of this chapter (relating to Feasibility Conclusion).

(G) Individual Unit Capture Rate. For each Unit Type by number of Bedrooms and rent restriction categories, the individual unit capture rate is defined as the Relevant Supply of proposed and Unstabilized Comparable Units divided by the eligible demand for that Unit. Some households are eligible for multiple Unit Types. In order to calculate individual unit capture rates, each household is included in the capture rate for only one Unit Type.

(H) Capture Rate by AMGI Band. For each AMGI band (30%, 40%, 50%, 60%, and also 20%, 70%, and 80% if the Applicant will make the Income Average election), the capture rate by AMGI band is defined as Relevant Supply of proposed and Unstabilized Comparable Units divided by the eligible demand from that AMGI band. Some households are qualified for multiple income bands. In order to calculate AMGI band rates, each household is included in the capture rate for only one AMGI band.

(I) Absorption. Project an absorption period for the subject Development to achieve Breakeven Occupancy. State the absorption rate.

(J) Market Impact. Provide an assessment of the impact the subject Development, as completed, will have on existing Developments supported by Housing Tax Credits in the Primary Market. (§2306.67055)

(11) Photographs. Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. An aerial photograph is desirable but not mandatory.

(12) Appendices. Any Third Party reports including demographics relied upon by the Market Analyst

must be provided in appendix form. A list of works cited including personal communications also must be provided, and the Modern Language Association (MLA) format is suggested.

(13) Qualifications. Current Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships) and any changes to items listed in §11.303(c)(1)(B) and (C) of this chapter (relating to Market Analyst Qualifications).

(e) The Department reserves the right to require the Market Analyst to address such other issues as may be relevant to the Department's evaluation of the need for the subject Development and the provisions of the particular program guidelines.

(f) In the event that the PMA for a subject Development overlaps the PMA's of other proposed or Unstabilized comparable Developments, the Underwriter may perform an extended Sub-Market Analysis considering the combined PMA's and all proposed and Unstabilized Units in the extended Sub-Market Area; the Gross Capture Rate from such an extended Sub-Market Area analysis may be used by the Underwriter as the basis for a feasibility conclusion.

(g) All Applicants shall acknowledge, by virtue of filing an Application, that the Department shall not be bound by any such opinion or Market Analysis, and may substitute its own analysis and underwriting conclusions for those submitted by the Market Analyst.

§11.304. Appraisal Rules and Guidelines.

(a) General Provision.

(1) An appraisal prepared for the Department must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation. The appraisal must be prepared by a general certified appraiser by the Texas Appraisal Licensing and Certification Board. The appraisal must include a statement that the report preparer has read and understood the requirements of this section. The appraisal must include a statement that the person or company preparing the appraisal, or reviewing the appraisal, is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the appraisal and that the fee is in no way contingent upon the outcome of the appraisal.

(2) Appraisals received by the Department for Applications to be underwritten will be reviewed in accordance with USPAP Standard 3 and Standard 4. The reviewing appraiser will be selected by the Department from an approved list of review appraisers. If the reviewing appraiser disagrees with the conclusions or value(s) determined by the appraiser, the Underwriter will reconcile the appraisal and appraisal review and determine the appropriate value conclusions to be used in the underwriting analysis.

(b) Self-Contained. An appraisal prepared for the Department must describe sufficient and adequate data and analyses to support the final opinion of value. The final value(s) must be reasonable, based on the information included. Any Third Party reports relied upon by the appraiser must be verified by the appraiser as to the validity of the data and the conclusions.

(c) Appraiser Qualifications. The appraiser and reviewing appraiser must be appropriately certified

or licensed by the Texas Appraiser Licensing and Certification Board.

(d) Appraisal Contents. An appraisal prepared for the Department must be organized in a format that follows a logical progression. In addition to the contents described in USPAP Standards Rule 2, the appraisal must include items addressed in paragraphs (1) - (12) of this subsection.

(1) Title Page. Include a statement identifying the Department as the client, acknowledging that the Department is granted full authority to rely on the findings of the report, and name and address of person authorizing report. The title page must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(2) Letter of Transmittal. Include reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, effective date of appraisal, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, and signatures of all appraisers authorized to work on the assignment including the appraiser who inspected the property. Include a statement indicating the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

(4) Disclosure of Competency. Include appraiser's qualifications, detailing education and experience.

(5) Statement of Ownership of the Subject Property. Discuss all prior sales of the subject Property which occurred within the past three years. Any pending agreements of sale, options to buy, or listing of the subject Property must be disclosed in the appraisal report.

(6) Property Rights Appraised. Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered. The appropriate interest must be defined in terms of current appraisal terminology with the source cited.

(7) Site/Improvement Description. Discuss the site characteristics including subparagraphs (A) - (E) of this paragraph.

(A) Physical Site Characteristics. Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the Development Site. Include a plat map or survey.

(B) Floodplain. Discuss floodplain (including flood map panel number) and include a floodplain map with the subject Property clearly identified.

(C) Zoning. Report the current zoning and description of the zoning restrictions and any deed restrictions, where applicable, and type of Development permitted. Any probability of change in zoning should be discussed. A statement as to whether or not the improvements conform to the current zoning should be included. A statement addressing whether or not the improvements could

be rebuilt if damaged or destroyed, should be included. If current zoning is not consistent with the highest and best use, and zoning changes are reasonable to expect, time and expense associated with the proposed zoning change should be considered and documented. A zoning map should be included.

(D) Description of Improvements. Provide a thorough description and analysis of the improvements including size (Net Rentable Area, gross building area, etc.), use (whether vacant, occupied by owner, or being rented), number of residents, number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc. All applicable forms of depreciation should be addressed along with the remaining economic life.

(E) Environmental Hazards. It is recognized appraisers are not experts in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential environmental hazards (such as discolored vegetation, oil residue, asbestos-containing materials, lead- based paint etc.) noted during the inspection.

(8) Highest and Best Use. Market Analysis and feasibility study is required as part of the highest and best use. The highest and best use analysis should consider paragraph (7)(A) - (E) of this subsection as well as a supply and demand analysis.

(A) The appraisal must inform the reader of any positive or negative market trends which could influence the value of the appraised Property. Detailed data must be included to support the appraiser's estimate of stabilized income, absorption, and occupancy.

(B) The highest and best use section must contain a separate analysis "as if vacant" and "as improved" (or "as proposed to be improved/renovated"). All four elements (legally permissible, physically possible, feasible, and maximally productive) must be considered.

(9) Appraisal Process. It is mandatory that all three approaches, Cost Approach, Sales Comparison Approach and Income Approach, are considered in valuing the Property. If an approach is not applicable to a particular property an adequate explanation must be provided. A land value estimate must be provided if the Cost Approach is not applicable.

(A) Cost Approach. This approach should give a clear and concise estimate of the cost to construct the subject improvements. The source(s) of the cost data should be reported.

(i) Cost comparables are desirable; however, alternative cost information may be obtained from Marshall & Swift Valuation Service or similar publications. The section, class, page, etc. should be referenced. All soft costs and entrepreneurial profit must be addressed and documented.

(ii) All applicable forms of depreciation must be discussed and analyzed. Such discussion must be consistent with the description of the improvements.

(iii) The land value estimate should include a sufficient number of sales which are current, comparable, and similar to the subject in terms of highest and best use. Comparable sales information should include address, legal description, tax assessor's parcel number(s), sales price,

date of sale, grantor, grantee, three year sales history, and adequate description of property transferred. The final value estimate should fall within the adjusted and unadjusted value ranges. Consideration and appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) of this clause should be made when applicable:

(I) Property rights conveyed;

(II) Financing terms;

(III) Conditions of sale;

(IV) Location;

(V) Highest and best use;

(VI) Physical characteristics (e.g., topography, size, shape, etc.); and

(VII) Other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).

(B) Sales Comparison Approach. This section should contain an adequate number of sales to provide the Underwriter with a description of the current market conditions concerning this property type. Sales data should be recent and specific for the property type being appraised. The sales must be confirmed with buyer, seller, or an individual knowledgeable of the transaction.

(i) Sales information should include address, legal description, tax assessor's parcel number(s), sales price, financing considerations and adjustment for cash equivalency, date of sale, recordation of the instrument, parties to the transaction, three year sale history, complete description of the Property and property rights conveyed, and discussion of marketing time. A scaled distance map clearly identifying the subject and the comparable sales must be included.

(ii) The method(s) used in the Sales Comparison Approach must be reflective of actual market activity and market participants.

(I) Sale Price/Unit of Comparison. The analysis of the sale comparables must identify, relate, and evaluate the individual adjustments applicable for property rights, terms of sale, conditions of sale, market conditions, and physical features. Sufficient narrative must be included to permit the reader to understand the direction and magnitude of the individual adjustments, as well as a unit of comparison value indicator for each comparable.

(II) Net Operating Income/Unit of Comparison. The Net Operating Income statistics for the comparables must be calculated in the same manner. It should be disclosed if reserves for replacement have been included in this method of analysis. At least one other method should accompany this method of analysis.

(C) Income Approach. This section must contain an analysis of both the actual historical and projected income and expense aspects of the subject Property.

(i) Market Rent Estimate/Comparable Rental Analysis. This section of the report should include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental Units. The comparables must indicate current research for this specific property type. The comparables must be confirmed with the landlord, tenant or agent and individual data sheets must be included. The individual data sheets should include property address, lease terms, description of the property (e.g., Unit Type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics of the property, and location of the comparables. Analysis of the Market Rents should be sufficiently detailed to permit the reader to understand the appraiser's logic and rationale. Adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc. must be considered.

(ii) Comparison of Market Rent to Contract Rent. Actual income for the subject along with the owner's current budget projections must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. The Contract Rents should be compared to the market-derived rents. A determination should be made as to whether the Contract Rents are below, equal to, or in excess of market rates. If there is a difference, its impact on value must be qualified.

(iii) Vacancy/Collection Loss. Historical occupancy data and current occupancy level for the subject should be reported and compared to occupancy data from the rental comparables and overall occupancy data for the subject's Primary Market.

(iv) Expense Analysis. Actual expenses for the subject, along with the owner's projected budget, must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. Historical expenses should be compared to comparables expenses of similar property types or published survey data (such as IREM, BOMA, etc.). Any expense differences should be reconciled. Include historical data regarding the subject's assessment and tax rates and a statement as to whether or not any delinquent taxes exist.

(v) Capitalization. The appraiser should present the capitalization method(s) reflective of the subject market and explain the omission of any method not considered in the report.

(I) Direct Capitalization. The primary method of deriving an overall rate is through market extraction. If a band of investment or mortgage equity technique is utilized, the assumptions must be fully disclosed and discussed.

(II) Yield Capitalization (Discounted Cash Flow Analysis). This method of analysis should include a detailed and supportive discussion of the projected holding/investment period, income and income growth projections, occupancy projections, expense and expense growth projections, reversionary value and support for the discount rate.

(10) Value Estimates. Reconciliation of final value estimates is required. The Underwriter may request additional valuation information based on unique existing circumstances that are relevant for deriving the market value of the Property.

(A) All appraisals shall contain a separate estimate of the "as vacant" market value of the underlying land, based upon current sales comparables. The "as vacant" value assumes that there are no improvements on the property and therefore demolition costs should not be considered. The appraiser should consider the fee simple or leased fee interest as appropriate.

(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value at current contract rents." For public housing converting to project-based rental assistance, the appraiser must provide a value based on the future restricted rents. The value used in the analysis may be based on the unrestricted market rents if supported by the appraisal. Regardless of the rents used in the valuation, the appraiser must consider any other on-going restrictions that will remain in place even if not affecting rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.

(C) For existing Developments with rent restrictions, the appraisal must include the "as-is as-restricted" value. In particular, the value must be based on the proposed restricted rents when deriving the value based on the income approach.

(D) For all other existing Developments, the appraisal must include the "as-is" value.

(E) For any Development with favorable financing (generally below market debt) that will remain in place and transfer to the new owner, the appraisal must include a separate value for the existing favorable financing with supporting information.

(F) If required the appraiser must include a separate assessment of personal property, furniture, fixtures, and equipment (FF&E) or intangible items. If personal property, FF&E, or intangible items are not part of the transaction or value estimate, a statement to such effect should be included.

(11) Marketing Time. Given property characteristics and current market conditions, the appraiser(s) should employ a reasonable marketing period. The report should detail existing market conditions and assumptions considered relevant.

(12) Photographs. Provide good quality color photographs of the subject Property (front, rear, and side elevations, on-site amenities, interior of typical Units if available). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included. An aerial photograph is desirable but not mandatory.

(e) Additional Appraisal Concerns. The appraiser(s) must be aware of the Department program rules and guidelines and the appraisal must include analysis of any impact to the subject's value.

§11.305. Environmental Site Assessment Rules and Guidelines.

(a) General Provisions. The Environmental Site Assessments (ESA) prepared for the Department must be conducted and reported in conformity with the standards of the American Society for Testing and Materials (ASTM). The initial report must conform with the Standard Practice for Environmental Site

Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527-13 or any subsequent standards as published). Any subsequent reports should also conform to ASTM standards and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The ESA shall be conducted by a Third Party environmental professional at the expense of the Applicant, and addressed to the Department as a User of the report (as defined by ASTM standards). Copies of reports provided to the Department which were commissioned by other financial institutions must either address Texas Department of Housing and Community Affairs as a co-recipient of the report or letters from both the provider and the recipient of the report may be submitted extending reliance on the report to the Department. The ESA report must also include a statement that the person or company preparing the ESA report will not materially benefit from the Development in any other way than receiving a fee for performing the ESA, and that the fee is in no way contingent upon the outcome of the assessment. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law." The ESA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(b) In addition to ASTM requirements, the report must:

(1) State if a noise study is recommended for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise;

(2) Provide a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the ESA or identified during the physical inspection;

(3) Provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map;

(4) If the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for Lead Based Paint or asbestos containing materials would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;

(5) State if testing for lead in the drinking water would be required pursuant to local, state, and federal laws, or recommended due to any other consideration such as the age of pipes and solder in existing improvements. For all Rehabilitation Developments, the ESA provider must state whether the on-site plumbing is a potential source of lead in drinking water;

(6) Assess the potential for the presence of Radon on the Development Site, and recommend specific testing if necessary;

(7) Identify and assess the presence of oil, gas or chemical pipelines, processing facilities, storage facilities or other potentially hazardous explosive activities on-site or in the general area of the site that could potentially adversely impact the Development. Location of these items must be shown on

a drawing or map in relation to the Development Site and all existing or future improvements. The drawing must depict any blast zones (in accordance with HUD guidelines) and include HUD blast zone calculations; and

(8) Include a vapor encroachment screening in accordance with the ASTM "Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions" (E2600-10).

(c) If the report recommends further studies or establishes that environmental hazards currently exist on the Property, or are originating off-site, but would nonetheless affect the Property, the Development Owner must act on such a recommendation, or provide a plan for either the abatement or elimination of the hazard. Evidence of action or a plan for the abatement or elimination of the hazard must be presented upon Application submittal.

(d) For Developments in programs that allow a waiver of the Phase I ESA such as an existing USDA funded Development, the Development Owners are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(e) Those Developments which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms to the requirements of this section.

§11.306. Scope and Cost Review Guidelines.

(a) General Provisions. The objective of the Scope and Cost Review Report (SCR) required for Rehabilitation Developments (excluding Reconstruction) and Adaptive Reuse Developments is to provide a self-contained report that provides a comprehensive description and evaluation of the current conditions of the Development and identifies a scope of work for the proposed repairs, replacements and improvements to an existing multifamily property or identifies a scope of work for the conversion of a non-multifamily property to multifamily use. The SCR author must evaluate the sufficiency of the Applicant's scope of work and provide an independent review of the Applicant's proposed costs. The report must be in sufficient detail for the Underwriter to fully understand all current conditions, scope of work and cost estimates. It is the responsibility of the Applicant to ensure that the scope of work and cost estimates submitted in the Application is provided to the author. The SCR must include a copy of the Development Cost Schedule submitted in the Application. The report must also include the following statement, "any person signing this Report acknowledges that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(b) For Rehabilitation Developments, the SCR must include analysis in conformity with the ASTM "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018)" except as provided for in subsections (f) and (g) of this section.

(c) The SCR must include good quality color photographs of the subject Real Estate (front, rear, and side elevations, on-site amenities, interior of the structure). Photographs should be properly labeled.

(d) The SCR must also include discussion and analysis of:

(1) Description of Current Conditions. For both Rehabilitation and Adaptive Reuse, the SCR must contain a detailed description with good quality photographs of the current conditions of all major systems and components of the Development regardless of whether the system or component will be removed, repaired or replaced. For historic structures, the SCR must contain a description with photographs of each aspect of the building(s) that qualifies it as historic and must include a narrative explaining how the scope of work relates to maintaining the historic designation of the Development. Replacement or relocation of systems and components must be described;

(2) Description of Scope of Work. The SCR must provide a narrative of the consolidated scope of work either as a stand-alone section of the report or included with the description of the current conditions for each major system and components. Any New Construction must be described. Plans or drawings (that are in addition to any plans or drawings otherwise required by rule) and that relate to any part of the scope of work should be included, if available;

(3) Useful Life Estimates. For each system and component of the property the SCR must estimate its remaining useful life, citing the basis or the source from which such estimate is derived;

(4) Code Compliance. The SCR must document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Applicant to ensure that the SCR adequately considers any and all applicable federal, state, and local laws and regulations which are applicable and govern any work and potentially impact costs. For Applications requesting Direct Loan funding from the Department, the SCR author must include a comparison between the local building code and the International Existing Building Code of the International Code Council.;

(5) Program Rules. The SCR must assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, the Department's Uniform Physical Condition Standards, and any scoring criteria including amenities for which the Applicant may claim points. It is the responsibility of the Applicant to inform the report author of those requirements in the scope of work; for Direct Loan Developments this includes, but is not limited to the requirements in the Lead-Based Paint Poisoning Prevention Act (42 USC §§4821-4846), the Residential Lead- Based Paint Hazard Reduction Act of 1992 (42 USC §§4851-4856), and implementing regulations, Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35 (including subparts A, B, J, K, and R), and the Lead: Renovation, Repair, and Painting Program Final Rule and Response to Children with Environmental Intervention Blood Lead Levels (40 CFR Part 745);

(6) Accessibility Requirements. The SCR report must include an analysis of compliance with the Department's accessibility requirements pursuant to Chapter 1, Subchapter B and §11.101(b)(8) of this title (relating to Site and Development Requirements and Restrictions) and identify the specific items in the scope of work and costs needed to ensure that the Development will meet these requirements upon Rehabilitation (including conversion and Adaptive Reuse);

(7) Reconciliation of Scope of Work and Costs. The SCR report must include the Department's Scope and Cost Review Supplement (SCR Supplement) with the signature of the SCR author. The SCR

Supplement must reconcile the scope of work and costs of the immediate physical needs identified by the SCR author with the Applicant's scope of work and costs. The costs presented on the SCR Supplement must be consistent with both the scope of work and immediate costs identified in the body of the SCR report and the Applicant's scope of work and costs as presented in the Application. Variations between the costs listed on the SCR Supplement and the costs listed in the body of the SCR report or on the Applicant's Development Cost Schedule must be reconciled in a narrative analysis from the SCR provider. The consolidated scope of work and costs shown on the SCR Supplement will be used by the Underwriter in the analysis to the extent adequately supported in the report; and

(8) Cost Estimates. The Development Cost Schedule and SCR Supplement must include all costs identified below:

(A) Immediately Necessary Repairs and Replacement. For all Rehabilitation developments, and Adaptive Reuse developments if applicable, immediately necessary repair and replacement should be identified for systems or components which are expected to have a remaining useful life of less than one year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards. The SCR must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.

(B) Proposed Repair, Replacement, or New Construction. If the development plan calls for additional scope of work above and beyond the immediate repair and replacement items described in subparagraph (A) of this paragraph, the additional scope of work must be evaluated and either the nature or source of obsolescence to be cured or improvement to the operations of the Property discussed. The SCR must provide a separate estimate of the costs associated with the additional scope of work, citing the basis or the source from which such cost estimate is derived.

(C) Reconciliation of Costs. The combined costs described in subparagraphs (A) and (B) of this paragraph should be consistent with the costs presented on the Applicant's Development Cost Schedule and the SCR Supplement.

(D) Expected Repair and Replacement Over Time. The term during which the SCR should estimate the cost of expected repair and replacement over time must equal the lesser of 30 years or the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the Property. The SCR must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The SCR must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred for a period and no less than 30 years. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation

factor of not less than 2.5% per annum.

(e) Any costs not identified and discussed in sufficient detail in the SCR as part of subsection (d)(6), (d)(8)(A) and (d)(8)(B) of this section will not be included in the underwritten Total Development Cost in the Report.

(f) If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

(1) Fannie Mae's criteria for Physical Needs Assessments;

(2) Federal Housing Administration's criteria for Project Capital Needs Assessments;

(3) Freddie Mac's guidelines for Engineering and Property Condition Reports; and

(4) USDA guidelines for Capital Needs Assessment.

(g) The Department may consider for acceptance reports prepared according to other standards which are not specifically named in subsection (g) of this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied.

(h) The SCR shall be conducted by a Third Party at the expense of the Applicant, and addressed to Texas Department of Housing and Community Affairs as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address Texas Department of Housing and Community Affairs as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to Texas Department of Housing and Community Affairs.

(i) The SCR report must include a statement that the individual or company preparing the SCR report will not materially benefit from the Development in any other way than receiving a fee for performing the SCR. Because of the Department's heavy reliance on the independent cost information, the provider must not be a Related Party to or an Affiliate of any other Development Team member. The SCR report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(j) The SCR report must include the Department's SCR Compliance checklist containing the signatures of both the Applicant and SCR author.

(k) Scope of Work Narrative. For Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, a Scope and Cost Review prepared by a Third Party is not required. The application must provide a Scope of Work Narrative, consisting of:

(1) A detailed description of the current conditions of all major systems and components of the Development regardless of whether the system or component will be removed, repaired or replaced;

(2) For historic structures, a description of each aspect of the building(s) that qualifies it as historic, including a narrative explaining how the scope of work relates to maintaining the historic designation of the Development; and

(3) a narrative of the consolidated scope of work for the proposed rehabilitation for each major system and components.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

SUBCHAPTER E FEE SCHEDULE, APPEALS, AND OTHER PROVISIONS

10 TAC §§11.901 - 11.907

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§11.901. Fee Schedule.

Any unpaid fees, as stated in this section, 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 available, it may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. Other forms of payment may be considered on a case-by-case basis. Applicants will be required to pay any insufficient payment fees charged to the Department by the State Comptroller. The Executive Director may extend the deadline for specific extenuating and extraordinary circumstances, unless prohibited by other parts of this Chapter, provided the Applicant submits a written request for an extension to a fee deadline no later than five business days prior to the deadline associated with the particular fee.

(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 a private 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, may be eligible to receive a discount of 10% off the calculated pre-application fee provided such documentation is submitted with the 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. Initial processing will constitute 50% of the review, threshold review prior to a deficiency being issued will constitute 30% of the review, and review after deficiencies are submitted and reviewed will constitute 20% of the review. In no instance will a refund of the pre-application fee be made after the Full Application Delivery Date.

(3) Application Fee. Each Application must be accompanied by an Application fee.

(A) Housing Tax Credit Applications. 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 total number of Units in the full Application. Otherwise, the Application fee will be $30 per Unit based on the total 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, may be eligible to receive a discount of 10% off the calculated Application fee, provided such documentation is submitted with the fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be $1,000 per Application except for those Applications that are layered with Housing Tax Credits and submitted simultaneously with the Housing Tax Credit Application. Pursuant to Tex. Gov't Code §2306.147(b), the Department is required to waive Application fees for private nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services and if HOME funds are awarded. 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. 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 withdrawal must occur prior to any Board action regarding eligibility or appeal. The amount of refund will be commensurate with the level of review completed. Initial processing will constitute 10% of the review, the site visit will constitute 10% of the review, program evaluation review will constitute 40% of the review, and the underwriting review will constitute 40% of the review. For Competitive HTC Applications, in no instance will a refund of the Application fee be made after final awards are made in July.

(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 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 (6) and (7) of this section, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.

(6) Housing Tax Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4% 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% of the Commitment Fee may be issued upon request.

(7) Tax Exempt Bond Development Determination Notice Fee. No later than the expiration date in the Determination Notice, a fee equal to 4% 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, then a refund of 50% of the Determination Notice Fee may be issued upon request. The refund must be requested no later than 30 days after the Certificate of Reservation deadline.

(8) Tax-Exempt Bond Credit Increase Request Fee. Requests for increases to the credit amounts to be issued on IRS Forms 8609 than what was reflected in the Determination Notice for Tax-Exempt Bond Developments must be submitted with a fee equal to 4% of the amount of the credit increase for one year.

(9) Extension Fees. All extension requests for deadlines relating to the Carryover, 10% Test (submission and expenditure), Construction Status Reports, or Cost Certification requirements submitted at least 30 calendar days in advance of the applicable original deadline will not be required to submit an extension fee. Any extension request submitted fewer than 30 days in advance or after the original deadline must be accompanied by an extension fee of $2,500. Fees for each subsequent extension request on the same activity will increase by increments of $500, regardless of whether the first request was submitted thirty (30) calendar days in advance of the applicable deadline. An extension fee will not be required for extensions requested on Developments that involve Rehabilitation when the Department or U.S. Department of Agriculture (USDA) is the primary lender, if USDA or the Department is the cause for the Applicant not meeting the deadline. For each Construction Status Report received after the applicable deadline, extension fees will be automatically due (regardless of whether an extension request is submitted). Unpaid extension fees related to Construction Status Reports will be accrued and must be paid prior to issuance of IRS Forms 8609. For purposes of Construction Status Reports, each report will be considered a separate activity.

(10) 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 in order for the request to be processed. Fees for each subsequent amendment request related to the same Application will increase by increments of $500. A subsequent request, related to the same Application, regardless of whether the first request was non-material and did not require a fee, must include a fee of $3,000. Amendment fees and fee increases are not required for the Direct Loan programs.

(11) Right of First Refusal Fee. Requests for approval of the satisfaction of the Right of First Refusal provision of the Land Use Restriction Agreement (LURA) must be accompanied by a non-refundable fee of $2,500.

(12) 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.

(13) 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 of $3,000.

(14) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of $1,000.

(15) Unused Credit or Penalty Fee for Competitive HTC Applications. 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. A penalty fee equal to the one year credit amount of the lost credits (10% 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 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 Code, §42. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director may 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 as further provided for in §11.9(f) of this chapter (relating to Factors Affecting Scoring and Eligibility in current and future Application Rounds), 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 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.

(16) Compliance Monitoring Fee. Upon receipt of the cost certification for HTC Developments, HTC Developments that are layered with Direct Loan funds, or upon the completion of the 24-month development period and the beginning of the repayment period for Direct Loan only Developments, the Department will invoice the Development Owner for compliance monitoring fees. For HTC only the amount due will equal $40 per low-income unit. For Direct Loan Only Developments the fee will be $34 per Direct Loan Designated Units. Developments with both HTCs and Direct Loan will only pay one fee equal to $40 per low income unit. Existing HTC developments with a Land Use Restriction Agreement that require payment of a compliance monitoring fee that receive a second allocation of credit will pay only one fee; the fee required by the original Land Use Restriction Agreement will be disregarded. For HTC Developments, the fee will be collected, retroactively if applicable, beginning with the first year of the credit period. For Direct Loan 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. For Direct Loan only developments, the fee must be paid prior to the release of final retainage. 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.

(17) Public Information Request Fee. Public information requests are processed by the Department in accordance with the provisions of Tex. Gov't 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.

(18) Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b)) All fees charged by the Department in the administration of the Housing Tax Credit and Direct Loan programs may 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.

(19) Appraisal Review Fee.

(A) Competitive HTC Applications. Applicants required to submit an Appraisal must submit an Appraisal Review Fee or priority Applications on or before the Market Analysis Delivery Date. If an Application becomes a priority Application after the Market Analysis Delivery Date, the Appraisal Review Fee is due in response to the initial Administrative Deficiency issued by the Department, which will request payment for the fee.~~within 7 calendar days of publication of the updated Application Log.~~

(B) Tax-Exempt Bond Developments. Applicants required to submit an Appraisal must submit the Appraisal Review Fee with the Application. For Applications that are withdrawn prior to the Third Party Appraisal Review, the Appraisal Review Fee will be refunded upon request.

(C) The Appraisal Review Fee will be $1,875 per Application.

§11.902. Appeals Process.

(a) For Competitive HTC Applications, an Applicant or Development Owner may appeal decisions made by the Department pursuant to Tex. Gov't Code §2306.0321 and §2306.6715 using the process identified in this section. For Tax-Exempt Bond Developments and Direct Loan Developments (not layered with a Competitive HTC Application), an Applicant or Development Owner may appeal decisions made by the Department pursuant to §1.7 of this title (relating to Appeals). 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 for Applications), pre-application threshold criteria, and 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 requested change to a Commitment or Determination Notice;

(6) Denial of a requested change to a loan agreement;

(7) Denial of a requested change to a LURA;

(8) Any Department decision that results in the termination or change in set-aside 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 the seventh calendar day 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 made by a 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 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 information can be provided in accordance with any rules related to public comment before the Board, full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal must be disclosed in the appeal documentation filed with the Executive Director.

(e) An appeal filed with the Board must be received in accordance with Tex. Gov't Code §2306.6715 (d).

(f) If there is insufficient time for the Executive Director to respond to a Competitive Housing Tax Credit Application appeal prior to the agenda being posted for the July Board meeting at which awards from the Application Round will be made, the appeal may be posted to the Board agenda prior to the Executive Director’s issuance of a response.

(g) Board review of an Application related appeal will be based on the original Application. A witness in an appeal may not present or refer to any document, instrument, or writing not already contained within the Application as reflected in the Department's records.

(h) The decision of the Board regarding an appeal is the final decision of the Department.

(i) 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))

§11.903. 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 Tex. Gov't Code, Chapter 2306 or a rule adopted under that chapter, may be subject to:

(1) Assessment of administrative penalties in accordance with Chapter 2, Subchapter C of this title (relating to Administrative Penalties) 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; or

(2) In the case of the competitive Low Income Housing Tax Credit Program, a point reduction 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.

§11.904. Alternative Dispute Resolution (ADR) Policy.

In accordance with Tex. Gov't Code, §2306.082, it is the Department's policy to encourage the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Tex. Gov't Code~~,~~ Chapter 2010, to assist in resolving disputes under the Department's jurisdiction, as provided for in §1.17 of this title (relating to Alternative Dispute Resolution).

§11.905. General Information for Commitments or Determination Notices.

(a) A Commitment or Determination Notice shall not be issued with respect to any Development for an unnecessary amount in accordance with §42(m)(2)(A) or where the cost for the total development, acquisition, construction or rehabilitation exceeds the limitations established by the Department and the Board.

(b) All Commitments or Determination Notices, whether reflected in the Commitment or Determination Notice or not, are made subject to full compliance with all applicable provisions of law and the Department’s rules, all provisions of Commitment, Determination Notice, and Contract, satisfactory completion of underwriting, and satisfactory resolution of any conditions of underwriting, award, and administrative deficiencies.

(c) The Department shall notify, in writing, the mayor, county judge, or other appropriate official of the municipality or county, as applicable, in which the Development is located informing him/her of the Board's issuance of a Commitment Notice, as applicable.

(d) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or completion of construction with respect to a Development and/or apply administrative penalties if:

(1) The Applicant, Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure, to meet any of the conditions of such Commitment,

Determination Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Application process for the Development;

(2) Any material statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;

(3) An event occurs with respect to the Applicant or the Development Owner which would have made the Application ineligible for funding pursuant to Subchapter C of Chapter 11 of this title (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules) if such event had occurred prior to issuance of the Commitment, Determination Notice or Carryover Allocation; or

(4) The Applicant, Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure, to comply with this chapter or other applicable Department rules, procedures, or requirements of the Department.

§11.906. Commitment and Determination Notice General Requirements and Required Documentation.

(a) Commitment. For Competitive HTC Developments, the Department shall issue a Commitment to the Development Owner which shall confirm that the Board has approved the Application and state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) and the determination that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment shall expire on the date specified therein, which shall be 30 calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §11.901 of this title (relating to Fee Schedule, Appeals, and other Provisions), and satisfies any conditions set forth therein by the Department. The Commitment expiration date may not be extended.

(b) Determination Notices. For Tax Exempt Bond Developments, the Department shall issue a Determination Notice which shall confirm that the Development satisfies the requirements of this chapter as applicable and other applicable Department rules in accordance with the §42(m)(1)(D) of the Internal Revenue Code (the Code). The Determination Notice shall also state the Department's determination of a specific amount of housing tax credits that the Development may be eligible for, subject to the requirements set forth in the Department's rules, as applicable. The Determination Notice shall expire on the date specified therein, which shall be 30 calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in Chapter 11, Subchapter E of this title, and satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended. If the requirements of the Determination Notice, and any conditions of the Determination Notice are met, the Determination Notice shall be valid for a period of one year from the effective date of the Determination Notice, without distinction between a Certificate of Reservation or Traditional Carryforward Reservation. In instances where the Certificate of Reservation is withdrawn after the Determination Notice has been issued and a new Certification of Reservation is issued, staff will not

re-issue the Determination Notice. After one year from the effective date of the Determination Notice, if a new Certificate of Reservation or Traditional Carryforward Reservation is issued, the Applicant will be required to contact the Department in order to have a new Determination Notice issued and a new Application must be submitted. Such Application submission must meet the requirements of §11.201(2) of this chapter (relating to Procedural Requirements for Application Submission). If more than a year has not passed from the effective date of the Determination Notice, yet an Applicant desires to have a new Determination Notice issued that reflects a different recommended credit amount, then a new Application must be submitted that meets the requirements of §11.201(2).

(c) Documentation Submission Requirements at Commitment of Funds. No later than the expiration date of the Commitment (or no later than December 31 for Competitive HTC Applications, whichever is earlier) or Determination Notice, the documentation described in paragraphs (1) - (7~~6~~) of this subsection must be provided. Failure to provide these documents may cause the Commitment or Determination Notice to be rescinded.

(1) For entities formed outside the state of Texas, evidence that the entity filed a Certificate of Application for foreign qualification in Texas, a Franchise Tax Account Status from the Texas Comptroller of Public Accounts, and a Certificate of Fact from the Office of the Secretary of State. If the entity is newly registered in Texas and the Franchise Tax Account Status or Certificate of Fact are not available, a statement can be provided to that effect.

(2) For Texas entities, a copy of the Certificate of Filing for the Certificate of Formation from the Office of the Secretary of State; a Certificate of Fact from the Secretary of State, and a Franchise Tax Account Status from the Texas Comptroller of Public Accounts. If the entity is newly registered and the Certificate of Fact and the Franchise Tax Account Status are not available, a statement can be provided to that effect.

(3) Evidence that the signer(s) of the Commitment or Determination Notice have sufficient authority to sign on behalf of the Applicant in the form of a corporate resolution which indicates the sub-entity in Control consistent with the entity contemplated and described in the Application.

(4) Evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan.

(5) Evidence of satisfaction of any conditions identified in the Credit Underwriting Analysis Report, any conditions from the Executive Award Review and Advisory Committee as provided for in Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), or any other conditions of the award required to be met at Commitment or Determination Notice.

(6) Documentation of any changes to representations made in the Application subject to §10.405 of this title (relating to Amendments and Extensions).

(7) For Applications underwritten with a property tax exemption, documentation must be submitted in the form of a letter from an attorney identifying the statutory basis for the exemption and

indicating that the exemption is reasonably achievable, subject to appraisal district review. Additionally, any Development with a proposed Payment in Lieu of Taxes (PILOT) agreement must provide evidence regarding the statutory basis for the PILOT and its terms.

(d) Post Bond Closing Documentation Requirements. Regardless of the issuer of the bonds, no later than 60 calendar days following closing on the bonds, the Development Owner must submit the documentation in paragraphs (1) - (5) of this subsection.

(1) Training certificate(s) from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager has attended and passed at least five hours of Fair Housing training. The certificate(s) must not be older than two years from the date of submission and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates.

(2) A training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended and passed at least five hours of Fair Housing training. The certificate must not be older than two years from the date of submission and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates.

(3) Evidence that the financing has closed, such as an executed settlement statement.

(4) A confirmation from the Compliance Division evidencing receipt of the CMTS Filing Agreement form pursuant to §10.607(a) of this chapter.

(5) An initial construction status report consisting of items from paragraphs (1) – (5) of §10.402(h) of this title (relating to Construction Status Reports).

§11.907. Carryover Agreement General Requirements and Required Documentation.

~~(a)~~ Carryover (Competitive HTC Only). All Developments that received a Commitment, and will not be placed in service and receive IRS Form(s) 8609 in the year the Commitment was issued, must submit the Carryover documentation, in the form prescribed by the Department in the Carryover Manual, no later than the Carryover Documentation Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) of the year in which the Commitment is issued pursuant to §42(h)(1)(C) of the Code.

(1) Commitments for credits will be terminated if the Carryover documentation has not been received by this deadline, unless an extension has been approved. This termination is subject to right of appeal directly to the Board, and if so determined by the Board, immediately upon final termination by the Board, staff is directed to award the credits to other qualified Applicants on the approved waiting list.

(2) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be re-evaluated by the Department for a reduction of credit or change in conditions.

(3) All Carryover Allocations will be contingent upon the Development Owner providing evidence that they have and will maintain Site Control through the 10% Test or through the anticipated closing date, whichever is earlier. For purposes of this paragraph, any changes to the Development Site acreage between Application and Carryover must be addressed by written explanation or, as appropriate, in accordance with §10.405 of this title (relating to Amendments and Extensions).

(4) Confirmation of the right to transact business in Texas, as evidenced by the Franchise Tax Account Status (the equivalent of the prior Certificate of Account Status) from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State must be submitted with the Carryover Allocation.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

SUBCHAPTER F. SUPPLEMENTAL HOUSING TAX CREDITS

10 TAC §§11.1001 - 11.1009

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new sections affect no other code, article, or statute.

§11.1001. General.

(a) This subchapter applies only to 2022 Housing Tax Credits (HTC) requested to supplement Competitive HTC awards from the 2019 and 2020 ceilings, hereinafter referred to as Supplemental Credits. Applications receiving 2022 credits as forward commitments or as part of the regular 2022 Housing Credit Cycle are not subject to the policies in this subchapter. Applicants with 2017 and 2018 allocations that received Force Majeure treatment in 2019 are prohibited from requesting Supplemental allocations, as are 2021 applicants.

(b) Submissions required to make such a request are considered a supplement to the Original Application. Requests for Supplemental Allocations are not considered Applications under the 2022 HTC Competitive Cycle nor are they part of the 2022 Application Round.

(c) Requests for Supplemental Allocations are not considered an Amendment to the Original Application. Requests for Supplemental Allocations may only include the items described in this subchapter, and submissions may not include changes to the Application that would be classified as an Amendment under §10.405 of this title (relating to Amendments and Extensions). Applicants that have Application changes that would constitute an Amendment must pursue approval of those changes separately by following the process for Amendments identified in §10.405 of this title.

Issuance of a Supplemental Allocation does not constitute implicit approval of any items that may require approval as an Amendment.

(d) Any and all required notifications, submissions, satisfaction of deadlines, or resolutions required in association with Housing De-concentration Factors and satisfaction of Housing De-concentration Factor requirements, or resolution of any deficiencies, undertaken by an Applicant in association with their Original Application were satisfactorily addressed in the year of the Original Application, as evidenced by having received an allocation, are considered by extension to have been sufficiently satisfied for the Supplemental Credits with no further actions required by the Applicant.

(e) Funding decisions, satisfaction of deadlines, final scoring, or other Departmental processes that were undertaken in the award year are considered, by extension, to have been sufficiently satisfied for the Supplemental Credits~~.~~; revisions to costs will not have an impact on points originally awarded for Costs of Development per Square Foot or Leveraging (§§11.9(e)(2) and (4) of this title, respectively).

(f) Developments that have Placed in Service are not eligible to receive Supplemental Credits. Applications awarded in 2019 or 2020 that have already closed their financing, Applications requesting or being awarded Multifamily Development Loans, and Applications originally funded in 2019 or 2020 that have been approved for force majeure consideration by the Department's Board are eligible to receive Supplemental Credits. However, for Developments that have contracted for Multifamily Loan funds, the increased expenses must have occurred after the execution date of the Multifamily Contract.

(g) Except where preempted by federal or state law, the Qualified Allocation Plan (QAP) for the year of the original award will continue to apply. Proposed Developments and Applications will maintain their eligibility determinations from the Original Application, along with having met threshold requirements under Subchapters B and C of this Chapter, unless specifically stated otherwise in this subchapter.

(h) All awards of Supplemental Credits will constitute the Department's approval of the original allocation being qualified for Force Majeure and the original allocation will be accompanied with Force Majeure treatment. The previously-executed Carryover Allocation Agreement will be void and a new Carryover Allocation Agreement will be issued that reflects a new total allocation that includes the full amount of the original award plus any Supplemental Credits awarded. The Department's Governing Board may impose a deadline that is earlier than the Placed in Service Deadline and may impose conditions that were not placed on the original allocation.

§11.1002. Program Calendar for Supplemental Housing Tax Credits.

Supplemental HTC Deadlines. Non-statutory deadlines specifically listed in the Program Calendar may be extended by the Department for a period of not more than 5 business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Department that there is good cause for the extension.

Deadline	Documentation Required
11/12/21	Department releases Materials for Notice of Intent for Supplemental Allocations.
11/19/21	Department releases Materials for Supplemental Allocations.
11/19/21	Deadline for Notice of Intent due for Supplemental Allocations.
12/10/21	Deadline for all Requests for Supplemental Allocations.
~~01/03/2022~~	~~Begin accepting Supplemental Allocation requests.~~
February ~~April~~ Board meeting ~~(est.)~~	Board approval of Supplemental Allocations under this Subchapter (may be awarded conditioned on final underwriting review).
05/01/21 (est.)	Commitments for Supplemental Allocations are Issued.
05/15/21 (est.)	Commitment Fees for the Supplemental Allocation and any conditions of the credit Allocation are to be met.
11/01/2022	Carryover Documentation Delivery Date.
11/30/2022	Deadline for closing under §11.9(c)(8) (if applicable) (not subject to an extension under §11.2(a) pursuant to the requirements of §11.9(c)(8)).
07/21/2023~~Determined by the Board~~	10% Test Documentation Delivery Date.
12/31/24 ~~Determined by the Board~~	Placement in Service.
Five business days after the date on the Deficiency Notice (without incurring point loss)	Administrative Deficiency Response Deadline (unless an extension has been granted).

§11.1003. Maximum Supplemental Housing Tax Credits, Requests and Award Limits.

(a) The maximum amount available for allocation of Supplemental Credits will be $5,000,000. This maximum may not provide sufficient credits to fully fund all requests for Supplemental Allocations. If

there are any Supplemental Credits still available after all requests have been considered, the remainder will be transferred to the 2022 Competitive Housing Tax Credit ceiling after the Board's approval of the Supplemental Allocation awards. ~~A waitlist will be maintained for Supplemental Credit requests not having received a Supplemental Allocation; however, Supplemental Allocations will be made from the waitlist only to the extent that an allocation of Supplemental Credits is returned.~~ Applications for which a request for Supplemental Credits was submitted will not be eligible to receive an allocation from the 2022 Competitive Housing Tax Credit ceiling.

(b) Maximum Supplemental Request Limit for any given Development. Supplemental Allocations are limited to the increase in eligible costs. Supplemental Allocations will not be awarded for costs that were excluded from basis in the underwriting of the original Application. An Applicant may not request more than 7%~~15%~~ more credits than their Original allocation. For all requests, the Department will consider the amount in the funding request of the Application to be the amount of Housing Tax Credits requested and will reduce the Applicant's request to the maximum allowable under this subsection through the underwriting process. (§2306.6711(b)).

(c) Increase in Eligible Basis (30% Boost). Applications having received an increase in Eligible Basis in their Original Application are determined by the Department, on the basis of having been previously determined eligible for this purpose, to be eligible for the basis boost for the Supplemental Allocation. However, staff will not recommend a Supplemental Allocation that would cause the Development to be over sourced, as determined by the Department, in which case a credit amount necessary to fill the gap in financing will be recommended. In no instance will the boost exceed more than the amount of credits required to create the HTC rent-restricted Units.

§11.1004. Competitive HTC Set-Asides. (§2306.111(d)).

(a) All Supplemental Allocation amounts will be associated with the Set-Aside for which the Original allocation qualified. Developments having been awarded under a set-aside in 2019 or 2020 will be considered to meet the set-aside requirements for that same set-aside in 2022. Supplemental Credits issued by the Board will be attributed to each 2022 Set-aside for the 2022 Application round as appropriate (for instance, for a 2020 development awarded out of the 2020 Non-Profit Set-Aside, now receiving $100,000 in Supplemental Credits, $100,000 would be attributed to the 2022 Non-Profit Set-Aside).

(b) At-Risk and USDA Set-Asides. At least 15% of the amount available for Supplemental Allocations will be allocated under the At-Risk Development Set-aside and will be deducted from the amount available for Supplemental Allocations prior to the application of the regional allocation formula required under §11.1005(c)(1) of this Subchapter (relating to Regional Allocation Formula). Up to 5% of the amount available for Supplemental Allocations may be given priority to Rehabilitation Developments under the USDA Set-aside. If the allocations set aside for the At-Risk and USDA applications are not fully utilized, they will be made available to other Supplemental Allocation requests through the collapse referenced in §11.1005(c)(2) of this Subchapter (relating to Award Recommendation Methodology and Collapse).

§11.1005. Supplemental Credit Allocation Process.

(a) Intent to Request a Supplemental Allocation. Only those Applicants who submit an Intent to Request a Supplemental Allocation form to the Department by the deadline specified in §11.1002 of this Subchapter (relating to Program Calendar for Supplemental Housing Tax Credits) are eligible to submit a Request for Supplemental Allocation. The Intent to Request a Supplemental Allocation must include at a minimum, the application name and number, the year of the award, the subregion and an estimate of the amount of Supplemental credits being requested.

(b) Request for Supplemental Allocation. Requests for Supplemental Allocations must be received by the deadline specified in §11.1002 of this Subchapter (relating to Program Calendar for Supplemental Housing Tax Credits) in the format required by the Department. Changes in the amount of the Supplemental credits requested between submission of an Intent to Request a Supplemental Allocation and the actual Request for Supplemental Allocation are permitted.

(c) This section identifies the general allocation process and the methodology by which awards under the Supplemental Credit Ceiling are made.

(1) Regional Allocation Formula. After making adjustments for the At-Risk and USDA Set-Asides referenced in §11.1004(b) of this subchapter, ~~T~~the Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region (subregion) Supplemental Credits consistent with the Regional Allocation Formula developed in compliance with Tex. Gov't Code §2306.1115; however, consistent with the total amount available being significantly less than the Credit Ceiling, the Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region (subregion) Supplemental Credits in an amount not less than $40,000.

(2) ~~The~~ Award Recommendation Methodology and Collapse. The methodology described in §11.6(3) of this Chapter (relating to Award Recommendation Methodology) will apply to the Supplemental HTC credit allocations. Awards of Supplemental Allocations may be made prior to completion of the Underwriting evaluation provided for in §11.1008 of this Subchapter (relating to Supplemental Credit Applications Underwriting and Loan Policy), in which case the award will be made conditionally. Any conditionally awarded Supplemental Allocations may, among other things, have the amount of their Supplemental Allocation subsequently reduced or have other conditions placed on it. In the event of a tie between two or more Applications, the tie breakers in §11.7 of this chapter (relating to Tie Breaker Factors) will be utilized.

(3) Supplemental Credit Selection Criteria. The final score from the Original Application will be utilized for ranking purposes of the Supplemental Credit Applications.

(4) Third Party Requests for Administrative Deficiency. Due to the nature of the Supplemental Credit process and reliance on the Original Application and scores, the Third Party Request for Administrative Deficiency process will not be utilized during the Supplement Allocation process under this subchapter.

§11.1006. Procedural Requirements for Supplemental Credit Application Submission.

(a) The procedures and requirements of §11.201 of this chapter (relating to Procedural Requirements

for Application Submission) will generally apply to the Supplemental Credit Application, unless otherwise specified in this Subchapter.

(b) The Original Application will be relied upon, as deemed final and reviewed by staff as part of the original award; the request for Supplemental Credits must only include the items authorized in this subchapter. Architectural drawings, or other documents that relate to changes to the Application other than revisions to the financing structure may not be submitted. The Applicant must submit the required documents as a single PDF document and all spreadsheet exhibits must also be provided in a usable spreadsheet format as further specified in the Department's released materials, which will be incorporated into the Original Application by staff, and become the full request for Supplemental Allocation.

§11.1007. Required Documentation for Supplemental Credit Application Submission.

The purpose of this section is to identify the threshold documentation that is specific to the request for Supplemental Allocation submission, unless specifically indicated or otherwise required by Department rule. Only those documents listed herein may be submitted.

(1) Certification, Acknowledgement and Consent of Development Owner. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by the Development Owner and addresses 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 and that they have given it with all required authority and with actual knowledge of the matters certified. Applicants must certify that there has been no change to the Applicant Eligibility or Original Owner Certification since the Original Application was submitted.

(2) Site Requirements and Restrictions. The Applicant must certify that there have been no changes from the Original Application that would require additional disclosure or mitigation, or render the proposed Development Site ineligible. Any change must be addressed under the requirements of §10.405 (relating to Amendments and Extensions).

(3) Financing Requirements. Supplemental Credit Applications must include updated exhibits and supporting information required under §11.204(7) of this chapter (relating to Required Documentation for Application Submission), along with construction contracts or contractor bids with a detailed schedule of values to support the Development Cost Schedule. The Financing Narrative should describe changes to the financial structure of the Supplemental Credit Application since the Original Application was submitted. Applicants should utilize 2021 rents in their updated exhibits; any resulting changes to operating expenses must include an explanation and rationale for the changes. Requests must include evidence from the Applicant's equity investor that the additional credits will be purchased and state the dollar value associated with that purchase. Eligible cost increases are not limited to construction costs, additionally, all cost increases must be substantiated. Supplemental Credit Applications that include Rehabilitation or Adaptive Reuse activities must include a letter from the Original Application Scope and Cost Review provider certifying that the scope of the project has not changed from the Original Application; the Development Cost Schedule must be supported by either:

(A) construction contracts or contractor bids, or

(B) an updated Scope and Cost Review Supplement.

(4) Site Control. Applicants must certify that there has been no change to Site Control, other than extensions or purchase by the Applicant, since the Original Application was submitted. If the nature of Site Control has changed, Supplemental Credit Applicants must submit the appropriate documentation as described in §11.204(10) of this chapter.

(5) Zoning. (§2306.6705(5)) If the zoning status of the Development has changed since the Original Application, the Supplemental Credit Application must include all requirements of §11.204(11) of this chapter (relating to Zoning).

§11.1008. Supplemental Credit Applications Underwriting and Loan Policy.

Changes to a Development's financing structure do not constitute an Amendment. Requests for Supplemental Credits will only be reviewed for items addressed in this subchapter. In requests for Supplemental Credits the Total Developer Fee and Developer Fee included in Eligible Basis cannot exceed the Developer Fee amounts in the published Real Estate Analysis report for the Original Application. Requests may not reduce the Deferred Developer Fee from the amount included in the published Real Estate Analysis report for the Original Application, and any updates made to the Original Application that is reflected in an executed Multifamily Direct Loan Contract. The Real Estate Analysis Division will publish a memo for the Supplemental allocation serving as a supplement to the report for the Original Application.

§11.1009. Supplemental Credit Fee Schedule.

Supplemental Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4% of the annual Supplemental 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% of the Commitment Fee may be issued upon request.~~

Arx Advantage, LLC
Robbye G. Meyer
1305 Dusky Thrush Trail
Austin, Texas 78746
(512) 963-2555
robbyemeyer@gmail.com

October 7, 2021

Via Electronic Mail

Mr. Cody Campbell
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Comments to the 2022 DRAFT QAP

Dear Mr. Campbell:

Section 11.7 Tie Breakers – We concur with TAAHP's comments to have a flat 20% poverty rate threshold (with 35% in region 11 and 25% in region 13) instead of a three-year average. This will be consistency with opportunity index and the applicant will know ahead on time what the percent is without having to wait for site demographics to be published.

We also support splitting up the tie breakers into three separate categories with poverty being first, rent burden being second and distance to nearest HTC development being third.

We also support the Rural Rental Housing Association (RRHA) comment for the need to have a separate tie break for USDA applications. The oldest placed is service development getting a priority goes to help USDA developments need to preserve the older housing stock.

Section 11.9(c)(7) Proximity to Jobs – We as a company have not supported this point category since its inclusion in the rules for several reasons. First and foremost, the majority of the jobs counted in the radius are not jobs that are served by the residents in affordable housing. Why is there a need to locate affordable housing in an area where the jobs are out of their reach or educational boundaries. Second, it is not an accurate mapping of jobs tool. A site can be within the appropriate distance to specific jobs; however, if the radius from the site does not reach to the middle of the census block the jobs are in, the jobs for the census block will not be counted. We have run into this scenario numerous times. Last, but certainly not least, many companies count their jobs at their headquarters and not separate locations, although, Labor and Standards does request them to report employees in their working locations. This is the case for many hospitals in Texas. Prime example, Baylor Scott & White reports from their headquarters so all the BSW hospital employees throughout the state are counted in the headquarters location instead of the major medical facility in College Station or BSW in

downtown Dallas. These major job centers are not counted appropriately. We ask again, that the Department (with the industry's help) find a better solution for this point category.

We will support the TAAHP position this year to amend the Draft Rule as was suggested in September to have Urban designated areas with a two-mile radius and Rural designated areas with a four-mile radius with no changes to the numbers of jobs for points.

Section 11.9(d)(7)(A) Concerted Revitalization Plan (CRP) – We support the TAAHP position for the revisions to the Urban area CRP concerning the equalization for development sites located in or out of qualified census tracts.

We appreciate the streamlining process for Rural area CRP. The previous language required for local resolutions made some municipalities very uncomfortable even though they were in support of the rehabilitation.

Section 11.9(e)(7)(B) Right of First Refusal – We agree with the TAAHP recommendations to remove the added language to the Draft Rules. We understand the need to be in compliance with IRS Section 42; however, these language additions and IRS compliance need to be discussed in more detail to work out the complexities of the "lease to own" scenario. Other states do have this option and it has created issues, for them and developers, in understanding how these developments process out at the end of compliance.

Section 10.10 Third Party Request for Administrative Deficiency (RFAD) – We realize that there will not be substantial changes to the rules at this point; however, we recommend the RFAD process be discussed for the 2023 rules, for changes to be made to return to the original intention of this process which was to bring to the Department's attention items/issues that would not be typically identified in the course of the application review process.

Section 11.201(2)(A)(i) Lottery Applications (Waitlist) Priority 1 or 2 applications – We request that Architectural Drawings be considered as part of the Third-Party Reports for Private Activity Bond/HTC applications that are on the Bond Review Board waitlist. The three day notice prior to issuance of the reservation does not allow for the drawings to be complete and require deficiency notices to clear the inconsistencies.

Section 11.204(6) Experience Requirement – We support the TAAHP recommendation to have a date range of 2014-2021 since the experience requirements have remained consistent throughout those years.

Section 11.207(3) Waiver of Rules – Since 2017 and the destruction of Hurricane Harvey, we have asked TDHCA to request the Governor to allow the Board to forward commitment funds in subsequent years ONLY in very specific circumstances that would affect the Texas application pool or industry as a whole and NOT allow the Board to grant forward commitments at their pleasure. This request has been met with Board resistance since it was first requested due in part because of previous Board activity to grant forward commitments at will. Staff has now added language that would placate to that same negative Board activity.

We whole-heartedly support the Board's ability to forward commit allocation; however, ONLY in specific circumstances that affect the Texas application pool or industry as a whole. We want there to be limits to the forward commitment activity.

We suggest the amended language:

"unless due to extenuating and unforeseen circumstances as determined by the Board, **due to circumstances that affect the Texas application pool or industry as a whole**,"

Section 11.302(g)(2)(B) Other Underwriting Conditions: Floodplains – Flood insurance is difficult and extremely expensive in this day in time. Many private insurance companies will not allow coverage for the contents of a tenant or third-party's belongings. The National Flood Insurance Program (NFIP) is not available in all communities and is limited to maximum coverage amounts for multi-unit residential buildings. Under the Department's program rules for Sites that are located wholly or partially in a floodplain, there is mitigation of "all finished ground floor elevations" to be one foot above the floodplain. In addition, developments must also meet local codes or federal regulations if federal funds are applicable.

We request the following change to accommodate the changes in today's reality.

(B) The Applicant must identify the cost of flood insurance for any buildings located in the floodplain ~~and for the tenant's contents for buildings~~ and certify that the flood insurance will be obtained, if available for the development, or will provide evidence that the Tenant has been informed that all or a portion of the buildings are located within the 100-year floodplain and that it is encouraged that they consider getting appropriate insurance or take necessary precautions as set forth in Section 11.101(a)(1) of the QAP;

We appreciate the opportunity to contribute comment to the rules.

Sincerely,

Robbye G. Meyer

Commenter 2

ATLANTIC PACIFIC COMMUNITIES

October 8, 2021

Brooke Boston
Deputy Executive Director of Programs
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
brooke.boston@tdhca.state.tx.us

Re: Public comment on the Qualified Allocation Plan - Census Tract Data

Ms. Boston,

We appreciate the opportunity to provide public comment on the draft Qualified Allocation Plan. During the September 20th roundtable meeting, Department staff and stakeholders discussed various options relating to the census tract boundaries that should be used in the 2022 QAP. Like other stakeholders, we were not clear whether the 2010 or 2020 boundaries should be used for different scoring and threshold items. Having looked at precedent from a decade ago as well as the statutory requirements, we believe that in order to maintain the integrity of the data, the best option is to use the 2010 boundaries for all items that rely on census tract level 2019 5-year ACS data and to use 2020 boundaries on items that are not informed by census tract level ACS data. Since 2019 is the most recent 5-year dataset available, the boundaries used for those items should be based on the census tract boundaries used by the Census Bureau for that dataset. The 2020 boundaries should be used for items such as Underserved Area since it does not rely on census tract level ACS data.

It appears this approach is consistent with how this was handled back in 2012. The Site Demographic Characteristics report from that year states: "The poverty data and median income data is from the 2005 to 2009 ACS. This data will require a Census Tract number based on the 2000 Census which may be different from the tract number under the 2010 Census." (https://www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/docs/12-SiteDemo.xls) The report also includes a tab named "HTC Inventory 2010 tract change" indicating the new census tract numbers that informed items such as "Developments in Census Tracts with Limited Existing HTC Developments".

It was also mentioned during the roundtable that the Department might use 2021 Qualified Census Tract designations. We feel the most appropriate path forward is for the Department to use the 2022 designations, available as of September 9th, per the HUD notice which states in relevant part: "Effective Date. The 2022 lists of QCTs and DDAs are effective: (1) For allocations of credit after December 31, 2021; or (2) for purposes of IRC Section 42(h)(4), if the bonds are issued and the building is placed in service after December 31, 2021." (https://www.huduser.gov/portal/Datasets/qct/QCTDDA2022_Notice.pdf)

If you have any questions, please do not hesitate to contact me.

Sincerely,

Dan Wilson, Senior Vice President
Atlantic Pacific Communities
dwilson@apcompanies.com
305-357-4733

CC: Matthew Griego
matthew.griego@tdhca.state.tx.us

ATLANTIC PACIFIC COMMUNITIES

October 8, 2021

Brooke Boston
Deputy Executive Director of Programs
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
brooke.boston@tdhca.state.tx.us

Re: Public comment on the Qualified Allocation Plan - New Right of First Refusal item

Ms. Boston,

We appreciate the opportunity to provide public comment on the draft Qualified Allocation Plan. We feel strongly that, as currently drafted, the three-point item for Applicants that provide a Right of First Refusal to tenants of developments designed as single-family detached homes will create numerous and significant unintended consequences. We respectfully request that the Department implement this requirement of Section 42 in a similar manner to the Department's implementation of the statutory requirement regarding proximity to veteran's facilities. Rather than making this an additional three-point scoring item, it should be an alternative way to score a maximum of one point under Right of First Refusal. Accordingly, we propose the following language for this section of the QAP:

> (7) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) **An Application may qualify to receive up to one (1) point by providing a Right of First Refusal.**
> (A) ~~**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 Tex. Gov't Code, §2306.6726 and the Department's rules including §10.407 of this part (relating to Right of First Refusal) and §10.408 of this part (relating to Qualified Contract Requirements). **Alternatively, if the ~~(B) The~~** Development **is ~~designed~~ platted to be sold as single-family detached homes, Development Owners ~~and~~** commit**~~s~~** to offer a right of first refusal to tenants of the property to purchase the dwelling at the end of the Compliance Period. A de minimus amount of a participating tenant's rent may be attributed to the purchase of a Unit. Such commitment will be reflected in the LURA for the Development. The Applicant must provide a description of how they will implement the 'rent-to-own' activity, how they will make tenants aware of the opportunity, and how they will implement the right at the end of the Compliance Period. Such a Development may not be layered with National Housing Trust Funds. ~~**(3 points)**~~

If the Department feels a greater distinction must be made, we would urge you to delay implementation of this for at least one year. The stakeholder community should have an opportunity to provide thoughtful and meaningful feedback about how to mitigate potential issues that would impact the competitive process and implementation of the ROFR at the end of the Compliance Period. Based on a cursory review of the language proposed in the current draft QAP we have the following concerns:

- It will ultimately result in the creation of far fewer units as it is much more costly to build single family on a per unit basis.
- Developers, investors and the Department have not had enough time to complete the necessary research that will allow all to understand how these should be financed, underwritten and converted at the end of the Compliance Period.

- The three-point advantage provided for these types of developments could make this a predominantly single-family program.
    - It will push developments out into the suburbs farther away from areas with meaningful concentrations of jobs, particularly if the Proximity to Job Areas point item remains as currently drafted. Viable sites will need to be larger and therefore most often located farther away from the urban core. This push will be amplified by the three-point advantage; single-family sites that only score 4 out of the 6 available points for Proximity for Jobs Areas will still rank higher than any multifamily site earning maximum points.
- The Section 42 requirement to have units for Eventual Tenant Ownership does not provide that they must be single-family. Allowing other product types could result in the production of more affordable units, but the Department would need to provide clearer guidance regarding implementation at the end of the Compliance Period.
- At the end of the Compliance Period:
    - Not all tenants will be interested in purchasing those homes and this could create a complicated patchwork of fractured ownership in an otherwise unified development site that shares amenities and common areas. This would impact the financeability of the consolidated units as well as the units purchased through this ROFR mechanism.
    - The Qualified Contract process requires Qualified Entities to cover outstanding debt plus taxes. How should these obligations be broken out for individual units of different size, location and market value?
    - Language should also clarify whether or not Applicants can select both ROFR options for four (4) total points and if so, the priority should be clearly spelled out. For example, would (a) the Qualified Entity have priority, essentially nullifying the tenants' options or (b) would the tenants have priority and then the Qualified Entity would have the option to purchase the remaining units?

If you have any questions, please do not hesitate to contact me.

Sincerely,

Dan Wilson
Senior Vice President
Atlantic Pacific Communities
dwilson@apcompanies.com
305-357-4733

CC: Matthew Griego
matthew.griego@tdhca.state.tx.us

HOUSING LAB BY BETCO

Prescribed Consulting For Affordable Housing Development

October 8, 2021

Brooke Boston, Director of Programs
Texas Department of Housing & Community Affairs
221 East 11th Street
Austin, Texas 78701
Brooke.Boston@tdhca.state.tx.us

Dear Ms. Boston,

On behalf of the staff at BETCO Housing Lab, we appreciate the opportunity to submit recommendations for modifications to the 2022 Qualified Allocation Plan (QAP) and Uniform Multifamily Rules. BETCO Housing Lab is an affordable housing consulting firm, which provides multifamily development services to a wide range of clients who develop affordable housing across the state of Texas. Please consider the following recommendations to specific provisions of the draft 2022 Qualified Allocation Plan & Uniform Multifamily Rules.

Comments related to the Qualified Allocation Plan 2022 Draft

1. Subchapter A – General, Section 11.1(d)(19) Definitions, Commitment Notice or Subchapter A – Competitive HTC Allocation Process, Section 11.6(2), Credits Returned and National Pool Allocated After January 1

   Comment: Include in the definition or in the credits returned language that if contingent commitment notices are issued by the Department, they expire by December 31 of the cycle year. If the effective time period for these notices is extended to the following year (after January 1), then these notices shall only be extended by Board action.

   Justification: Currently, the QAP does not include the ability for a commitment to be carried forward to the following year. Yet, this action occurred this year with the fulfillment of a 2020 contingent commitment when a 2020 9% HTC award was returned in January 2021. Per current program rules, these credits should have been included in the 2021 HTC cycle and allocated back to the corresponding subregion. If contingent commitments or carryovers are to be executed in one cycle year but the credits are not available until the following year, then Board approval is required for such action.

Lora Myrick (512) 785-3710
lora@betcohousinglab.com | 2201 Northland Drive Austin, Texas 78756 | 812 San Antonio Street, Suite L-14, Austin, Texas 78701

2. Subchapter A – General, Section 11.1(d) Definitions

Comment: Include definitions for (1) a qualified census tract and (2) a forward commitment.

Justification:
(1) The new CRP language provides points for applications located in a Qualified Census Tract (QCT), as determined by the Secretary of HUD. It would be great to have a stated definition to ensure all applicants have the same understanding of the definition of a QCT and comply accordingly, in a consistent manner.
(2) In light of forward commitments made for current and previous HTC applications, it would be prudent to add the definition for a forward commitment to the QAP. Though it is not a favorable action by the Board, it is permitted by the IRS and was included in previous QAPs, utilized during "absolute must" periods when there is a country or global disaster (e.g. The Great Recession, COVID-19) that creates unforeseen hardships (a force majeure) on the financing and construction of affordable housing or due a ministerial error. Please see below language from the TDHCA 2011 QAP.

(c) **Forward Commitments.** The Board may determine to issue Commitments of tax credit authority with respect to Applications from the State Housing Credit Ceiling for the calendar year following the year of issuance (each a "forward commitment") to Applications submitted in accordance with the rules and timelines required under this chapter and the application checklist provided in the Tax Credit (Procedures) Manual. The Board will utilize its discretion in determining the amount of credits to be allocated as forward commitments and the reasons for those commitments considering score and discretionary factors.

(1) Unless otherwise provided in the Commitment with respect to a Development selected to receive a forward commitment, actions which are required to be performed under this chapter by a particular date within a calendar year shall be performed by such date in the calendar year of the State Housing Credit Ceiling from which the credits are allocated.

(2) Any forward commitment made pursuant to this section shall be made subject to the availability of State Housing Credit Ceiling in the calendar year with respect to which the forward commitment is made. If a forward commitment shall be made with respect to a Development placed in service in the year of such commitment, the forward commitment shall be a "binding commitment" to allocate the applicable credit dollar amount within the meaning of §42(h)(1)(C) of the Code.

(3) If tax credit authority shall become available to the Department in a calendar year in which forward commitments have been awarded, the Department may allocate such tax credit authority to any eligible Development which received a forward commitment, in which event the forward commitment shall be canceled with respect to such Development.

3. Subchapter A – Competitive HTC Set-Asides, Section 11.5(2) USDA Set-Aside

Comment: Suggested language change to "No less than ~~At least~~ 5% of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA."

Lora Myrick (512) 785-3710
lora@betcohousinglab.com | 2201 Northland Drive Austin, Texas 78756 | 812 San Antonio Street, Suite L-14, Austin, Texas 78701

Justification: Texas Govt. Code 2306.111(d-2) states that five percent of housing tax credits to developments receive federal financing through the Texas Rural Development Office of the United States of Agriculture. The intent of this statue it to ensure no less than 5% of HTC go to USDA applications – meeting the requirement. It is not a minimum requirement (a floor). We suggest changing the language to reflect the intent of the statue.

4. Subchapter A – Pre-Application Requirements (Competitive HTC Only), Section 11.8(b)(2)(B)(i)

   Comment: Please add: "Neighborhood Organizations on record with the state or county 30 days prior to the beginning of the Application Acceptance Period whose boundaries include the entire proposed Development Site, where a reasonable search for applicable entities has been conducted."

   Justification: Applicants do complete a reasonable search for neighborhood organizations, according to the pre- and full application requirements. However, there may be times when organization may be formed in hopes to prevent affordable housing from being built in a neighborhood. Because of due diligence of the developer, plus the assurance of the third-party RFAD review process, developers do ensure that a reasonable search and required notifications are sent to specified entities and meet the program requirements. It would be best for the language to reflect such intent.

5. Subchapter A – Competitive HTC Selection Criteria, Section 11.9(c)(7)(A) Proximity to Jobs

   Comment: Change the use of population of a municipality or unincorporated areas of a county to urban and rural designations.

   Justification: We request that the 2-mile radius apply to **all urban** subregions and the 4-mile radius apply to **all rural** subregions rather than using the population. Because there are smaller, suburban municipalities like Pasadena in Harris County or Garland in Dallas County, which have a population of 499,999 or less within a county with a population of 1 million or more, the current language is problematic. As written, the proposed rule would allow two sites, one within the boundaries of the municipality and one immediately outside of it in the unincorporated area of a county with a population of 1 million or more, to utilize two different methodologies to derive these points. The site in the unincorporated area could easily meet the jobs test, in comparison to a site located within the municipality's boundaries, while being further from a concentration of jobs. This change creates consistency with other parts of the QAP, such as the subregion urban/rural split, Opportunity Index, and CRP scoring items.

Lora Myrick (512) 785-3710

lora@betcohousinglab.com | 2201 Northland Drive Austin, Texas 78756 | 812 San Antonio Street, Suite L-14, Austin, Texas 78701

6. Subchapter A – Competitive HTC Selection Criteria, Section 11.9(c)(8) Readiness to Proceed

   Comment: Please remove the scoring item, "Readiness to Proceed"

   Justification: The COVID-19 pandemic has produced unforeseen and often dramatic inflationary pressures, delays in the supply chain, and shortages in labor. Each of these items has resulted in increased costs to be borne by the development community, with little resources available to mitigate. This scoring item restricts a developer's ability to adjust to these changes in market conditions (i.e., increases in construction costs, drops in tax credit equity pricing, etc.), all of which we are seeing play out because of pandemic-related factors. Should an application amendment be needed, an applicant is forced to accept the penalty primarily due to taking appropriate action in the best economic interest of the development.

   The RTP deadline has also forced developers to spend significantly more on design and pursue dollars earlier in the process without any certainty of an award. We estimate that at least twice the typical amount of pre-development funds were spent prior to award in 2018–2020 than non-RTP deals, in many cases on developments that did not receive funding because of last minute gyrations in scoring, underwriting, compliance review, etc., which was the case on several applications this round. That is a waste of resources we could be using to pursue other affordable deals. Additionally, the imposition of RTP has not resulted in production of housing units earlier on the ground than would have been the case without RTP.

7. Subchapter A – Competitive HTC Selection Criteria, Section 11.9(d)(7)(A) Concerted Revitalization Plan

   Comments:
   (1) Fix conflicting language: "(ii) A plan may consist of one or more, complementary, local planning documents […]. No more than two local plans may be submitted for each proposed Development.";
   (2) Add as a requirement for both Rural and Urban developments under the CRP scoring item: The proposed Development is required to receive a letter from the appropriate local official for the municipality (or county if the Development Site is completely outside of a municipality) that explicitly identifies the proposed Development as contributing to the concerted revitalization efforts of the municipality or county.
   (3) Suggested change to Rural CRP point structure:
   - *Keep: the points for Rehabilitation, or demolition and Reconstruction Rural CRP developments to (7 points).*
   - ***Add:** The proposed development is New Construction, located in a Rural Area, and meets the requirements defined in the Urban CRP section. (5 points)*

Lora Myrick (512) 785-3710
lora@betcohousinglab.com | 2201 Northland Drive Austin, Texas 78756 | 812 San Antonio Street, Suite L-14, Austin, Texas 78701

Justification:

(1) The new language is in conflict with the existing language and we are looking for clarification around the number of local plans that can be submitted for the CRP scoring item.

(2) We request that a letter from the city or the county be required, stating that the proposed development contributes to the concerted revitalization efforts, for both urban and rural developments. A letter, rather than a resolution, indicates that the city has reviewed the development and confirms their approval and adherence to the on-going revitalization efforts. This keeps with the discussion point from staff that the city or county created a CRP, set the goals for each plan, and the addition of the specified affordable housing development is aligned with their plan.

(3) Rural communities, similar to Urban communities, are also experiencing an affordable housing shortage. "Nearly a quarter of the nation's most rural counties have seen a "sizeable increase" in the percentage of residents spending more than half their income on housing, […]. [And] thanks to low and stagnant incomes, as well as policy decisions that limit affordable housing construction – roughly 47 percent of rural renters, or 2.6 million Americans, were "cost-burdened." [Additionally] a web of demographic transformation – aging populations, young adults moving in search of opportunity, slow recovery after the Great Recession, the influx of immigrants, and the persistence of rural poverty in the wake of the urban concentration of jobs – means these regions of the country need more, not less, rental assistance and housing."[1]

Centering on Texas, there are 593,3063 people under the poverty line for a rural poverty rate of 17.3% (for comparison, the poverty rates for Texas and the US are 15.5% and 14.1%, respectively).[2] With high poverty rates in Texas counties, referred to as PPCs – Persistent Poverty Counties by FreddieMac[3], adding New Construction projects under the Concerted Revitalization Plan scoring item for rural developments would help these counties, who wouldn't qualify for Opportunity Index points, increase their affordable housing stock. Valuing this item at 5 points would still preserve the intent of the scoring item, which prioritizes the preservation of existing stock but would also provide opportunities for newly constructed units to serve cost-burdened Texans.

8. Subchapter A – Competitive HTC Selection Criteria, Section 11.9(e)(2) Cost of Development per Square Foot

Comment: Thank you for increasing the cost per square foot!

[1] "The rent's "too damn high" in rural America, too," Curbed. 2019. https://archive.curbed.com/2019/4/2/18291233/rent-apartment-rural-affordable-housing
[2] "2021 Draft State of Texas Low Income Housing Plan and Annual Report," TDHCA. 2021
[3] "LIHTC in Rural Persistent Poverty Counties," Freddie Mac Multifamily. 2020 https://mf.freddiemac.com/docs/lihtc_persistent_poverty_counties.pdf

Lora Myrick (512) 785-3710
lora@betcohousinglab.com | 2201 Northland Drive Austin, Texas 78756 | 812 San Antonio Street, Suite L-14, Austin, Texas 78701

9. Subchapter A – Competitive HTC Selection Criteria, Section 11.9(e)(7)(B) Right of First Refusal

   Comment: Remove the newly added single family ROFR scoring item.

   Justification: Per TDHCA staff comments during the September 20th roundtable, this subsection has been added to the draft 2022 QAP in order to satisfy certain requirements of IRC Section 42. It was also noted that TDHCA staff plans to implement other changes in the 2023 QAP to bring the program rules in compliance with IRC Section 42.

   We respectfully request this newly added scoring criteria be removed in its entirety from the draft 2022 QAP. Given the complexity of 'rent-to-own' programs as outlined in this newly added subsection, an open discussion is needed to weigh the pitfalls/hurdles/negative outcomes and proper protocols need to be implemented to ensure that issues do not arise as a result of this change. A good reference to look to for this item would be the State of Oklahoma's QAP, as they have included the construction of single family in their HTC rules for several years.

   We further request that all 'Section 42 compliance" topics contemplated to be added to the next cycle's QAP be made the subject of roundtable discussions early next year prior to their addition to the 2023 draft QAP. A suggestion to be added to a roundtable discussion could be incentivizing single family design/development as an option for the 130% boost.

10. Subchapter A – Competitive HTC Selection Criteria, Section 11.101(a)(2) Undesirable Site Features.

    Comment: Remove (K) Development Sites that would violate a Joint Land Use Study for any military Installation

    Justification: We recommend the removal of this undesirable site feature. It is a new addition to the QAP stemming from a one-off incident with one HTC applicant, and arguably, at the heart of the dispute was the resistance to affordable housing. Military service members may live on or off base; however, if they live off base, affordable housing is needed. Lower ranking service members earn salaries in the similar salary ranges of food service members to teachers and first responders.[4] It should be the responsibility of the developer to make sure the proposed development does not violate a Joint Land Use Study for any military installation and should advocate for the reasons affordable housing would be an asset for the surrounding community. If removal of this undesirable site feature is not favorable, it may be worth adding military service entities, as applicable, to the list of governmental entities to be notified at pre- and full-application.

[4] "Salaries of U.S. Army Soldiers," Chron. 2018. https://work.chron.com/salaries-us-army-soldiers-6496.html

Lora Myrick (512) 785-3710
lora@betcohousinglab.com | 2201 Northland Drive Austin, Texas 78756 | 812 San Antonio Street, Suite L-14, Austin, Texas 78701

11. Subchapter C – Public Notifications, Section 11.203(2) Notification Recipients.

    Comment: On the Pre-Application, please add an additional drop-down menu option for notifications to be uploaded as an attachment, like site control documents.

    Justification: It would be helpful and easy for both the applicant and the Agency.

12. Subchapter D – Underwriting Rules and Guidelines, Section 11.302(e) Total Housing Development Costs.

    Comment: Remove the newly added language, "For Competitive Housing Tax Credit Applications, the Underwriter will adjust an Applicant's cost schedule line to meet program rules. Underwriter will not make subsequent adjustments to the application to meet feasibility requirements as a result of the initial adjustment required to meet program rules."

    Justification: The developer needs to maintain the ability to ensure their application is feasible per program rules. An adjustment in one line item on the cost schedule typically results in changes to the credit request, and subsequently the total sources and uses. Any change to an application under review by staff must allow the developer to review or challenge the adjustment—to provide context, additional information, and to make sure that the change does not affect other portions of the application. Many times, a change creates a ripple effect. If the change makes an application infeasible, then it will result in loss of time, money, and desired affordable housing developed in a community.

13. Subchapter D – Underwriting Rules and Guidelines, Section 11.302(i) Feasibility Conclusion

    Comment: Fix: "The Development will be characterized as infeasible if one or more of paragraphs (3) or (4) of this subsection applies unless paragraph (~~6~~5)(B) of this subsection also applies.

Thank you for the opportunity to provide public comment to the draft 2022 Qualified Allocation Plan and Uniform Multifamily Rules. If you have any questions or would like to discuss these items further, please do not hesitate to contact me directly at (512) 785-3710 or via email at lora@betcohousinglab.com.

Sincerely,

Lora Myrick, President
BETCO Housing Lab

Lora Myrick (512) 785-3710
lora@betcohousinglab.com | 2201 Northland Drive Austin, Texas 78756 | 812 San Antonio Street, Suite L-14, Austin, Texas 78701

Brooke Boston

From: Jo Kathryn Quinn <jkquinn@caritasofaustin.org>
Sent: Thursday, October 7, 2021 1:56 PM
To: Brooke Boston
Cc: Jason Phillips; Megan Podowski; Adelita Winchester
Subject: Comments on the Draft of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan

Dear Brooke,

Thank you for the opportunity to comment on the DRAFT of the above-referenced HTC Qualified Allocation Plan.

I am commenting specifically to the criminal history screening criteria included in the definition of supportive housing. TDHCA should not mandate criminal history screening criteria except for federally required criteria. Each recipient of LIHTC funds for development of Supportive Housing should have the autonomy to establish screening criteria as appropriate for each development. However, should TDHCA continue to mandate additional screening criteria, the following are further comments regarding this specific (italicized) section:

(-a-) Temporary denial for a minimum of seven years from the date of conviction based on criminal history at application or recertification of any felony conviction for murder related offense, sexual assault, kidnapping, arson, or manufacture of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(-b-) Temporary denial for a minimum of three years from the date of conviction based on criminal history at application or recertification of any felony conviction for aggravated assault, robbery, drug possession, or drug distribution.

- Change “seven years” to “three years” where highlighted.
- Remove the word “recertification” where highlighted. If a tenant has a conviction once living on the premises: if the activity for the conviction did not occur on the premises or violate the lease, this should not affect their tenancy at recertification/lease renewal.

Again, thank you for the opportunity to comment.

Best,

Jo Kathryn Quinn | President and CEO
Caritas of Austin
Direct: 512.646.1252 Mobile: 512.466.7080
611 Neches St | PO Box 1947, Austin TX, 78767
www.caritasofaustin.org

Follow us on Facebook, Instagram and Twitter

October 8, 2021

Brooke Boston
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701

RE: Comment on the Draft 2022 Qualified Allocation Plan

Dear Ms. Boston:

The following comments are in response to the draft 2022 Qualified Allocation Plan (QAP). I thank Staff for their work on this document and the opportunity to provide input.

11.1(d)(10) Bedroom Definition

The Definitions section of the QAP defines Bedroom and specifies minimum sizes and widths for the walls and the closet. This presents a potential conflict for rehabilitation developments that are not required to meet the minimum Unit Size square footage requirements under 11.101(b)(6) and therefore might not meet these Bedroom size requirements. I propose that this definition include a provision that "Rehabilitation developments where unit configurations are not being altered will be exempt from the bedroom and closet width, length, and square footage requirements."

11.1(e) Data

Please confirm usage of the 2010 census tracts for the 2022 QAP. The census data concerning many of the scoring items is based on the 2010 census tracts and the 2022 HUD QCTs are also based on the 2010 census tracts.

11.3(d) One Mile Three Year Rule

Subparagraph B of this section has new proposed language that states that a One Mile Three Year Resolution would need to be obtained if a development that has received an allocation of "Supplemental Allocation of 2022 credits" during the three-year period preceding the date the Application Round begins is located within one mile. It is my understanding that the Supplemental credits are unlikely to have a final award by the date the Application Round begins, so please clarify whether Supplemental credit *applications* would require a One Mile Three Year resolution for 2022 9% HTC applications.

11.3(g) One Award per Census Tract Limitation

Currently, this section applies to Urban subregions only. I propose that this section apply to Urban and Rural subregions. There are Rural subregions where multiple applications could be awarded and two applications could be awarded in the same census tract. In order to spread awards to different areas, which I believe was the reason this section was added to the QAP, Rural subregions should also have a One Award per Census Tract Limitation.

11.7 Tie Breaker Factors

Though you may receive comment to increase the poverty rate for eligibility regarding the first tiebreaker, my comment is that no change be made in the final 2022 QAP. Using the average of the last 3 years of awards provides a baseline to give an advantage to lower poverty areas based on recent awards in the state. The current figure already means that more than 50% of all census tracts in the state qualify for the first tiebreaker. Increasing the poverty value to 20% means that even more census tracts would qualify. Furthermore, in many areas, a higher the poverty rate equates to a lower median income and higher rent

burden, so an increase to 20% would actually mean that lower income areas would rank better than higher income areas. I think this is a policy shift that needs further discussion and changing this tiebreaker in the 2022 QAP would be a significant change from the draft.

11.8(b)(2)(B)Pre-Application Notification Recipients

The 2021 QAP added the following requirement: "Regardless of the method of delivery, the Applicant must provide an accurate mailing address in the Pre-application." In 2021, the majority of applicants did not comply and staff did not issue any deficiencies for this item until the Department was alerted to the requirement through the RFAD process. If this information is not a necessity for staff, I propose that this requirement be removed.

11.9 Competitive HTC Selection Criteria

This section specifies how boundaries will be measured from the Development Site to scoring items, but does not specify how Scattered Site development boundaries will be measured and will be scored. For example, there was an instance last year where an application consisting of two scattered sites on the same street claimed Opportunity Index points, but only one of the two scattered sites met the distance requirement for a Q3 census tract to be awarded points under the Opportunity Index. Please provide clarification in the QAP to indicate that for Scattered Site Developments, points for location-based scoring items like Underserved Area and Opportunity Index will be determined individually for each scattered site, and should there be a difference in points, the lowest number of points will be used for the Application. Additionally, the Tie Breaker should be determined for each scattered site and the lowest ranking Tie Breaker should be used for the Application.

11.9(b)(2)(A) HUB

Please add clarification whether multiple HUBs may be used to meet the percentage requirements specified in this section. As written, it states that "The HUB must have some combination of ownership interest in each of the General Partner of the Applicant, Cash Flow from operations, and Developer Fee which taken together equal at least 50% and no less than 5% for any category," which to me refers to a single HUB. In 2021, an application was awarded points under this section when it used two different HUBs to meet the owner, cash flow, and developer fee combination requirement. If this is actually allowed, please clarify the language to make this clear.

11.9(c)(6) Residents with Special Housing Needs

Subparagraph C has been added to this section concerning development sites located in a county of over 1 million and within 2 miles of a veteran health facility. Because At-Risk and USDA applications compete statewide and there are a limited number of counites over 1 million people, I propose that At-risk or USDA set asides are not eligible for this scoring item.

11.9(c)(7) Proximity to Job Areas

Though you may receive comment to modify the distances for this scoring item, my comment is that no changes be made in the final 2022 QAP. When the draft 2022 QAP was before the Board for approval, several members of the development community made comment that the 4-mile radius was too large. Because the Board declined to make any changes, the development community has been working with the 2-mile and 4-mile figures as specified in the Draft for several weeks. A change to this scoring item now would be a significant alteration to the QAP and give an advantage to the Association members that are now proposing a smaller radius and be a disadvantage to non-members.

11.9(d)(1) Local Government Support

This section outlines whether the resolution must come from the city or county for applications (1) within a municipality, (2) within an ETJ, and (3) outside of a municipality/ETJ. The section does not address sites that are partially within a municipality and partially within the ETJ or county. In a prior year, an Application

with a site half in the city and half in the ETJ submitted a resolution of support from the City only, but there was a question as to whether it would have also needed a resolution of support from the County since part of the site was in the ETJ. Can clarification be added for this situation? This scenario will also be applicable to 11.9(d)(5)(B) Community Support from State Representative when no letter is submitted.

11.9(d)(4) Quantifiable Community Participation

In the past, I have found discrepancies between boundary maps and descriptions and even no published boundaries at all for a neighborhood organization. Please clarify that Neighborhood Organizations must also have their boundaries published and on record with the state or county and that those published boundaries will be the boundaries used for this scoring item. This will prevent confusion, uncertainty, and issues with conflicting boundary maps like that of 20116 Dian Street Villas. A neighborhood organization must be on record with the county or state, have its boundaries on record with the county or state, and should also be able to show that the neighborhood organization would have been discoverable as of 30 days prior to the beginning of application acceptance period.

11.9(d)(7) Concerted Revitalization Plan

I support the proposed change to this section that gives a 2-point advantage to Urban development sites located in QCTs. If there is public comment to argue that this QCT advantage be removed, then I propose that development sites that are even *eligible* for Opportunity Index points NOT be eligible for Concerted Revitalization points.

Allowing a high opportunity site to take points for a revitalization plan gives that application a competitive advantage over other high opportunity applications because the highest scoring revitalization application is awarded first in several regions. This occurred in multiple regions last year. This defeats the purpose of the scoring item. It was my understanding that the highest scoring revitalization application under the award methodology was added by the legislature so that true revitalization applications could compete with high opportunity applications. If the Application is in a census tract that qualifies for the Opportunity Index, it is arguable that the area has already undergone revitalization. My proposed language is below:

> (i) An Application may qualify to receive points if the Development Site is geographically located within an area for which a concerted revitalization plan (plan or CRP) has been developed and published by the municipality. The Development Site must not be eligible for points under the criteria found in §11.9(c)(4) Opportunity Index.

11.9(e)(1) Right of First Refusal

Subsection B was added to the draft, which gives 3 points for developments proposing single-family detached homes only. It should be noted that traditional apartment developments may be converted to condominiums where individual units could be sold to residents. If this section is to remain in the QAP, then it should be available to any construction type. The only exception that I could see would be SRO-type developments where individual units may not have full kitchen facilities and therefore may not be considered complete housing facilities able to be sold as a residence.

11.101(a)(2) Undesirable Site Features

If the QAP allows a local ordinance to supersede the distances in this section, then I propose that a local resolution also be acceptable. This allows the local government to approve development in their community and would also remove subjectivity and interpretation around certain features and avoid unnecessary RFADs. Example language is included below.

> Where there is a local ordinance or resolution that specifies the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, then such smaller distances may be used and documentation such as a copy of the local ordinance or resolution identifying such distances relative to the Development Site must be included in the Application.

11.101(b)(1)(C) Ineligibility of Developments within Certain School Attendance Zones

The TEA will not have testing and school ratings for a second year due to COVID. Because the most recent data on school ratings is several years old, it seems unfair to completely redline development locations based on schools that were underperforming several years ago but may be performing now. For 2022 only, I propose that Development Sites located in a school attendance zone that is rated F for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding be eligible if the Application includes documentation and a letter from the ISD Superintendent that outlines specific improvements that have been made to the schools and also that the Application commits to providing an after school educational services for tenants.

Thank you for your attention to these comments. Please contact me with any questions.

Regards,

Alyssa Carpenter
ajcarpen@gmail.com
512-789-1295

October 6, 2021

Cody Campbell
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Dear Cody:

On behalf of DMA Development Company, LLC, I am submitting the following comments to the QAP and the Multifamily Rules.

§**11.3(b) Two Mile Same Year Rule**

We request the removal of the Supplement Allocations from this provision. The two-mile same year rule is a one-year look, meant to prevent two awards within 2 miles in the same competitive round. The applications for supplemental allocations served that purpose when they were initially submitted and received original credit allocations in 2019 and 2020. To have them again eliminate a second round of 2022 deals within two miles seems like double jeopardy. As Subchapter F has many provisions that treat applications for supplemental credits as meeting threshold in their original application year, I propose that the same concept be applied to concentration factors. In other words, the applications for supplemental credits should be treated only as 2019 and 2020, and not 2022 allocations for purposes of the de-concentration factors.

Should TDHCA staff determine that the applications for supplement allocations must be considered in terms of the 2022 de-concentration rules, to be legally compliant with statute, I support staff's language in the published draft in that it prioritizes applications for supplemental allocations over new 2022 applications.

§11.9(c)(7)(B) Proximity to Jobs

We whole heartedly support all the proximity to jobs provisions as they are included in published draft This change will result in more affordable sites that are more suited to multifamily development.

Subchapter F. Supplemental Credits

We appreciate staff's inclusion of this new subchapter which is critical in addressing the construction cost difficulties we developer are facing right now. Two years ago, I was building garden style affordable housing product for less than $125 per square foot, and today, I am building comparable housing for more than $175 per square foot, which is a 40% increase over 2 years ago.

Because the large portion of the increase happened in the last 10-12 months, as pandemic related supply chains issues took time to affect the market, it is accurate to say that the 2020 deals have been the ones most adversely affected. In consideration of that, I recommend that the QAP maintain the provisions in the draft which work to prioritize 2020 deals over 2019 deals. Those are specifically:

11.1001(f). Development that have placed in service are not eligible to receive Supplemental Credit.

I strongly support the maintenance of this provision. No project that has placed in service is at risk of not being completed. To allow developments who have placed in service to apply for supplemental credits serves no policy goal.

11.1003. Maximum Supplemental Housing Tax Credits.

I strongly recommend that the maximum request be 7%, not 15% more credits than their additional application. If all potential applicant request 15%, the $5M that we have earmarked to help all struggling 2020 deals will not go far enough.

11.1005(3). Supplemental Credit Selection Criteria. The final score from the Original Application will be utilized for ranking purposes of the Supplemental Credit Allocation.

While I would prefer a policy whereby every affected 2020 deal would receive some allocation of additional credits, I recognize that this is likely not possible due to the board's inclusion of 2019 deals in this provision. That being said, I support the proposed ranking system included in the published draft because it gives a scoring priority to 2020 deals, who generally score higher than 2019 deals.

I would also like to note that TAAHP's consensus comments recommend that closed transactions should be somehow given priority over transactions that have not yet closed. I do not believe that this prioritization serves the policy objective behind this subchapter, which is to help struggling deals. Therefore, I recommend leaving the Supplement Credit Selection Criteria as it is in the published draft.

11.1007(3). Financing Requirements.

Here, I recommend requiring more extensive documentation for closed transactions, to include executed construction contracts, executed change orders, and the final investor projections attached to an executed operating agreement or company agreement, so that TDHCA is confident that it is receiving the actual numbers used by the developer, lender and investor to close the transaction.

Sincerely,

Janine Sisak
Senior Vice President/General Counsel

4101 Parkstone Heights Drive, Suite 310 | Austin, TX, 78746
P: 512.328.3232 | F: 512.328.4584
www.dmacompanies.com

Commenter 7

Disability Rights TEXAS

2222 West Braker Lane
Austin, Texas 78758
MAIN OFFICE 512.454.4816
TOLL-FREE 800.315.3876
FAX 512.323.0902

DRTx Comments on 2022 Qualified Allocation Plan (QAP)

Disability Rights Texas (DRTx) is Texas' federally-designated Protection and Advocacy (P&A) agency for persons with disabilities. We provide a wide range of services for people with disabilities to ensure that their rights are upheld and that they are not discriminated against based on their disability. We also work to ensure that the needs of people with disabilities are met so that they can live as independently as possible.

There is a serious shortage of affordable housing for extremely low-income Texans across our state. According to a recent study published by the National Low Income Housing Coalition, Texas currently has only 29 units affordable to extremely low income Texans per 100 households that need them; major metropolitan hubs such as Austin, Houston and Dallas have even fewer.[1] People with disabilities who receive social security income (SSI or SSDI) are part of this income bracket, and can have an even tougher time finding housing if they need an accessible unit. The Low Income Housing Tax Credit Program (LIHTC) is the future of affordable housing, supplanting the aging housing stock carrying over from the 20th century, and it is critical that the 2022 QAP reflect the needs of the low income Texans the program was created to support.

Good Cause for Eviction Standard

Currently, the 2022 QAP does not include clear language around a good cause for eviction standard. While there is no defined good cause for eviction standard in federal law, states have taken it upon themselves to create standards to protect tenants living in LIHTC properties. This standard is critical to holding landlords accountable to fair housing guidance, and to ensuring that tenants in LIHTC properties, including people with disabilities, have robust tenant protections. As the goal of this program is to provide affordable housing to low income tenants, we believe it is necessary for the 2022 QAP to both define a good cause for eviction standard, and to create a process by which TDHCA will ensure that properties are meeting this standard. Sample language can be taken from the good cause for eviction definition in federal statute for the Section 8 program, and federal lease guidance for the Project Based Voucher Program.[2,3]

Accessible Unit Design Costs – Grab Bar Installation

Visitability standards are a relatively new component of the Texas QAP, but are an important step in allowing people with disabilities, both LIHTC residents and the public, to enjoy the benefits of their unit. The Development Accessibility Requirements in the 2022 QAP require that at least one bathroom in first floor units, or units accessible by elevator, have appropriate blocking to support the installation of a grab bar. Grab bars are common requests for people with disabilities and go a long way in protecting people from falls, something that is becoming a more prominent issue with our aging population. The average cost of a grab bar is approximately $21, but labor adds an additional $150 to the total cost.[4] The total cost for a grab bar and labor can

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[1] National Low Income Housing Coalition. (2021). *The Gap: A Shortage of Rental Homes*. Available from: https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2021.pdf

[2] Cornell Law School Legal Information Institute. (n.d.). *Electronic Code of Federal Regulations* - 24 CFR § 880.067. *Section 8 Housing Assistance Payments Program for New Construction* - Termination of Tenancy and Modification of Lease. Available from: https://www.law.cornell.edu/cfr/text/24/880.607.

[3] Cornell Law School Legal Information Institute. (n.d.). *Electronic Code of Federal Regulations* - 24 CFR § 983.256. *Project Based Voucher Program (PBV)* - Lease. Available from: https://www.law.cornell.edu/cfr/text/24/983.256

[4] https://porch.com/project-cost/cost-to-install-grab-bars#national-average-cost

be out of reach for many low income tenants with disabilities, especially as people struggle financially due to the COVID-19 pandemic. To ensure that people with disabilities are not priced out of this common, yet necessary, modification, we suggest that the 2022 QAP include language requiring that tenants and landlords work together, with tenants paying for materials and landlords paying for the cost of labor.

COVID-19 Related Eviction Forgiveness for LIHTC Tenant Applicants

People across Texas are struggling financially because of something entirely out of their control: a pandemic. People's health and financial stability have suffered during the pandemic, and many are facing imminent eviction or homelessness. People with disabilities are facing these realities acutely since people at risk of complications from COVID-19 have had to choose between generating income or their health. DRTx was an early recipient of COVID-19 emergency funds to help prevent evictions for people with disabilities. Despite the eviction moratorium, which has ended, we can attest firsthand that evictions have become far more prevalent over the past year.[5] In the last three years, representing pre and post pandemic, the number of housing cases the housing team has received has increased more than 1000%. For our clients, evictions due to disability make it harder to find future housing, and we almost always have to do an accommodation to prevent future landlords from taking these evictions into account when screening tenants regarding their rental histories.

Besides the financial and rental history stigma associated with an eviction, almost every eviction additionally impacts the health of renters as they face evictions. Simply put, every renter who experiences the threat, risk of, or is evicted, is a person with, even temporarily, a disability. To ensure that the LIHTC program is helping those who need it the most right now, we suggest that landlords be disallowed from considering the rental histories of tenants (evictions, past debts owed due to evictions, etc.) from March 2020, the earliest time the Emergency Rental Assistance Program (ERAP) can consider paying past rent amounts, until October 2022, when the ERAP funds must be finally spent.

Thank you for the opportunity to provide comments on these important issues.

Please contact Tanya Lavelle, DRTx Policy Specialist with questions
tlavelle@disabilityrightstx.org

[5] The Eviction Lab. (Aug. 21, 2021). *Preliminary Analysis: 11 Months of the CDC Moratorium*. Available from: https://evictionlab.org/eleven-months-cdc/

MARQUE REAL ESTATE CONSULTANTS

6300 West Loop South, Ste. 670
Bellaire, Texas 77401
(713) 560-0068 – p
(713) 583-8858 – f
donna@marqueconsultants.com

October 8, 2021

Texas Department of Housing and Community Affair
221 East 11th Street
Austin, Texas 78701
Attn: Cody Campbell
Director, Multifamily Finance
Via Email – cody.campbell@tdhca.state.tx.us

Re: Comments Regarding 2022 Rules

Dear Mr. Campbell,

Thank you and others at TDHCA for your continued efforts to dialogue with the stakeholders relating to the proposed 2022 Chapter 11, Qualified Allocation Plan (QAP). Please accept the following comments and suggested changes on behalf of Marque Real Estate Consultants (Marque). **These comments update and take the place of those submitted to Brook Boston on September 1, 2021.**

1. **Subchapter A - Pre-Application, Definitions, Threshold Requirements and Competitive Scoring.**

a. **Section 11.4(c)-Increase in Eligible Basis (30% boost)**: Given the major costs increases and pandemic related delays, the 30% basis boost is vital to the success of a 2022 transaction. All areas and development types should qualify for the boost. Therefore, I recommend the following change to Section 11.4(c)(3)(E):

> (E) The Development is in an area covered by a concerted revitalization plan, ~~is not an Elderly Development~~, and is not located in a QCT. A Development….

b. **Section 11.8(b)(2)(B)-Pre-Application Notification Recipients**. RFADs were submitted challenging those applicants that failed to provide accurate mailing addresses in the Pre-Applications. The QAP already require the Applicant to retain proof of delivery. Therefore I recommend that the following sentence be stricken from this Paragraph.

> (B)…..Regardless of the method of delivery, the Applicant must provide an accurate mailing address in the Pre-Application.

c. **Section 11.9(c)(7)(B)-Proximity to Job Areas.** I agree with TAAHP's comments on the removal of points associated with Proximity to Urban Core and the expansion of the radius used to determine the Proximity to Jobs scoring item from 1-mile to 2-miles in all Urban sub-regions and a 4-miles radius in all Rural sub-regions.

d. **Section 11.9(e)(2)-Cost of a Development per Square Foot**. A high cost development includes (iv)-a Site that qualifies for a minimum of five (5) points related to Opportunity Index. However, the rule does not define whether these points can be achieved if the Development meets the criteria of

subparagraphs (A) or (B) of the Opportunity Index scoring category. Therefore, I suggest the following changes to this subsection that will allow a concerted revitalization transaction to meet the definition of a high cost development and eligible to receive the maximum points in this scoring item:

> (A)(iv) The development is in a location that would score at least five (5) points under Opportunity Index, under criteria found in 11.9(c)(4)(A) and/or 11.9(c)(4)(B).

e. **Section 11.10-Third Party Request for Administrative Deficiency for Competitive HTC Applications.** I feel strongly that the RFAD process should remain in our rules but that Staff should follow the stated purpose and disallow any RFADs that do not bring to Staff's attention "new, material information about the Application" that is not otherwise available to Staff in the Application such as statutory notifications to applicable individuals and entities and undesirable site and neighborhood characteristics not disclosed in the application.

Staff was very busy this cycle with rent relief and other matters. This resulted in Staff not being able to timely review applications and post administrative deficiencies and responses to the deficiencies to the applicable applications before the RFAD deadline triggering unnecessary RFADs.

2. **Subchapter C – Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules.**

a. **11.201-Procedural Requirements for Application Submission**. I recommend the following change to Subparagraph (8)-Limited Review Process in order to more narrowly define the use of this process:

> (8) Limited Reviews. If, after the submission of the Application, an Applicant identifies an error in the Application that would likely be the subject of a Deficiency, the Applicant may request a limited review of the specified and limited issues in need of clarification or correction. This issue may not relate to the scoring of an Application, or failure to comply with any statutory requirements.

b. **Section 11.204-Required Documentation for Application Submission**. I recommend that Subparagraph (8)(G)-Occupied Developments be revised to clarify that the Rule and the items to be submitted in corresponding Tab 21 of the Application applies to those Applicants that are:

> (i) proposing the redevelopment of occupied residential structures so that it is consistent with **Section 2306.6705(6)** of the Texas Government Code that defines Occupied Developments as those proposing rehabilitation; and/or
>
> (ii) applying for Direct Loan funds whose development sites include occupied structures (residential or commercial).

3. **Subchapter D – Underwriting and Loan Policy**.

a. **Section 11.302(g)-Other Underwriting Considerations**. Subparagraph (2)-Floodplain requires the Applicant to either remap the Development Site out of the floodplain or provide, in part, (i) flood insurance for the buildings and for the tenant's contents if any of buildings will be located within the 100-year floodplain. Flood insurance is difficult and extremely expensive in this day in time. Private insurance companies will not allow coverage for the contents of a tenant or third-party's belongings. The National

Flood Insurance Program (NFIP) is not available in all communities and is limited to maximum coverage amounts for multi-unit residential buildings and would only apply to Rehabilitation developments. Under the Department's Program Rules for Sites that are located wholly or partially in a floodplain, there is mitigation of "all finished ground floor elevations" to be one foot above the floodplain. In addition, developments must also meet local codes or federal regulations if federal funds are applicable.

We request the following change to accommodate the changes in today's reality.

(B) The Applicant must identify the cost of flood insurance for any buildings located in the floodplain ~~and for the tenant's contents for buildings~~ and certify that the flood insurance will be obtained, if available for the development, and will provide evidence that the Tenant has been informed that all or a portion of the buildings are located within the 100-year floodplain and that it is encouraged that they consider getting appropriate insurance or take necessary precautions as set forth in Section 11.101(a)(1) of the QAP;

4. **Subchapter F – Supplemental Housing Tax Credits**.

I concur with TAAHP that COVID related disruptions in the supply of materials and cost escalations have impacted 2019 and 2020 transactions. I also appreciate TDHCA working with the affordable housing community to create a process under the 2022 QAP rules that is fair and equitable to all eligible developments that were truly harmed by the disruption. In that light, I respectfully submit the following comments:

- Limitation - Any forward commitments be limited to no more than $5,000,000.00 in 2022 tax credit equity and that such proceeds be limit to assisting 2019 and 2020 transactions only (not 2021);

- Stand-Alone Chapter - Subchapter F should be a stand-alone chapter that is unique to the 2022 QAP rules and such chapter should recognize and waive any statutory provisions that relate to de-concentration factors and elderly calculations. 2019 and 2020 supplemental credit awardees were awarded credits under QAP rules unique to the year of the award which included compliance with all de-concentration and elderly limitation factors. Therefore, request for Supplemental Allocations should be considered an Amendment to the Original Application ***solely*** in connection with the amount of supplemental credits allocated to such development and any resulting revisions or updates to their respective underwriting report. An awardee of Supplemental Credits should not impede and be given preferential treatment to a 2022 transaction. To do otherwise will further limit the production of affordable housing in the 2022 round;

- Ranking. I disagree with the use of the 9% scores from the applicable cycle to determine prioritization for a Supplemental Allocation. The points associated with certain scoring categories increased from 2019 to 2020 so there would be a built-in priority for 2020 applications. This would be particularly problematic in sub-regions where only one transaction is reached in a given year, and the Supplemental Allocation amount available in the sub-region is not large enough to support two awards. The purpose of the Supplemental Allocation process is to award credits to those transactions that were impacted the most from COVID disruptions. Therefore, the prioritization and ultimately the decision on the Supplemental Allocation amount should be made in the following order:

a. Transactions that are closed and under construction the longest should be given first priority. These would be deals that are the most at risk. Those that are recently closed or have not closed at all had time to resize their deals and/or seek an award of Direct Loan funds. Also, the markets including lumber pricing have dramatically improved over the last several months so they are less impacted by the COVID disruptions; and

b. The Real Estate Analysis team at TDHCA should be given the authority to evaluate those priority transactions under (a) above. They are familiar with the financial structure and can opine on the changes in development costs unique to the transaction and determine those that are most impacted and should receive the Supplemental Allocation. REA should also be given the flexibility in making their "harm analysis" to re-prioritize developments in a given sub-region in order to reach those developments that are impacted the most by COVID disruptions; and

- Tie Breakers. I disagree with the use of Tie Breakers in determining prioritization of Supplemental Credits. Poverty rates, rent burden and distance to the nearest HTC development do not differentiate transactions that were harmed the most and therefore deserving of a Supplemental Allocation of credits.

I appreciate your consideration of my comments to the 2022 QAP.

Sincerely,

Donna Rickenbacker

Donna Rickenbacker,
Principal

cc: Brooke Boston – Via Email
Director of Programs

From:	Harris Block
To:	htc.public-comment@tdhca.state.tx.us; Brooke Boston
Subject:	Rules Comments
Date:	Friday, October 8, 2021 11:01:38 AM
Attachments:	image001.png

To: The Texas Department of Housing and Community Affairs

Attn: Brooke Boston and Matt Griego

Re: Rules Comments

This is Harris Block with Eureka Holdings. We plan to submit an application for 2022 9% Low Income Housing Tax Credits. I respectfully request that TDHCA keep the scoring and tie-breakers items in the QAP as currently drafted. It is punitive to modify them now as I have spent the last five (5) weeks searching for qualifying acquisition sites using the version the Board approved on September 2nd.

Respectfully submitted,

Harris Block

==========

Harris Block
Eureka Holdings, LP
603 W 8th Street
Austin, TX 78701

Dallas address:
4144 North Central Expressway, Suite 870A
Dallas, TX 75204

Phone: 214-363-2628, ext 106
Direct Dial: 214-438-5057
Fax: 469-453-6635
Mobile: 214-683-8991

Commenter 10

FOUNDATION COMMUNITIES
creating housing where families succeed

3000 S IH 35, Ste 300
Austin, TX 78704

tel: 512-447-2026
fax: 512-447-0288

foundcom.org

October 7, 2021

Brooke Boston, Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

RE: Comments for the 2022 Draft Qualified Allocation Plan

Thank you for the opportunity to comment on next year's QAP. Enclosed please find Foundation Communities' comments on the 2022 Draft QAP as well as proposed topics for more substantive changes we would like TDHCA to consider for the 2023 QAP.

Sincerely,

Walter Moreau

Walter Moreau
Executive Director
Foundation Communities

Comments for 2022 Draft QAP

§11.4(b) Maximum Request Limit – We oppose increasing the limit to $2M. This is providing 25% more tax credits with no incentive to build more units, which will result in fewer units produced overall. We understand that costs are increasing but many developers are getting creative and finding ways to provide 100+ units with $1.5 million in tax credits. If the tax credit limit increases we urge staff to add a tax credit per unit cap.

§11.7 Tie Breaker Factors – We urge staff to add tax credit per affordable unit as a tie breaker factor. We think this would fit well after the 1st tie breaker related to poverty and keep distance as the last tie breaker. With all else equal, the development that is providing more units per tax credit should get prioritized.

§11.3 Housing De-Concentration Factors – We ask that you remove Supplemental Applications from housing de-concentration factors, especially the 2 mile same year rule. The goal of de-concentration was achieved in previous years and should have no bearing on 2022 applications. Supplemental applications are not providing new units that would trigger de-concentration considerations.

§11.9(c)(6)(C) Proximity to Veterans Services – to prevent confusion, please clarify what constitutes a "veterans hospital, veterans affairs medical center, or veterans affairs health care center" by using the terms from the Veterans Affairs website for locating VA locations. https://www.va.gov/find-locations/?facilityType=health. As an example, "VA emergency Care" would likely qualify, but would "All in-network Emergency Care" qualify. This should be clarified. The website is also an easy way to document which locations qualify.

§11.9(c)(7) Proximity to Jobs – We strongly recommend that the 2 mile radius be used for all cities within urban sub-regions and the 4 mile radius be used for rural sub-regions. Regardless of city size, a 2 mile radius from jobs within urban sub-regions will provide far greater access to jobs, amenities, and transportation than a 4 mile radius. Closer proximity should be incentivized in scoring.

§11.9(d)(7) Concerted Revitalization Plan – We ask that you remove the scoring associated with CRPs in QCTs or allow a City Resolution of Support to allow the max 7 points for a CRP that is NOT located in a QCT. We argue that many of the CRP areas that are no longer located in a QCT have increasing incomes are decreasing poverty because revitalization efforts are accomplishing the intended purpose. We argue that this is a positive example of criteria promoting community support and engagement.

§11.9(e)(7)(B) Right of First Refusal for tenants of single family-detached – This is a very interesting concept, but we are concerned that this very new scoring item has been added without time and opportunity for public discussion and is allotted too many competitive points. One concern is that this will prioritize lower density developments and thus less units produced per tax credit. We ask that you reduce scoring to 1 point or remove this item altogether and provide a chance for more feedback and discussions next year.

Topics for 2023 QAP

Cap on Tax Credit per Unit – We would like to propose the concept of a cap on tax credits per unit as a discussion topic for next year. A tax credit per unit cap will incentivize more units, more leverage, and greater efficiency for the 9% program. Without an incentive to build more units, we are concerned that

smaller deals are outscoring larger deals that offer more units with similar costs. As an example, in 2021, the median award was $16k tax credit per unit, and there were several outliers awarded over $22K tax credits per unit. Several of these examples are urban area developments with less than 75 units that were awarded $1.5M in tax credits, while other developments in the same subregion are committing 100+ units with the same amount of tax credits. We strongly recommend that staff find a way to address this. A cap on tax credit per unit, adjusted for project type and location, would result in more units overall.

§11.9(c)(5) Underserved Census Tracts– The combination of scoring for census tracts that are underserved, high opportunity, and close to amenities has incentivized the development of a lot of HTC projects in highly desirable areas over the last several years. The downside is that the underserved point structure leaves these census tracts uncompetitive after a project is awarded. Because denser census tracts need more HTC units we would like to see the state move towards a HTC density per census tract concept. We argue that a high opportunity census tract with 2,000 households and only 100 HTC units is an underserved census tract. We understand that this is a big shift and requires data analysis and developer feedback, but wanted to float the concept.

§11.9(e)(7)(A) Right of First Refusal - Right of First Refusals are critical to the long-term preservation of the state's investment in affordable housing. We urge the state to require all 9% and 4% tax credit applicants to provide a ROFR.

§11.9(b)(6)(B)(iii) Energy and Water Efficiency Features – We ask that the QAP continue to improve scoring incentives to build green. We are concerned that the proposed amenities are too basic, too easy, and not impactful enough. Our industry can and must start building smarter and greener and more sustainably. Below are some ideas to improve this section.

- Make EPA WaterSense or equivalent toilets, showerheads, and faucets mandatory rather than a scoring criteria. The cost of these fixtures continue to drop and the savings in water far outweigh the slightly higher premium at the front end.

- Make the remaining 2 points worth of Energy and Water Efficiency Features more impactful by removing green features that are too easy, should be mandatory, or are already partially mandatory, and adding green features that are more substantive.

- Move Green Building Certifications to 6(B)(iii) Energy and Water Efficiency Features. Keeping green building certifications in a different section is problematic for 2 reasons. First, it essentially allows applicants to double count green features and green building certifications, because many of these green features are already required by certifications. Second, it incentivizes 2 points worth of easier green features over green building certifications.

Home Innovation RESEARCH LABS™

October 7, 2021

Texas Department of Housing and Community Affairs (TDHCA)
Attn: Brooke Boston and Matt Griego
Rules Comments
PO Box 13941
Austin, Texas 78711-3941

Submitted electronically: Brooke.Boston@tdhca.state.tx.us; htc.public-comment@tdhca.state.tx.us

Dear Ms. Boston and Mr. Griego:

On behalf of Home Innovation Research Labs, I am pleased to submit comments regarding TDHCA's Draft 2022-2023 Qualified Allocation Plan (QAP).

We praise TDHCA for maintaining competitive points for third-party green building certification. We especially praise TDHCA for incentivizing certification to the *ICC-700 National Green Building Standard (NGBS).*

This letter includes an overview of Home Innovation's NGBS Green certification program, including market and policy acceptance and certification activity.

Praise for Green Building Criteria

We praise TDHCA for maintaining competitive points for third-party green building certifications. The Green Building Features criteria encourages development that is efficient, comfortable, and supports resident health.

Comprehensive green building standards support true housing affordability and ensure that funded buildings are designed to support the comfort and health of residents. Further, by recognizing multiple green building rating systems, TDHCA is empowering applicants to pursue their program of choice. We respectfully request that these options be retained in the final QAP.

In particular, we commend TDHCA for recognizing NGBS Green certification based on the *ICC-700 National Green Building Standard (NGBS)*. The NGBS was specifically designed for residential projects and is affordable to implement, making it ideally suited for low-income housing programs.

National Green Building Standard Overview

The NGBS was the first residential green building rating system to undergo the full consensus process and receive approval from the American National Standards Institute (ANSI). Since 2008, each version of the NGBS has been approved by the American National Standards Institute (ANSI). The 2008, 2012, and 2020 versions were developed with support from the National Association of Home Builders (NAHB) and the International Code Council (ICC). For the third edition of the standard, the 2015 version, the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) participated as a third co-sponsor. This partnership further cements the NGBS as the preeminent green standard for residential construction.

The NGBS is also the first solely residential green building standard to be one of the ICC suite of I-codes that form a complete set of comprehensive and coordinated building codes. As the industry standard for green residential development, it is embedded within the International Green Construction Code (IgCC) as an alternative compliance path for multifamily residential buildings and the residential portion of mixed-use buildings. Finally, the NGBS is also approved as an ASHRAE standard.

As one of the I-Codes, the NGBS is written in code language to make it easy for industry professionals and contractors to understand. I believe this is one reason the NGBS has been successful even in areas where it is not part of the building code and is used as an above-code program. For a residential building to be in compliance, the building must contain all mandatory practices in the NGBS. The building must also contain enough practices from each of the six categories of green building practices to meet the required threshold points.[1] The six categories of green practices are:

- Lot & Site Development
- Resource Efficiency
- Energy Efficiency
- Water Efficiency
- Indoor Environmental Quality
- Homeowner Education

Under the NGBS, homes and multifamily buildings can attain one of four potential certification levels: Bronze, Silver, Gold, or Emerald. The NGBS was specifically designed so that no one category of green practices is weighted as more important than another. Peerless among other green rating systems, the NGBS requires that all projects must achieve a minimum point threshold in every category of green building practice to be certified. A project certified to the NGBS can't merely obtain all or most of its points in a few categories, as other rating systems allow. This requirement makes the NGBS the most rigorous green building rating systems available.

[1] See page 12 in ICC 700-2020 NGBS.

The NGBS's mandatory provisions must be met for certification at any level. There are no exemptions. However, unlike other green building rating systems, the NGBS contains an expansive array of green building practices aimed at all phases of the development process: design, construction, verification, and operation. This provides the flexibility builders and developers need to ensure their green projects reflect their geographic location, climatic region, cost constraints, and the type of project they are constructing.

Certification Program

Home Innovation Research Labs serves as Adopting Entity and provides certification services to the NGBS. Home Innovation Labs is a 57-year-old, internationally-recognized, accredited product testing and certification laboratory located in Upper Marlboro, Maryland. Our work is solely focused on the residential construction industry and our mission is to improve the affordability, performance, and durability of housing by helping overcome barriers to innovation. Our core competency is as an independent, third-party product testing and certification lab, making us uniquely suited to administer a green certification program for residential buildings. Our staff is made up of mechanical, structural, and electrical engineers; planners; economists; architects; former builders, remodelers, and contractors; lab and technicians. Combined, they possess an unparalleled depth of knowledge and experience in all facets of market analysis and building science research and testing. Why is that important? Because behind every building seeking NGBS compliance stands a team of experts on a mission to help them succeed. Participation in NGBS Green brings our building science expertise to each project team at no additional cost.

Independent, Third-Party Verification

The NGBS requires that a qualified, independent third-party inspect the project and verify that all green design or construction practices claimed by the builder toward green certification are incorporated correctly into the project. Most projects require at least two inspections. The verifier must perform a rough inspection before the drywall is installed to observe the wall cavities, and a final inspection once the project is complete. The required verification offers imbues an elevated level of rigor and quality assurance to the projects that are certified. An affordable housing organization can be assured that construction practices for higher building performance and healthier residences are successfully achieved.

Verifiers record the results of their rough and final inspections on a Verification Report, which is submitted to Home Innovation Research Labs. Home Innovation reviews every rough and final inspection to ensure national consistency and accuracy in the verification reports. After the Verification Reports are reviewed and approved, our team issues green certification to the project.

Home Innovation Research Labs qualifies, trains, tests, and accredits the NGBS Green Verifiers and maintains a current list at www.HomeInnovation.com/FindNGBSVerifier. Verifiers must possess experience in residential construction and green building. Many verifiers are Home Energy Rating System (HERS) raters. Potential verifiers are trained on how to verify every NGBS practice. After completing the training, verifiers must pass an exam and carry sufficient insurance to earn accreditation. Verifiers renew their accreditation annually and retrain and retest with every NGBS version.

Home Innovation maintains strict rules to ensure verifiers remain independent and free of conflict-of-interest on the projects for which they provide verification services. Verifiers serve as our field agents to confirm buildings are NGBS compliant. Further, we regularly audit our verifiers and their verifications as part of our internal quality assurance program.

QAP Recognition of the NGBS

The National Green Standard is currently recognized in 29 state and local Qualified Allocation Plans (QAPs), and an increasing number of State Housing Finance Agencies have been adding NGBS green certification to their QAPs to help promote green affordable housing. In these plans, NGBS is recognized as on-par with comparable programs, such as LEED and Enterprise Green Communities, and other regional programs, such as Earth Advantage. Multifamily builders who utilize NGBS for low-income housing tax credits typically receive the same number of points for NGBS as they would for an alternative program. The straight-forward and low-cost nature of the NGBS certification program make it ideally suited for affordable housing development, and this is evident by the number of Habitat for Humanity organizations and other LIHTC providers who select NGBS as their program of choice.

Program Statistics to Date

Home Innovation has certified 8,141 multifamily buildings representing 294,264 dwelling units. Currently, there are 4,206 multifamily buildings in progress, representing an additional 166,921 dwelling units. I believe that these statistics show that we have been successful in designing a green certification program that is affordable and flexible, while remaining rigorous.

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Summary

Thank you for the opportunity to provide feedback on Texas' 2022-2023 Draft QAP. We applaud TDHCA for maintaining optional green building criteria that references credible third-party green building programs.

I am happy to meet with you or your staff should you require a more detailed overview of the NGBS or our certification program. I will also gladly send you any supplemental information that you might require. Please do not hesitate to contact Michelle Foster (mfoster@homeinnovation.com, 301-430-6205), our vice president of Sustainability, directly if she can be of further assistance.

I look forward to working with you to promote green certified affordable housing in Texas.

Sincerely,

Michael Luzier
President & CEO

October 8, 2021

Mr. Cody Campbell
Multifamily Finance Director
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701
cody.campbell@tdhca.state.tx.us

Re: Housing Trust Group comments to the 2022 Draft Qualified Allocation Plan and Multifamily Rules.

Dear Mr. Campbell:

Housing Trust Group (HTG) is pleased to present for consideration the following comments to the draft 2022 Qualified Allocation Plan (QAP) and Multifamily Rules.

§11.3 De-concentration Factors – Applications applying for supplemental credits should not be included in the de-concentration factors, since they had already been subject to the de-concentration rule in the original application year. Newly submitted 2022 applications should not be impacted by 2019 or 2020 deals applying for supplemental credits.

§11.9(c)(7) Proximity to Jobs Area – HTG is pleased with the language as written in the Staff draft. The proposed expanded radii will open more high opportunity sites throughout the state, including mid-sized cities that have not been competitive over the past several years.

§11.9(d)(5) Community Support from State Representative – If a letter of Support, Opposition, or Neutrality comes to TDHCA, the Department must notify the Applicant of receipt of such letter within three (3) business days. It is imperative that Applicants for LIHTC are made aware of any correspondence affecting Application score so that business decisions can be made accordingly.

§11.9(d)(7)(A) Concerted Revitalization Plan – HTG concurs with TAAHP's comment. Section 42(m) states that QAPs must give "preference" to "projects which are located in qualified census tracts… and the development of which contributes to a concerted community revitalization plan…" A QAP must clearly adhere to the provisions of 42(m) and provided those mandated preferences and layer in locally determined criteria. While the QAP provides points for Opportunity Index, providing the 2-point option for Concerted Revitalization Plan developments located within a QCT would make the QAP consistent with IRC Section 42(m)(B)(ii)(III).

> *"The membership would like to recommend that a 2-point option be added for those sites not located within a QCT. To qualify for the 2 points, an Applicant would need to provide "A letter from the appropriate local official for the municipality (or county if the*

Development Site is completely outside of a municipality) that explicitly identifies the proposed Development as contributing to the concerted revitalization efforts of the municipality or county (as applicable)." The membership further believes that securing a letter from the local government rather than a resolution is within the spirt of simplifying the process while making more 'Concerted Revitalization Plan' sites competitive relative to 'Opportunity Index' sites."

§11.9(e)(7)(B) Right of First Refusal – HTG concurs with TAAHP's comment. Eventual Tenant Ownership is a complicated matter that could be open to all levels of abuse at the end of 15 years. A well-established plan for eventual ownership that meets a previously determined minimum standard should be devised before implementing a "Right of First Refusal" provision. Until such minimum long term operational and disposition standards have been developed, it is recommended that the QAP simply provide a selection criteria consideration for projects proposing eventual tenant ownership that, at a minimum, are design and properly platted in a manner that is conducive to eventual ownership. This plan shall provide for a clear path of financial counseling by an experienced firm that provides such services for the existing tenants to eventually achieve ownership. A mechanism that allows for the planned disposition at year 15 (be it phased, or all inclusive) which, would then allow for individual tenant acquisition and an approved future deed restriction that would appropriately expire ("burn off") to prevent an immediate future "flip" at a market value increase.

"The membership respectfully requests this newly added scoring criteria be removed in its entirety from the draft 2022 QAP. Given the complexity of 'rent-to-own' programs as outlined in this newly added subsection, an open discussion of the pitfalls/hurdles/negative outcomes need to be weighed and proper protocols implemented to ensure that issues don't arise as a result of this change."

§11.204(6) Experience Requirement – HTG supports TAAHP's comment:

"Per discussion with TDHCA staff during the September 20th roundtable, the date change regarding the experience requirement was simply advancing the dates by one year. Given the provisions are largely the same from 2014 forward, the membership requests that the year 2014 serve as an 'anchor' year so that any experience from 2014 forward be allowed to satisfy the requirements of this section. Therefore, the date range would be updated to read "2014-2021"."

Subchapter D Underwriting Rules and Guidelines

§11.302(d)(1)(A)(i) Market Rents – Developments that contain less than 15% unrestricted units, the Underwriter should use the lower of Market Study approved market rents, or the Gross Program Rent at 80% AMI. The Underwriting staff should utilize the 80% AMI as the threshold rather than 60% AMI, whether a Development has selected Income Averaging or not. Similar to the standards of underwriting practices conducted by lenders and investors, where restricted rents adjusted for utility allowance fall above actual market rents, those restricted rents should be reduced to a 10% below market rents to provide an affordable rent advantage. Developments proposing unrestricted units ("market rate units") should be held to the same standard, whereby the adjusted unrestricted unit rents should fall 10% below the prevailing market rate as established in the market study. Arbitrarily underwriting the rents to 60% AMI creates an "on paper" shortfall and is not consistent with financial market practices for LIHTC developments. This also creates a higher demand and use of limited sources of soft funds held by local and state agencies to demonstrate to TDHCA that the artificial "on paper" financing shortfall must be filled due to this burdensome underwriting treatment.

Subchapter F. Supplemental Housing Tax Credits -

§11.1003 Maximum Supplemental Housing Tax Credits, Requests and Award Limits – HTG subscribes to TAAHP's comment**:**

> *After further discussion and review, the membership requests the cap on supplemental credits be reduced from 15% to 7%..*

§11.1005 Supplemental Credit Allocation Process – Applications for supplemental credits should be ranked based on the final score for that award year**.**

§11.1007 Required Documentation for Supplemental Credit Application Submission – HTG agrees with TAAHP's comment**:**

> *As part of the application documentation, the membership requests that an applicant be required to provide evidence from their investor that the additional credits will be purchased, and the dollar value associated with that acquisition. This will provide REA the information they need to wholly evaluate the application and ensure that allocated credits will be used.*

§11.1007(3). Financing Requirements – Applicants for supplemental credits that have already closed should be required to provide executed construction contracts, and approved change orders for materials.

If you have any questions or would like to discuss any of these items further, please do not hesitate to contact Val DeLeon at (512) 417-0985 or via email at valentind@htgf.com.

Sincerely,

Valentin DeLeon
Senior Vice President, Housing Trust Group

cc: Mr. Bobby Wilkinson, TDHCA

October 8, 2021

Texas Department of Housing and Community Affairs
Attn: Matthew Griego
QAP Public Comment
P.O. Box 13941
Austin, Texas 78711-3941
Submitted Via Email: htc.public-comment@tdhca.state.tx.us

Dear Mr. Griego,

The Humane Society of the United States (HSUS) is a national animal welfare non-profit organization that, for over 70 years, has worked to protect animals large and small from cruelty and to prevent neglect. A significant part of the HSUS' work is protecting companion animals—and the humans who love them—from discriminatory laws and practices that can separate families and pets. The forced separation of families from their pets is immensely traumatic for both humans and animals, particularly when families are forced to surrender their pets in order to secure other needs, like housing.

We recognize that the same poverty and structural inequity that creates inequitable access to healthy food, education, jobs, health care and housing also creates obstacles to affordable veterinary and pet wellness services. With tens of millions of pets living with loving families in poverty, there is an inextricable link between an individual or family's access to resources, including an affordable, decent, and safe home and the welfare of the companion animals who are part of that family.

I am the Texas State Director of the HSUS, and a former affordable housing attorney in Texas with several years of experience assessing the impacts of various provisions of the Qualified Allocation Plan on low-income renters and renters of color across our state. This background, in combination with the decades of experience of staff at the HSUS who advocate for more equitable access to resources in the context of pet wellness gave us a unique perspective as we reviewed the 2022 Draft QAP.

To that end, please accept the following comments in response to the 2022 Staff Draft of the Texas Qualified Allocation Plan (QAP).

I. The HSUS continues to oppose the increased distance to amenities allowed in the rural and urban Opportunity Index in §11.9(c)(4)(B) and recommends returning to the maximum distances allowed by the 2020 QAP.

The change from a 1-mile maximum allowable distance from amenities, such as grocery stores, to 2 miles will disproportionately impact tenants who are pet owners and who are physically disabled and/or do not have access to a car.

As mentioned above, the HSUS advocates for equitable access to resources, including pet wellness resources. Housing policies—and where our state prioritizes affordable housing development, in particular—should reflect a prioritized access to vital resources, like grocery stores and pet supply stores. It's likely that many of the proposed site developments under the change in 2020 to the 2-mile radius would allow for affordable housing to be built in areas that the United States Department of Agriculture (USDA) defines as having "low access" to healthy food, which should be unacceptable in any LIHTC application. The USDA defines "low access" as places where 500 people and/or 33 percent of the tract population resides more than 1 mile from a supermarket or large grocery store [in urban areas]."[1]

Lack of easy access to grocery and other department stores may also particularly impact pet owners living in these properties because grocery stores are often where pet owners buy pet food, toys, treats, etc. Therefore, the HSUS opposes the change to a 2-mile radius from amenities, like grocery stores, and recommends returning to the current 1-mile radius for urban developments in the 2020 QAP.

II. The HSUS maintains opposition to language in §11.101(D)(i) allowing Developers to obtain a resolution from the relevant city or county local government rather than being required to submit a Neighborhood Risk Factors Report if a proposed development is in a census tract with a poverty rate greater than 40%.

Across the country there are strong patterns of significantly higher private investment in low-poverty, majority white neighborhoods than in high-poverty neighborhoods, and neighborhoods whose residents are primarily people of color.[2] Without intentional investment in neighborhoods to build grocery stores, hospitals and doctors' offices, veterinary clinics, and pet supply stores, residents in high-poverty neighborhoods will continue to live in resource deserts.

For example, the map below shows the complete lack of resources in high-poverty census tracts in South Dallas. The residents in these zip codes range from approximately 70% to 98% Black and Latino and the average poverty rate in these zip codes is 43%. When compared to the surrounding neighborhoods that have a much higher percentage of white residents, the neighborhoods highlighted in this map are conspicuously lacking grocery stores, veterinary clinics, and pet supply stores—despite there being many pet owners in those neighborhoods who have to purchase pet supplies, just like any other pet owner. This is a direct result of the failure in both the public and private sectors to invest in these majority Black and Latino communities, making it incredibly challenging for residents to find the resources they need to maintain their own health, much less access the resources pet owners need to care for their pets.

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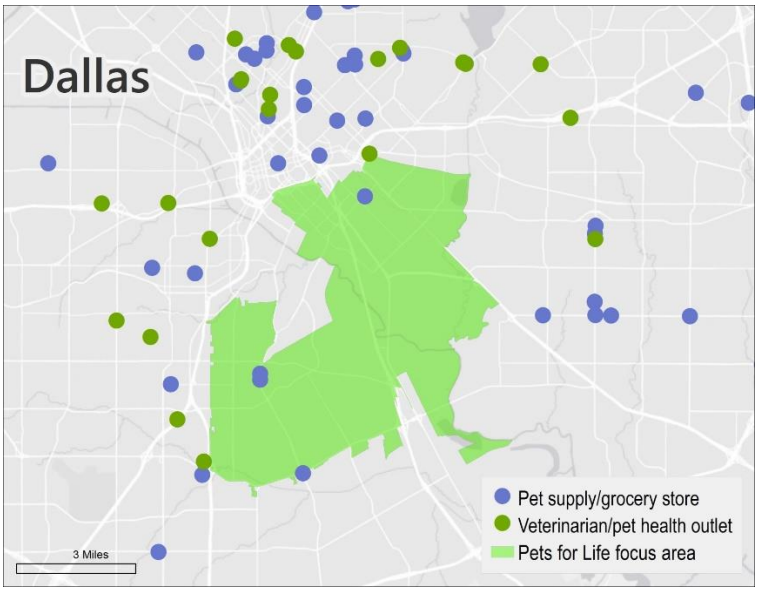
[1] United States Department of Agriculture, Economic Research Service, "Documentation", available at https://www.ers.usda.gov/data-products/food-access-research-atlas/documentation/ (Last visited Oct. 9, 2020).
[2] Moore, N., National Public Radio, *Study: Private Investment Flows to White, Wealthy Areas in Chicago By Wide Margins* (May 22, 2019), *available at* https://www.npr.org/local/309/2019/05/22/725693671/study-private-investment-flows-to-white-wealthy-areas-in-chicago-by-wide-margins; Theodos, B. and Meixell, B., *Preventing Unequal Investments in U.S. Cities*, U.S. News (Feb. 26, 2019 at 12:40 p.m.), *available at* https://www.usnews.com/news/cities/articles/2019-02-26/its-time-to-end-unequal-access-to-capital-in-us-neighborhoods.



To build a development in a high-poverty neighborhood, a Developer should have to prove to TDHCA that the neighborhood is receiving both public *and* private investment in resources that will benefit existing residents. A simple resolution from the local government saying that they are comfortable with a new development is not sufficient evidence. Therefore, the HSUS maintains opposition to the provision in the 2022 QAP Staff Draft that allows for this resolution and recommends, instead, requiring Developers to submit a Neighborhood Risk Factor Report showing strategies for mitigating a high poverty rate in a proposed development site.

III. HSUS continues to strongly oppose the criminal background screening criteria in §11.1(d)(122)(B)(v) from the 2021 QAP.

The criminal background screening criteria for Supportive Housing Developments are overly broad, discriminatory, and only serve to further limit an already slim safety net of resources for low-income pet owners who are re-entering society after being involved in the criminal justice system.

At any time more than 250,000 Texans are incarcerated and, according to the Prison Policy Initiative, 505,000 Texans go through local jail systems across the state, annually.[3] With an incarceration rate of 840 out of every 100,000 Texans, our state boasts a *higher incarceration rate than any other democracy on Earth* and potentially thousands of previously incarcerated Texans may be impacted by this policy.[4] It is vital that our affordable housing policies are intentionally crafted to mitigate our state's uniquely high incarceration rates and better support those impacted by the criminal justice system.

Supportive Housing models focus on providing resources for targeted groups of people, including those with a history of experiencing homelessness (or are at a greater risk of experiencing homelessness), those with a history of substance abuse disorders, and those with a history of mental illness. The benefits of Supportive Housing for these populations is well documented.[5] Each of these

[3] Prison Policy Initiative, Texas Profile, available at https://www.prisonpolicy.org/profiles/TX.html.
[4] *Id.* The United States incarceration rate, for example, is 664 out of 100,000 Texans.
[5] https://www.huduser.gov/periodicals/cityscpe/vol15num3/ch3.pdf.

underlying issues (homelessness, substance abuse, and mental illness) is also correlated with increased interaction with the criminal justice system.[6] Staff's recommendation to disallow tenants on the basis of Class A Misdemeanors and non-violent felonies is overly broad for the purpose of ensuring the safety of other tenants and staff at Supportive Housing Developments and will only add to the list of barriers to re-entry for previously incarcerated individuals and their families. For the following reasons, the HSUS continues to strongly oppose this change and recommends that it be removed from the 2022 QAP:

- A significant number of people experiencing homelessness have criminal histories of nonviolent offenses but offenses that nonetheless would disallow their participation in tax credit projects if these proposed changes were to go into effect. These include misdemeanor offenses like DWI. As written there is an immense risk that a significant proportion of the very people that Supportive Housing is meant to serve will be unable to utilize this vital safety net program. Other commenters (see Texas Housers comments, e.g.) go into greater detail about the impact this change would have on our most vulnerable renters, including a disproportionate impact on Black renters, which make up only approximately 12% of Texans, but over 33% of incarcerated residents.
- The criminal background screening will likely have additional impacts on the companion animals living with people who would be ineligible for housing under this rule. HSUS is in support of a housing first approach that does not limit access to housing based on past interaction with the criminal justice system, disability, or other factors because we recognize that preventing our most vulnerable pet owners from access to a safe, decent place to live—one of the most important and basic needs for any person or pet—will likely result in harm to pets and even force people to give up pets that they otherwise love and care for as important members of their families.

Pets are an integral part of life—with almost two-thirds of people living with at least one animal.[7] *Our housing policies should reflect the role that pets play in our health and well-being, regardless of a pet owner's income or their interaction with the criminal justice system.* Decades of research on the importance of the relationship between pets and people show that there are significant physical, emotional, and mental health benefits of pet ownership.[8] Those who have interacted with the criminal justice system and seeking Supportive Housing should not be denied housing and, therefore the possibility of experiencing the emotional and physical health benefits that we know having a pet can bring to a person's life.[9] A brief review of Texas Supportive Housing Developments across the state suggests that these property owners have, in many cases, recognized this important human-animal bond by making their properties pet-friendly, even if not truly pet-inclusive (i.e. without breed or weight restrictions).

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[6] *Id.* at "This particular population—those affected by behavioral health issues and histories of residential instability—are disproportionately represented in the correctional population."
[7] https://www.jabfm.org/content/28/4/526.full
[8] https://www.wellbeingintlstudiesrepository.org/cgi/viewcontent.cgi?article=1007&context=acwp_habr
[9] For example, a recent study found statistically significantly lower recidivism rates for incarcerated individuals who participated in prison-based dog training programs. Morris, K.N. (2021) Personal Communication.

At HSUS, we believe that advocating for the welfare of companion animals necessarily includes advocating for equitable access to resources for pet owners. Preventing so many of our state's most vulnerable renters and pet owners—those that have had interactions with the criminal justice system--from being served by Supportive Housing programs in Texas will, ultimately, likely result in what might be an otherwise avoidable separation of pets and their families. Therefore, HSUS recommends that Staff remove these criminal background screening provisions from the final 2022 QAP.

IV. The HSUS strongly supports future efforts by TDHCA to incentivize deeper income targeting in LIHTC properties ensuring Texas' lowest-income tenants have greater access to stable, affordable housing.

In its 2021-2022 survey, the American Pet Products Association found that 85 million families across the country own at least one pet, with 69 million and 45.3 million families reporting owning at least one dog or cat, respectively.[10] Nationally, it's estimated that 19 million pets live with families whose incomes place them below the federal poverty line.[11] **In Texas, with just over 4 million Texans in approximately 1.45 million households living below the federal poverty line, we can estimate that around 1.7 million pets live with families living in poverty in our state.**[12] Surveys by the animal sheltering community further point to housing insecurity as one of the top reasons for pet relinquishment, suggesting that there is a significant lack of stable, pet-friendly, and affordable housing in our state.

According to National Low Income Housing Coalition, in 2020 in Texas there were only 29 available and affordable units for every 100 extremely low-income families (families living at 0-30% AMI) and only 51 available and affordable units for every 100 low-income families (families living at 31-50% AMI).[13] Notably, these numbers do not account for *pet friendly* and affordable housing, which would likely make these statistics even more alarming These trends are similar, and in some cases more extreme, in Texas' major metropolitan areas:

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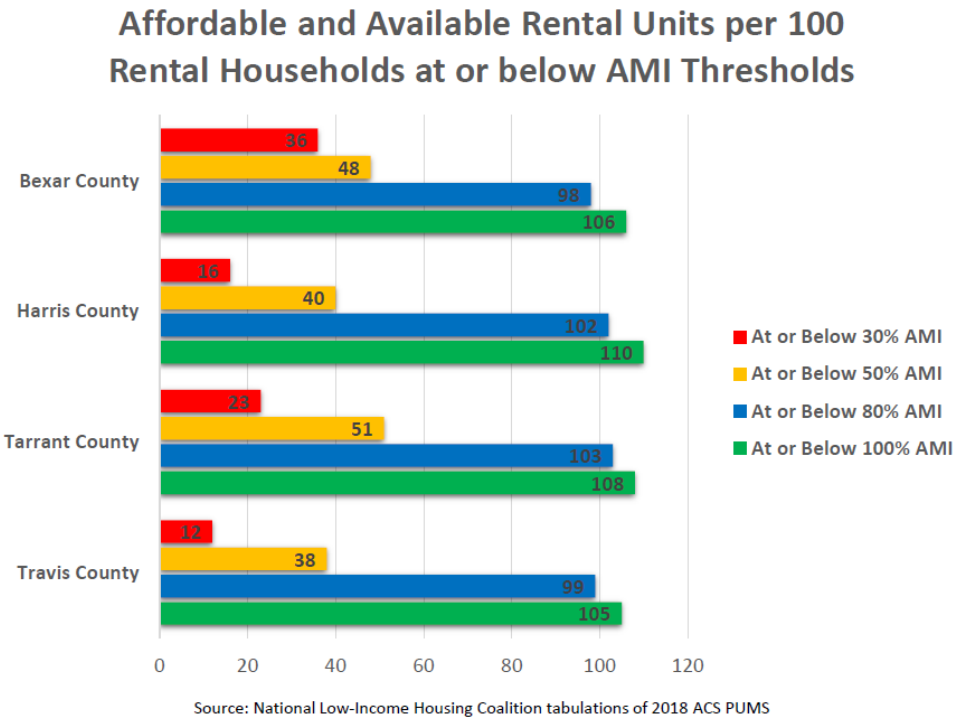
[10] 2021-2022 APPA National Pet Owners Survey, American Pet Products Association, available at https://www.americanpetproducts.org/press_industrytrends.asp.

[11] Arrington, A. and Markarian, M., Serving Pets in Poverty: A New Frontier for the Animal Welfare Movement, *The Sustainable Development Law & Policy Brief American University Washington College of Law*, available at https://www.humanesociety.org/sites/default/files/docs/American%20University%20PFL%20brief.pdf.

[12] US Census Bureau, American Community Survey 2019, https://everytexan.org/2020/09/17/new-census-data-confirms-texas-needs-to-equitably-invest-in-anti-poverty-programs/ (Texas poverty rate is 13.6%); US Census Bureau, American Community Survey 2019, https://censusreporter.org/profiles/04000US48-texas/ (There are 29,995,881 people in Texas with an average of 2.8 people per household); American Pet Products Association 2021-2022 Survey, *Id.* at fn 10 (Estimates 1.8 pets per household and that 67% of households have pets), which is approximately 1,757,072 pets living in households living under the federal poverty line.

[13] National Low Income Housing Coalition, The Gap: Texas (2019), available at https://reports.nlihc.org/gap/2019/tx.



While the current QAP does incentivize deeper income targeting in § 11.9(c), it's clear from the data compiled annually from the National Low Income Housing Coalition that the LIHTC program is not serving Texans most in need, despite being far and away our largest source of new and rehabilitated affordable housing. The National Housing Law Projects makes several recommendations about how states can ensure that the income averaging election, in particular, is supporting low-and-extremely-low-income families and that the HSUS encourages the Department to consider.[14]

One concern with the income averaging election is that Section 8 Housing Choice Voucher (HCV) holders can be inadvertently left out of LIHTC units where LIHTC rents are set at a price greater than the local payment standard for HCVs. Prior to the income averaging rule, it was rare for local payment standards to be too low to meet the rents in LIHTC properties because most LIHTC rents were set at 50% or 60% AMI.[15] However, with income averaging, a significant number of units can be set at 70-80% AMI and still satisfy the 60% AMI average across the development. Voucher holders, which likely can't make up the difference between what the voucher covers per the local payment standard and a LIHTC rent at 70-80% AMI, will not have access to those higher-rent units. As a result, in those developments that elect income averaging, voucher holders likely have fewer units available to them, which is directly counter to the immense need for housing in low-and-extremely low-income brackets.

[14] National Housing Law Project, Memorandum: New LIHTC Rule Regarding Income Averaging, available at https://www.nhlp.org/wp-content/uploads/NHLP-Income-Averaging-Memo-.pdf.
[15] *Id.*

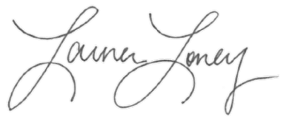
This is particularly problematic in Texas, which remains one of only two states in the country that allows private landlords to discriminate against those who rely on Section 8 HCVs as a source of income.[16] LIHTC and other subsidized affordable housing, when built in high-opportunity areas are likely the only opportunities for HCV holders to gain access to housing in neighborhoods with access to resources, well-paying jobs, and high-performing schools. Our QAP must incentivize or mandate policies to ensure that HCV holders are not inadvertently unable to rent LIHTC units.

To align with the Department's stated goal of supporting Texans most in need and to ensure that those relying on HCVs have access to as many LIHTC units as possible, the QAP should mandate or incentivize that if an applicant is going to rely on the income averaging election, the highest LIHTC rents should be set at or below the local payment standard for HCVs.

At the HSUS's Pets For Life[17] program, we recognize that a deep connection with pets transcends socio-economic, racial, and geographic boundaries and that no one should be denied the opportunity to experience the benefits and joy that come from the human-animal bond—particularly not when that denial is due to a lack of financial means that has been perpetuated by generations of systemically racist and inequitable housing, food, and education policies. In recent years, the broader animal welfare community has also come to recognize the inextricable relationship between keeping people housed and keeping pets out of animal shelters. Ensuring that extremely-low and low-income pet owners have access to decent, affordable housing in neighborhoods where there is ready access to necessary resources is an absolutely vital component of protecting the human-animal bond.

Thank you so much for taking the time to consider these comments and if you have any questions, please don't hesitate to reach out to me at lloney@humanesociety.org or (512) 534-7939.

Sincerely,



Lauren Loney
Texas state director, State Affairs
lloney@humanesociety.org
P. 512-534-7939

[16] Walters, E. and Satija, N., Texas Tribune, "Section 8 vouchers are supposed to help the poor reach better neighborhoods. Texas law gets in the way." (Nov. 19, 2018 at 12:00 am). Available at, https://www.texastribune.org/2018/11/19/texas-affordable-housing-vouchers-assistance-blocked/#:~:text=While%20states%20and%20cities%20across,discriminating%20against%20families%20with%20vouchers.

[17] Pets For Life, The Humane Society of the United States, available at https://www.humanesociety.org/issues/keeping-pets-life.

Commenter 14

Brooke Boston

From: Janna Cormier <janna.cormier@jcdevelopmentconsulting.com>
Sent: Friday, October 8, 2021 9:46 AM
To: Brooke Boston; Cody Campbell
Subject: 2022 Draft QAP Comments

I would like to make the following comments to the 2022 Draft QAP:

§11.204(13)(B) Organizational Charts
For applications with private equity fund investors, who are passive investors in the sponsorship entity, allow the fund manager to be named in the organizational chart, and not require a full list of investors, as they do not exercise control the development or make decisions.

I appreciate and support the changes recommended to streamline the 4% LIHTC applications including those in §11.204 Required Documentation for Application Submission, §11.205 Required Third Party Reports, §11.302 Underwriting Rules and Guidelines, §11.306 Scope of Work Narrative, §11.901 Fee Schedule and §11.906(b) Determination Notices.

Thank you for your consideration,

Janna Cormier

Janna Cormier

JC Development Consulting
512-773-8169
1305 E. 6th St., Ste. 12
Austin, TX 78702

JES DEV CO, INC

October 8, 2021

Ms. Brooke Boston
Mr. Matt Griego
Texas Department of Housing and Community Affairs
PO Box 13941
Austin, Texas 78711-3941

Re: Comments on Draft 10 TAC Chapter 11 Chapter 11 concerning the Housing Tax Credit program Qualified Allocation Plan

Dear Ms. Boston and Mr. Griego:

Thank you for the opportunity to comment on the draft qualified allocation plan. Our comments follow below. Please let us know if you have any questions or need further clarification.

10 TAC sec. 11.3: We encourage TDHCA not to apply the housing deconcentration rules/penalties to any 2022 applications because of any 2019 or 2020 requesting supplemental credits.

10 TAC sec. 11.4 (b): We encourage TDHCA not to count supplemental credit allocations for elderly projects against the credit ceiling for elderly developments in tracts that have elderly credit limits. The amount of credits available for elderly projects is extremely limited as is and to further reduce the credits reduces resources available to serve our elderly population, a population that is underserved currently.

10 TAC sec 11.9 (c)(6)(C): Additional guidance is requested as to which VA facilities are eligible for a point under this category. In addition to the facilities listed in the draft, the VA has clinics and centers that also provide medical care. A specific list of facilities that are considered eligible by TDHCA would be very helpful.

10 TAC sec. 11.9(c)(7): Please do not change the radii in the proximity to job categories. It may make sense to fine-tune this category before 2023 but decisions have been made, contracts signed, and funds have been expended already based on the current radii.

10 TAC sec. 11.9 (d)(7): We support the changes made to the Concerted Revitalization Plan language. This streamlines and simplifies a complicated, time-consuming, and burdensome process.

10 TAC sec.11.9 (e)(2): We suggest amending the language to state that, for purposes of this scoring item and for all proposed developments, the NRA will include Common Area up to 75 square feet per Unit, of which at least 50 square feet will be conditioned. Exterior space including patios, balconies and garages that are available for the exclusive use of the residents may also be included in this calculation.

10 TAC sec. 11.9(e)(2)(b): We encourage TDHCA to increase cost limits by 7.5% rather than the 5% in the current draft. Given the cost increases seen in the industry to date and the uncertainty of what costs will be when the supply chain "normalizes", a slightly larger adjustment will help reduce development risk.

10 TAC sec 11.9 (e)(6): We encourage TDHCA to award points for historic preservation based on the percentage of space that is historic in nature when compared to the percentage of space that is non-historic. Assuming a 50,000 square foot project contains 25,000 square feet of historic space (50%) and 25,000 square feet of non-historic space (50%), it should qualify for 2.5 points (50%). This would allow developers to be more creative in both large and small markets and would allow developers to consider smaller projects in smaller markets, cultural resources that are likely to be lost to a community otherwise.

10 TAC sec. 11.9(e)(7): We encourage TDHCA to find a different way to offer a preference for eventual tenant ownership. The current proposal will lead to more resources being used to produce fewer housing units further exacerbating the housing crisis facing working Texans and Texas seniors today. Additionally, rent to own programs do not necessarily benefit any resident except the resident that happens to occupy the unit at the time of conversion. A small set-aside dedicated to rent to own projects would meet TDHCA's objective while not overly reducing the resources needed to serve the most Texans.

10 TAC sec. 11.1002: Applicants for supplemental credits should be required to submit notice of their intent to request credits and the date should be included in the Calendar.

10 TAC sec. 11.1005 (3): Rather than use the raw score from the applicable credit year, we suggest scoring and ranking the projects based on the percentage of points awarded versus points available in the relevant calendar year. This would prioritize the award of supplemental credits to the project that better achieved TDHCA's objectives in the year its credits were awarded rather than rewarding a project that may have score more points simply because more points were available in that year.

10 TAC sec. 11.1006: Language requiring applicants to submit notice of their intent to request supplemental credits should be included in this paragraph or in 10 TAC sec. 11.1005.

Thank you for the opportunity to comment and, again, please let me know if you have questions or require further clarification.

Sincerely,

Michael P. Ash
Development Manager
JES Dev Co, Inc.

737-228-4962
mash@aepartners.com

Katopody LLC
Audit | Tax | Consulting

October 8, 2021

Brooke Boston, Deputy Executive Director of Programs
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

RE: Public Comments to Texas Department of Housing and Community Affairs Draft 2022 Housing Tax Credit Qualified Allocation Plan

Brooke:

Please accept this correspondence as our (Katopody, LLC) formal submission of public comments relating to the draft of the Housing Tax Credit Program Qualified Allocation Plan (QAP).

Our comments relate to changes, or potential changes, in competitive scoring criteria which we think will negatively impact the ability of cities to participate in the Tax-Credit allocation process. Specifically, we would like to comment on elements of the QAP which have increased the radius of job numbers applied to specific sites and provide comment on changes to scoring items which provides preference to Community Revitalization Plan (CRP) areas which are in Qualified Census Tracts (QCTs).

1. **§11.9(c)(7)(A) Proximity to Job Areas:** The increase in radius for jobs numbers has significantly increased areas which are competitive for Tax Credit awards, this is beneficial for the program in that it allows development to occur outside of urban areas with high costs of land. There has been some concern within the community that the 4-mile scoring criteria, for municipalities with populations under 500,000, creates a large difference in job numbers between similarly located sites in cities which are either over or under the threshold. While this is true, the larger radius in smaller municipalities will allow outlying cities to compete with more populous cities, which has not been the case in the two years since job data was incorporated into the QAP.

2. **§11.9(d)(7)(A)(iv) Concerted Revitalization Plan**: QCTs are designated by HUD in a process that largely bypasses local governments. Revitalization areas are the main way that local government can designate areas where they want and will be supportive of Tax Credit developments. We think that giving preference to CRPs which are within QCTs diminishes the ability of municipalities to influence in a proactive manner.

We appreciate the opportunity to comment on changes to the QAP and thank TDCHA staff for their dedicated efforts in drafting the QAP and administering the Housing Tax Credit program in Texas. Please contact me with any thoughts or questions regarding our comments.

Sincerely,

David T. Katopody, Director of Consulting Services
Katopody, LLC.

Commenter 17

Brooke Boston

From: Ina Spokas <Ina.Spokas@kcgcompanies.com>
Sent: Friday, October 8, 2021 10:04 AM
To: Brooke Boston; HTC Public Comment
Cc: CJ Lintner; Evan Lattner; Karla Burck
Subject: 2022 QAP Rules Public Comments

Brooke and Matt – please find below our comments regarding the draft 2022 QAP:

1. **Page 61 Underserved Area. (§§2306.6725(b)(2); 2306.127(3), 42(m)(1)(C)(ii))**
   For Rural areas, the current rules drive developers to not pursue developments in municipalities which may already have a LIHTC development because of scoring. Our recommendation is that, for Rural areas only, the Rules should be changed for paragraphs (C), (D), (E) and (F) for developments serving the same Target Population (i.e. Supportive Housing, General, or Elderly).
   The unintended consequence of the current Rule drives development away from Rural areas which desperately need additional affordable housing but are essentially "locked out" for 15-30 years due to the competitive nature of the 9% Application process. The change would allow for another development in a census tract to serve a different Target Population.

   For example, paragraph (C) should read as follows:
   (C) The Development Site is located entirely within a census tract that does not have another Development that was awarded less than 30 years ago according to the Department's property inventory in the Site Demographic Characteristics Report. For Rural areas, this applies to census tracts that do not have another development serving the same Target Population. (4 points);

   Paragraphs (D), (E) and (F) should be similarly revised.

2. **Page 63 §11.9(c)(7)(A) Criteria to Support Texans most in need: Proximity to Jobs**

- Draft QAP Change: The radius from the proposed Development site was increased from one mile to two miles in municipalities with population equal to or over 500,000. The radius was increased to 4 miles in municipalities with population less than 500,000 or in unincorporated areas.
- KCG Comments on Drafted Change:
  - KCG agrees that the radius should be increased. KCG also agrees that the radius should be based on the population of the Place, not simply it's Urban or Rural classification and appreciates TDHCA setting the cutoff at 500,000 given the resulting municipalities that fall over and under that cutoff. However, the below adjustments should be made:
  - KCG does not feel the radius is large enough, it should be increased to 5 miles for over populations equal to or more than 500,000 and 10 miles for populations under 500,000 (in addition to increasing the number of jobs at each point threshold). The currently proposed radii will not move developments away from highways and highly commercial areas, which is the negative impact of the scoring since this was added in the last QAP. Widening the radius will allow developers to go after sites that are properly located for residential but still within a reasonable drive of job centers. Most 9% developments in Texas are not truly transit oriented in that most tenants still rely on their own transportation to get to/from jobs. In light of this, it makes sense to focus on sites that are within an *acceptable driving distance* of a certain number of jobs rather than being right down the road from a major commercial center or along a highway just to get close enough to score job points.
  - Jobs at Each Point Threshold Should Increase – If it's not increased, the unintended consequence will result in a tie with many applications in the larger Regions given how easy it is to score max points under

the Draft QAP. It's KCG's opinion that the "perfect" job points should be nearly impossible to reach so that there is true variability among the Applications submitted. If not, the scoring is nearly a moot point as everything will defer to the tie-breakers in the larger regions. This should be adjusted regardless of the radius that is agreed upon

- Rural areas: The radius should be even larger for smaller municipalities – the increase from 2 to 4 miles does little or often nothing to change the amount of jobs that a given rural site scores. The radius should be much larger as jobs are much more dispersed geographically in rural areas and people living in rural markets are not relying on public transit or walkability to get to and from their job. This radius should be a minimum of 10 miles. Potentially this would a third "tier" of population breakdown.
- Finally, it would be much more beneficial if the Jobs data from OnTheMap was current instead of 3-4 years old. The data is no longer even relevant.

3. **Page 74 (2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii))**
The proposed increase of 5% for voluntary eligible basis barely puts a dent in the recent construction cost explosion. Below is a comparison for NEW CONSTRUCTION between 2021 and 2016.

Data from 2021 9% U/W reports:
21177 – Carver Ridge – Hutto R7 Rural Building Cost/sf = $96.18
21070 - Saison North – Austin R7 Urban Building Cost/sf = $112.91
21075 – June West – Austin R7 Urban Building Cost/sf = $107.44
21063 – Parker Apts – Austin R7 Urban Building Cost/sf = $117.43
21402 – Belmont – Austin R7 Urban Building Cost / sf = $100.50
21409 – Cypress Creek – Austin R7 Urba Building Cost / sf = $106.51
21435 – Yager Flats – Manor R7 Urban Building Cost / sf = $100.14

AVERAGE BUILDING COST/SF = $105.87

And compare to 5 years ago (2016)
16415 - Songhai at Westgate – Austin R7 Urban Building Cost / sf = $90.66
16416 – Fairway Landings – Kyle R7 Urban Building Cost / sf = $81.92
16434 – thinkEAST – Austin R7 Urban Building Cost / sf = $86.30
16188 – Kaia Pointe – Georgetown R7 Urban Building Cost / sf = $74.98
16068 – Live Oak – Georgetown R7 Urban Building Cost / sf = $74.83
16185 – Merritt Heritage – Georgetown R7 Ur Building Cost / sf = $74.28

AVERAGE BUILDING COST/SF = $80.50

It is a 31.5% INCREASE just in building cost/sf, on average. Increasing the voluntary eligible basis for building costs and hard costs by only 5% does NOT match the actual increases in construction.

Our recommendation is to increase the voluntary eligible basis for both Building construction Cost and Hard Costs should increase by no less than 15% to start filling the gap in actual costs of construction.

Thank you,
Ina Spokas

Ina Spokas | Vice President – Development
KCG Development, LLC | http://www.kcgcompanies.com
9311 N Meridian Street, Suite 100 | Indianapolis, IN 46260
C: (512) 689-3343 | C: (463) 204-8812 | Corporate: (317) 708-0943 | Ina.Spokas@kcgcompanies.com

Brooke Boston

From: Bast, Cynthia L. <CBast@lockelord.com>
Sent: Friday, October 8, 2021 2:21 PM
To: HTC Public Comment
Cc: Donna Rickenbacker
Subject: Comment to Underwriting Rule

Please see below, submitted on behalf of our client, DWR Development Group, LLC:

Comment: Section 11.302(g)(2) of the Underwriting Rules addresses properties within the 100-year floodplain. It requires the Underwriter to impose a condition in the Report that either: (A) The Applicant must pursue and receive a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR-F); or (B) The Applicant must identify the cost of flood insurance for the buildings and for the tenant's contents for buildings within the 100-year floodplain and certify that the flood insurance will be obtained. Item (B) is impossible under Texas law and therefore must be unenforceable, if the intent is for the landlord to be able to take actions to price or acquire insurance on its tenants' personal property. It is well settled in the State of Texas that a landlord may not obtain insurance covering a tenant's personal property. The prerequisite for obtaining an insurance policy is that the party seeking the insurance must have an "insurable interest." See *Valdez v. Colonial County Mutual Insurance Company* decided by the Austin Court of Appeals in 1999, stating that "insurable interest" is defined as "any lawful and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage." Further "if a claimant cannot suffer any pecuniary loss or derive any benefit from the property, he has no insurable interest." A landlord does not have any economic interest in a tenant's belongings, nor does a landlord derive any benefit from those belongings. Even the Texas Department of Insurance recognizes that a landlord's insurance will not cover a tenant's personal property, encouraging the acquisition of renter's insurance by tenants. For these reasons, Section 11.302(g)(2) of the QAP must be changed, and I recommend the following:

> (2) Floodplains. The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:
>
> (A) The Applicant must pursue and receive a Letter of Map Amendment (LOMA or Letter of Map Revision (LOMR-F); or
>
> (B) The Applicant must ~~identify the cost of flood insurance for the buildings and for the tenant's contents for buildings within the 100-year floodplain and certify that the flood insurance will be obtained~~ provide evidence that all tenants will be informed that all or a portion of the buildings are located within the 100-year floodplain and that it is encouraged that they consider getting appropriate renter's insurance; or

(C) The Applicant undertakes and substantiates sufficient mitigation efforts, with documentation of such submitted at Cost Certification;

and

(D) The Development must be proposed to be designated to comply with the QAP, Program Rules and NOFA, and applicable Federal or state requirements.

The additional benefit of this revision is that it makes TDHCA's standards consistent with HUD standards. See, for instance, Section 9.6.6 of the HUD MAP Guide, which says: "All new and renewal leases for projects where HUD has required flood insurance must contain acknowledgement ssigned by residents indicating that they have been advised that the property is in a floodplain and flood insurance is available for their personal property."

Take good care of yourself,

Cynthia Bast
Chair, Affordable Housing and Community Development Section
Locke Lord LLP
600 Congress Avenue
Suite 2200
Austin, Texas 78701
T: 512-305-4707
F: 512-391-4707
cbast@lockelord.com
www.lockelord.com

Commenter 19

Brooke Boston

From: Marilyn Hartman <marilyn.hartman46@gmail.com>
Sent: Wednesday, October 6, 2021 1:30 PM
To: Brooke Boston
Subject: 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan

Hi Brooke,

I am commenting on **10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan.**

As an advocate for people with serious mental illness, I would like to see permanent supportive housing (PSH) developments receive a set percentage of the LIHTC, perhaps 10-15%, as some other states have done. This kind of housing, with necessary services, is in very short supply. Here in Austin, there have been, for years, more than 2,000 homeless people identified, but waiting, for this kind of housing with appropriate supports. With a dearth of affordable housing, along with the great need for PSH and its services, this model is essential for many struggling with their mental illnesses.

Homeless and at-risk for homelessness people with serious mental illness have been left out of the correct housing solutions for decades. This has resulted in their cycling through expensive alternatives such as jails, hospitals, EDs, and homelessness, at great cost for taxpayers and in recovery potential for the affected individuals.

Just as the 10% allocation of Project Access for those coming out of state hospitals has been successful for some, PSH is another model that would lead to successful housing of many more. We have the ability to allow these citizens to have a better chance in life through a set-aside for PSH, particularly for those with serious mental illness. Please note that we are still missing residential models that some with the most severe cases of mental illness need, and other discussions are ongoing about those.

Please give this suggestion of a set allocation for PSH your full consideration. Thank you,

Marilyn Hartman
8807 Smoketree Cove
Austin, TX 78735
512-470-7840

Brooke Boston

From: Ana Padilla <apadilla@mcdhousing.com>
Sent: Friday, October 8, 2021 4:41 AM
To: comment@tdhca.state.tx.us; Brooke Boston
Subject: QAP comments

Good morning,
Please keep the QAP as currently drafted. Further modifying any scoring or tie-breaker methodology places an unnecessary burden on our site selection team. Changes this late in the cycle of new site selection criteria do nothing to improve the quality of development sites.
Thank you,

Ana Padilla
Sr Development Manager
McDowell Housing Partners
601 Brickell Key Drive Suite 700. Miami, FL 33131
Direct 786-257-2774 | Cell 216-310-8500
www.mcdprop.com

Brooke Boston

From: jmooney@mrecapital.com
Sent: Wednesday, October 6, 2021 11:13 AM
To: Brooke Boston
Subject: QAP Public Comment

Brooke,

Please keep the current version of the QAP. Changing the scoring criteria at this point is erratic. We do the best that we can to work with Cities and contractors as much as possible prior to the application deadline. This allows us to have the most accurate/reliable information that we can for each development. When the development community has time and is not chasing a moving target; we end up with better developments for residents, owners and TDHCA.

Thank you for your consideration.

Jake Mooney
10777 Barkley Street, Ste. 140
Overland Park, KS 66211
jmooney@mrecapital.com
C: 1-913-638-2500

Brooke Boston

From: Daniel Sailler <dsailler@mrecapital.com>
Sent: Wednesday, October 6, 2021 11:00 AM
To: Brooke Boston; Matthew Griego
Subject: QAP

Brooke and Matt,
Please keep the QAP as currently drafted. We have been working since August on site selection and changing the rules again at this stage of the game is unreasonable and punitive.
Thank you.
Daniel

Daniel Sailler
10777 Barkley St., Suite 140
Overland Park, Kansas 66211
Telephone: (913) 231-8400
E-mail: dsailler@mrecapital.com

Commenter 22

From: Darren Smith
To: Brooke Boston
Subject: 2022 QAP Comments
Date: Thursday, October 7, 2021 2:56:53 PM

Brooke Boston,

Please keep the QAP as currently drafted. Changing the scoring and tie-breaker criteria at this time is an onerous burden in the 4th quarter of our site searching efforts.

Thanks in advance.

Regards,

MVAH PARTNERS
Empower People
Enhance Communities

Darren W. Smith
Head of Development – Southwest Region
8506 Carrie Lane
Rowlett, Texas 75089
O (214) 501-5618
F (214) 501-5619
C (214) 316-3107

Brooke Boston

From: Justin Gregory <Justin.Gregory@mvahpartners.com>
Sent: Thursday, October 7, 2021 1:52 PM
To: Brooke Boston
Subject: 2022 QAP Comments

Hello,

On behalf of MVAH Partners LLC; I would like to offer the following comment on the 2022 QAP Draft:

- Please keep the QAP as currently drafted. Changing the scoring and tie-breaker criteria at this time is a burden on developers in the 4th quarter of our collective site searching efforts. We ask that any proposed changes be contemplated for the 2023 QAP.

As always, thank you for the opportunity to offer our thoughts on the QAP and we thank you for your efforts.

Thanks again!

MVAH PARTNERS
Empower People
Enhance Communities

Justin Gregory
Financial Analyst

9100 Centre Pointe Drive, Suite 210
West Chester, OH 45069
C (724) 561-3196

National Church Residences
EXCELLENCE THAT TRANSFORMS LIVES

October 5, 2021

Brooke Boston and Cody Campbell
MF Finance
TDHCA

Re: 2022 QAP Public Comment

Thank you for the opportunity to provide public comment to the draft 2022 QAP. Please see the following comments from National Church Residences:

1. **USDA Set-Aside Must be capped at 5%:**

   Due to the following explanations, USDA should be capped at 5% due to statutory language and unequal playing field with their own scoring criteria in the QAP when competing against remaining At-Risk.

   - USDA does not Statutorily Qualify for At-Risk outside its 5% USDA Set-Aside:

   There is a 2-prong approach in §2306.6702(a)(5)(A)(ii) to be eligible for the At-Risk set-aside and USDA doesn't meet the 2nd prong which requires either:

(a) the stipulation to maintain affordability in the contract granting the subsidy is nearing expiration; or

USDA has automatic rental assistance renewals as long as the 515 USDA debt remains outstanding. Unless the debt linked to the rental assistance is nearing the end of its term, (within 2 years per TDHCA) then these deals are not at risk of losing subsidy and do not meet this criterion.

(b) the HUD-insured or HUD-held mortgage on the development is eligible for prepayment or is nearing the end of its term;

United States Department of Agriculture debt is not "HUD".. but "USDA" and does not meet this criterion.

- Furthermore, Statute clearly is allocating 5% of the At-Risk pool to USDA, and no additional funds to USDA set-aside. Statute 2306.1111 states:

*In allocating low income housing tax credit commitments under Subchapter DD, the department shall allocate **five percent** of the housing tax credits in each application cycle to developments that receive federal financial assistance through the Texas Rural Development Office of the United States Department of Agriculture. Any funds allocated to developments under this subsection that involve rehabilitation must come from the funds set aside for at-risk*

developments under Section 2306.6714 and any additional funds set aside for those developments under Subsection (d-1).

- Both the 2021 and draft 2022 QAP, Tie-breakers are MAJOR problems for At-Risk if USDA exceeds 5%. The QAP is designed for every single USDA application to get a perfect score and because tie breaker (if over ~16% poverty) is distance to next LIHTC deal, USDA will win EVERY SINGLE TIME as was the case in 2021. USDA distance in 2021 was generally 15+ miles (up to 65+ miles). Average distance in tie break for 2021 USDA was 15 miles. Average distance At-Risk excluding USDA was 1.5 miles. Urban and metro areas will lose EVERY time when compared to USDA / Rural on distance to nearest LIHTC in a flat scoring QAP. Furthermore, USDA applications are less likely to have an existing LIHTC project in their census tract. Both the Underserved Points and the Tie-Breaker (Distance), favor applicants flung in the furthest, most remote and least populated areas of the state. Please see Tie-Break Interpretation below.

  This is extremely unfortunate as there are Urban High Opportunity deals with poverty rates in the 16-20% range and legitimate Urban CRP deals, missing 1st tie breaker, as previously interpreted by TDHCA, that have some of the most rent burdened census tracts in the entire state, yet since they are Urban they do not stand a chance in a distance tie breaker with rural USDA. Please see Tie-Break Interpretation below.

- USDA applications have different scoring including even if located in "urban" they can score as "rural" giving them automatic 7 points CRP and an unfair advantage. Even if they can't take the extra points funded in "at-risk" outside of "usda", it creates a higher number of perfect/high scoring applications, further pushing out the rest of At-Risk competition.

- In order to receive Pre-Application points, an application may NOT change the set-aside they have selected. In the past rounds, USDA applicants selected "USDA" set-aside and not "At-Risk". If it is determined in the unlikely scenario that a USDA does qualify for At-Risk outside the USDA 5% allocation, they must have selected "At-Risk" set aside or lose 6 pre-app points.

For all of the reasons listed below #1, USDA Set-Aside should be limited to only 5%.

2. Tie-Break Interpretation

I believe the Tie-Break is being interpreted incorrectly. It should be interpreted first as #1 (above or below the poverty rate threshold, then #2 (rent burden) then lastly #3, distance. Should this be corrected, the issue with the At-Risk Tie-Break improves. Furthermore, we request that the #1 Tie Break Poverty rate be moved to 20% Threshold to align with High Opportunity. A 3-year average creates difficulty in finding sites when not knowing the threshold and does not align with a policy.

(1) Applications proposed to be located in a census tract with a poverty rate of 20% ~~below the average poverty rate for all awarded Competitive HTC Applications from the past three~~

~~years~~ (with Region 11 adding an additional 15% to that value and Region 13 adding an additional 5% to that value). The poverty rate for each census tract will come from the most recent American Community Survey data.

(2) If a tie still persists, then the Development in the census tract with the highest percentage of statewide rent burden for renter households at or below 80% Area Median Family Income (AMFI), as determined by the U.S. Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy (CHAS) dataset and as reflected in the Department's current Site Demographic Characteristics Report.

(3) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development that serves the same Target Population and that was awarded less than 15 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph according to the property inventory included in the HTC Site Demographic Characteristics Report. The linear measurement will be performed from closest boundary to closest boundary of the Site presented at Pre-Application, if a pre-application is submitted, or the Site presented at full Application, whichever is closest.

3. **Please remove the request to provide all notification of addresses**
Providing details of addresses to all notification recipients is ripe for human error and I would anticipate numerous and unnecessary RFADs filed in the event that there are errors displayed in the addresses. We certify that notifications have been completed and TDHCA can continue to rely on that certification.

4. **Please provide clarification on Appraisal Review Fee due date.**
It is unclear when an application is considered "priority" and when the Appraisal Review Fee is due. In 2021, applications were scored incorrectly in several early logs making "priority" applications unclear. Please provide a column that clearly states an application is considered "priority" and provide notifications on when an application is considered "priority" and thus an Appraisal Review Fee is due. We also request this fee is refunded if the appraisal is not reviewed.

5. **Any cash out to developers on Identity of Interest transaction should not be included in TDC and leveraging calculation in 9%.** This past year, an application had $1M cash out to themselves and thus got about 90,000 in credits from TDC leverage on their additional $1M profit to themselves. This is taking away tax credits that could go to fund another application in order to fund additional profit to another developer. Alternatively, applicants should leave in a Seller Note as opposed to cash out. The changes in Identity of Interest in 2021 Rules allowed for this happen. I have notified TDHCA several times of this issue with zero response.

6. **Financial Feasibility Points**
   In order to account for Financial Feasibility approved underwriting exceptions, please update Financial Feasibility points to the below added language in red.

   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 unless an underwriting exception applies.

7. **Sponsor Characteristics**
   We appreciate the added option of (C) to promote more affordable service enriched housing sponsored by Non-Profits.

8. **CRP**
   We appreciate the changes to simplifying CRP points and believe that properties in QCTs should receive a point advantage to align w S.42.

We appreciate the opportunity to provide comments and sincerely hope that TDHCA will engage the affordable housing industry on future changes to the QAP as minimal engagement has happened in the prior 2 years.

Regards,

Tracey Fine
773-860-5747
tfine@nationalchurchresidences.org
Director of Housing

Brooke Boston

From: Jason Arechiga <JArechiga@nrpgroup.com>
Sent: Thursday, October 7, 2021 2:28 PM
To: Brooke Boston; Cody Campbell; Debra Guerrero
Cc: Matthew Griego
Subject: RE: Public comment from Jason Arechiga regarding 11.101. Site and Development Requirements and Restrictions. Item K

That's great. I amended mentioning the cities in the below. It's the same thing, but better for comment.

Hello Cody and Brooke,

I hope you all are doing well today and are getting ready for the influx of 9% and 4% projects that are about to be coming your way. Most of my comments have been addressed in the letter TAAHP sent to you all, but this is more a personal issue that greatly affects San Antonio, Killeen, and a few other military cities.

Item K as a undesirable feature is problematic in its language. As you all know, it reads

(K) Development Sites that would violate a Joint Land Use Study for any military Installation.

The problem in short, is that it is very vague and general. We understand that residential use has no place in the clear and accident prone 1 zones surrounding a base, but the military *discourages* residential housing in certain noise cones. Is that a violation? The problem is that there are 355 acres of current residential use (not just zoned) in the Randolph Joint Base area for 65-69 dnl alone. Please note that this is just a discouragement. See below (see link below also):

"Residential land use is incompatible within APZ I, discouraged within the 65- to 69-dB DNL noise zone, and strongly discouraged within the 70- to 74-dB DNL noise zone."

We have built and are looking at sites in the 65-69 DNL noise zone and mitigate the inside of the units to HUD standard. For example, this was done at Lucero (Acme) apartments in Lackland AFB here in SA.

The NRP Group has developed over 34 affordable housing communities in San Antonio, and all adhere to local military requirements but may not be in encouraged areas. We request that this language be amended to read "development sites built within Clear, APZ1, APZ2 zones" or if you all are able, please confirm that building in a 65-69 db DNL zone is acceptable and not a violation of item K.

We currently have two potential communities projected in the 65-69 area that are high opportunity. I know of various other developers who have more. Additionally, there are brand new single family and multifamily developments without tax credits built in these areas currently.

https://www.jbsa.mil/Portals/102/Documents/Environmental%20PA/FINAL%20Randolph%20AICUZ%20Study.pdf

Would you all mind confirming that building in this area would not violate this provision? Or perhaps, looking at a change to the language?

Thank you,

Jason Arechiga

2102164600

From: Brooke Boston <brooke.boston@tdhca.state.tx.us>
Sent: Thursday, October 7, 2021 2:16 PM
To: Jason Arechiga <JArechiga@nrpgroup.com>; Cody Campbell <cody.campbell@tdhca.state.tx.us>; Debra Guerrero <dguerrero@nrpgroup.com>
Cc: Matthew Griego <matthew.griego@tdhca.state.tx.us>
Subject: RE: Public comment from Jason Arechiga regarding 11.101. Site and Development Requirements and Restrictions. Item K

Jason, I will include this as public comment on the QAP. Thank you.

Brooke Boston
Deputy Executive Director of Programs
Texas Department of Housing and Community Affairs
512.475.1762

From: Jason Arechiga <JArechiga@nrpgroup.com>
Sent: Thursday, October 7, 2021 2:01 PM
To: Cody Campbell <cody.campbell@tdhca.state.tx.us>; Debra Guerrero <dguerrero@nrpgroup.com>; Brooke Boston <brooke.boston@tdhca.state.tx.us>
Subject: Public comment from Jason Arechiga regarding 11.101. Site and Development Requirements and Restrictions. Item K

Hello Cody and Brooke,

I hope you all are doing well today and are getting ready for the influx of 9% and 4% projects that are about to be coming your way. Most of my comments have been addressed in the letter TAAHP sent to you all, but this is more a personal issue that greatly affects San Antonio, Killeen, and a few other military cities.

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The problem in short, is that it is very vague and general. We understand that residential use has no place in the clear and accident prone 1 zones surrounding a base, but the military *discourages* residential housing in certain noise cones. Is that a violation? The problem is that there are 355 acres of current residential use (not just zoned) in the Randolph Joint Base area for 65-69 dnl alone. Please note that this is just a discouragement. See below (see link below also):

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https://www.jbsa.mil/Portals/102/Documents/Environmental%20PA/FINAL%20Randolph%20AICUZ%20Study.pdf

Would you all mind confirming that building in this area would not violate this provision? Or perhaps, looking at a change to the language?

Thank you,

Jason Arechiga
2102164600

PALLADIUM
USA

Friday, October 8, 2021

Brooke Boston, Deputy Executive Director of Programs
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

RE: Public Comments to Texas Department of Housing and Community Affairs (TDHCA) Draft 2022 Housing Tax Credit Program Qualified Allocation Plan (QAP)

Dear Brooke:

On behalf of Palladium USA International, Inc. ("Palladium"), please accept this written correspondence as our formal submission of public comments to the current draft of the TDHCA 2022 Housing Tax Credit Program QAP.

I. §11.3 Housing De-Concentration Factors:
We are strongly opposed to the changes allowing Supplemental Allocations of 2022 credits to be considered eligible for review under the Two Mile Same Year Rule and One Award per Census Tract Limitation deeming other Applications ineligible for review. This change is punitive to new 2022 transactions. Although the 2019 and 2020 transactions are under consideration for an allocation of 2022 credits, without the extraordinary circumstances we are currently experiencing these developments would have already been factored for deconcentration.

We are advocating to remove this language or allow for the Governing Body to deem that the proposed Development is consistent with the with the jurisdiction's obligation to affirmatively further fair housing and that the Governing Body of the appropriate municipality or county containing the Development has no objection to the Application.

Since it is unknown which 2019 and 2020 transactions will submit a Supplemental Application for 2022 credits, we strongly request that a Notice of Intent is required by TDHCA in advance for planning purposes for new 2022 Developments.

II. §11.9 Competitive HTC Selection Criteria:
   a. §11.9(c)(6)(C) Residents with Special Housing Needs.: Under this section, we are requesting guidance is provided to clarify what is considered a veterans hospital, veterans affairs medical center, or veterans affairs health care center. What are examples of the 3 qualifying centers to score 1 point?

   b. §11.9(c)(7)(A) Proximity to Job Areas.: We ask that strong consideration is made to keep the jobs scoring as currently written in the draft QAP. The 4-mile radius for municipalities of 499,999 or less allows these municipalities the opportunity to receive an award. Historically, these municipalities have not been competitive. A

prime example is in Region 3, where for the first time in several years smaller municipalities such as McKinney and Denton are competitive for **9%** awards.

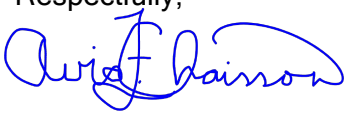
This is very important because smaller cities as these municipalities are experiencing exponential growth and their housing needs are just as vast and important as larger municipalities. The current radius allows these municipalities the opportunity to address their communities housing needs.

c. **§11.9(d)(7)(A)(iv) Concerted Revitalization Plan:** Concerted Revitalization Plans are a very important tool for municipalities to revitalize areas or neighborhoods that have had significant disinvestment and lack quality housing. It is imperative for municipalities to continue to determine and drive where the new investment or development should occur to support their revitalization plans.

   We disagree with the language allowing **7** points to CRPs that are located within a QCT and CRPs that are within a non-QCT receive only **5** points. We would like to suggest having the Governing Body of the municipality determine or provide a resolution for CRPs that are located with non-QCTs to receive an additional **2** points. This allows the municipality the ability to decide and opportunity to implement their adopted CRPs in terms of housing investment.

We would like to thank TDHCA staff for their efforts to produce the QAP as understandably this is a tremendous task. We very much appreciate the opportunity to provide comments and appreciate your consideration. Please feel free to contact me with any questions or concerns.

Respectfully,



Avis F. Chaisson, Director of Real Estate Development
Palladium USA International, Inc.

PROSPERA
HOUSING COMMUNITY SERVICES
Empowering families for nearly 25 years by providing safe, high-quality, affordable housing and support services.

Via Email

October 7, 2021

Texas Department of Housing and Community Affairs
Attn: Brooke Boston and Matt Griego
Rules Comments
P.O. Box 13941
Austin, Texas 78711-3941

Dear Ms. Boston and Mr. Griego:

The purpose of this letter is to provide public comment on the TDHCA Governing Board Approved Draft of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan (Draft QAP).

The census tract boundaries for the 2020 Decennial Census have changed, in some instances, from those boundaries of the census tracts from the 2010 Decennial Census, which were utilized for the last decade. Although the Draft QAP references "census tracts" numerous times through the document, it doesn't specifically denote which census tract boundaries will be used. However, it was stated at the TDHCA QAP Meeting on September 20, 2021, that Staff planned to utilize the 2020 census tracts in the 2022 9% Application Cycle (2022 Cycle).

We believe it is important that the census tract boundaries from the 2010 Decennial Census be utilized for the 2022 Cycle. Although the US Census Bureau issued the "2020 Census – Census Tract Reference Map" for all Texas counties, there are numerous instances where 2010 census tracts are broken into multiple new census tracts and in some instances multiple census tracts are combined to create a single new census tract (occurs in Bexar County and elsewhere), along with census tracts maintaining the same boundaries but given new names (significant renaming in Travis County and elsewhere).

These changes, in themselves, don't create significant issues, however, numerous scoring categories for the 2022 Cycle require data from the 2015-2019 American Community Survey 5-year estimate (ACS) which is based on the 2010 census tracts. This means there will be no data available for scoring categories in the current ACS for all newly created or renamed census tracts. Additionally, the recently issued 2022 Qualified Census Tracts (QCTs) are based on the 2010 census tracts and 2015-2019 ACS data (see excerpt below from the attached 2022 QCTs). Given the IRS requires QCTs to be considered in Concerted Revitalization Plan (CRP) scoring, not knowing what newly formed or created 2022 census tracts are official QCTs creates a significant issue.

3419 Nacogdoches Road
San Antonio, TX 78217--3377
P (210) 821-4300 F (210) 821-4303

2022 IRS SECTION 42(d)(5)(B) QUALIFIED CENSUS TRACTS
(2010 Census and 2013-2017, 2014-2018, and 2015-2019 American Community Survey (ACS) Data; OMB Metropolitan Area Definitions, August 15, 2017)
*Effective Date January 1, 2022

Therefore, we believe that the Draft QAP should be amended to specifically denote that 2010 census tracts will be utilized in the 2022 Cycle. If you have any questions or need any additional information, please contact me at (210) 774-0703 or at bradfordmc@prosperahcs.org.

Sincerely,

Brad McMurray
VP of Property Development

Attachment 2022 IRS Section 42(d)(5)(B) Qualified Census Tracts

2022 IRS SECTION 42(d)(5)(B) QUALIFIED CENSUS TRACTS
(2010 Census and 2013-2017, 2014-2018, and 2015-2019 American Community Survey (ACS) Data; OMB Metropolitan Area Definitions, August 15, 2017)
**Effective Date January 1, 2022*

METROPOLITAN AREA: Salt Lake City, UT MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Salt Lake County	1003.06	1003.08	1006.00	1014.00	1015.00	1016.00	1018.00	1019.00	1020.00	1021.00	1023.00	1025.00
	1026.00	1027.01	1027.02	1028.01	1029.00	1115.00	1116.00	1117.01	1119.05	1133.05	1133.06	1133.07
	1134.06	1135.12	1135.14	1136.00	1138.02							

METROPOLITAN AREA: San Angelo, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Tom Green County	4.00	7.00	9.00	18.00								

METROPOLITAN AREA: San Antonio-New Braunfels, TX MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
Bexar County	1103.00	1105.00	1106.00	1107.00	1108.00	1110.00	1205.02	1212.05	1214.04	1303.00	1304.01	1304.02
	1305.00	1306.00	1307.00	1308.00	1309.00	1310.00	1311.00	1312.00	1315.04	1315.07	1403.00	1406.00
	1408.00	1409.00	1410.00	1411.01	1411.02	1412.00	1504.00	1505.01	1505.02	1506.00	1508.00	1510.00
	1511.00	1513.02	1514.00	1522.01	1601.00	1603.00	1604.00	1605.01	1605.02	1606.00	1607.01	1607.02
	1609.01	1609.02	1610.00	1612.00	1613.03	1615.01	1615.04	1701.01	1701.02	1702.00	1703.00	1704.01
	1704.02	1705.00	1708.00	1709.00	1710.00	1711.00	1712.00	1713.01	1713.02	1714.02	1715.01	1715.02
	1716.01	1716.02	1718.02	1802.01	1802.02	1804.00	1805.01	1805.04	1807.02	1808.00	1809.02	1810.03
	1810.05	1813.03	1814.02	1818.20	1906.04	1910.03	1910.04	1910.06	1913.04	1919.00	1920.00	
Guadalupe County	2102.00	2103.00										

METROPOLITAN AREA: San Diego-Carlsbad, CA MSA

COUNTY OR COUNTY EQUIVALENT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT	TRACT
San Diego County	16.00	18.00	22.01	22.02	23.01	23.02	24.01	24.02	25.01	25.02	26.01	26.02
	27.07	27.08	27.09	27.10	27.12	28.01	29.02	29.04	29.05	30.04	31.01	31.11
	31.15	32.02	32.08	33.01	33.03	33.04	33.05	34.03	34.04	35.01	35.02	36.01
	36.02	36.03	39.01	39.02	40.00	41.00	47.00	48.00	49.00	50.00	51.00	57.00
	83.05	83.41	86.00	88.00	91.02	100.05	100.09	100.10	100.12	100.13	101.03	101.06
	101.10	101.11	101.12	104.01	104.02	105.02	116.01	116.02	117.00	118.01	118.02	120.02
	121.02	122.00	123.02	124.01	124.02	125.01	125.02	126.00	127.00	132.03	132.05	139.06
	141.02	144.00	146.01	153.01	154.04	157.01	157.03	157.04	158.01	158.02	159.01	159.02
	163.01	163.02	164.02	165.02	182.00	184.00	185.09	186.03	189.05	192.05	195.01	195.02
	198.05	200.28	200.29	202.02	202.06	202.07	202.09	202.11	202.13	202.14	203.08	205.00
	207.07	209.03	211.00	219.00								

PURPLE MARTIN
REAL ESTATE

October 8, 2021

Multifamily Finance Division
Texas Department of Housing and Community Affairs
Attn: Cody Campbell, Director of Multifamily Finance
221 East 11th Street
Austin, Texas 78701

Re: Public Comment, 2022 Official Draft Qualified Allocation Plan

Dear Mr. Campbell:

Thank you for the opportunity to provide public comment related the Texas Department of Housing and Community Affairs ("TDHCA") 2022 Draft Qualified Allocation Plan ("QAP"). Please accept the following comments on behalf of Purple Martin Real Estate ("PMRE"):

§11.1(d)(38)(B) Requirement for Agreement with Local Jurisdiction for Sites Divided by Public Road
The new requirement that an owner secure an agreement with a local jurisdiction for a 30-45 year LURA term to provide an accessible route for developments separated only by a public right of way could be difficult to secure for some developments that are able provide an accessible route. In order to ensure otherwise compliant developments are not disqualified for the lack of the 30-45 year agreement with the city, PMRE suggests the removal of this requirement and that instead to condition the award on the provision of an accessible route, and ensure that one is present as a part of compliance monitoring.

§11.5(3)(C)(ii) At-Risk Qualifications for Public Housing
QAP language is inconsistent with statute in this section. The QAP requires that units associated with developments in this category must have received Section 9 assistance within the two years preceding the Application for tax credits. In contrast, §2306.6702(a)(5)(B)(ii)(b) requires that developments formerly received Section 9 assistance, but the timeframe requirement is related to the demolition or disposition, not the Section 9 assistance. Per statute, units must "have been disposed of or demolished… in the two-year period preceding the application for tax credits." PMRE recommends the following revision to the QAP language so it is consistent with statute:

"(ii) Units to be Rehabilitated or Reconstructed must have been proposed to be disposed of or demolished, or already disposed or demolished in the two-year period preceding the Application for housing tax credits, by a public housing authority or public facility corporation created by a public housing authority under Chapter 303, Local Government Code and received assistance under §9, United States Housing Act of 1937 (42 U.S.C. section 1437g) ~~in the two-year period preceding the Application for housing tax credits~~;"

§11.7 Tie Breaker Factors
PMRE supports the TAAHP recommendation related to tie breakers. Currently, tie-breaker language related to the three-year average poverty rate for all awarded Competitive HTC Applications provides

2110 W. Slaughter Ln., Suite 107-394
Austin, TX 78748
(512) 658-6386
audrey@purplemartinre.com

much uncertainty in the process since the average is not known until the updated site demographics report is published in October/November each year. This time frame is well beyond the time Applicants begin the site selection process.

In an effort to provide certainty for Applicants that are actively searching for sites prior to the issuance of the site demographics report, the membership respectfully requests two minor changes to the current tie-breaker methodology. First, the membership requests the "three-year average" calculation be removed and a flat 20% poverty rate threshold be used for all regions other than 11 and 13. For region 11, it would be a flat 35% and region 13 would be a flat 25%. These poverty rates are consistent with the Opportunity Index threshold criteria.

The membership further requests the first tiebreaker be separated into two independent tie breaker criteria, which ultimately results into three distinct tie breakers: (1) poverty rate, (2) rent burden, and (3) distance to the nearest HTC development. The membership believes this separation will provide a clearer path to determine tiebreakers for both staff and the development community.

§11.9(c)(7) Proximity to Job Areas – PMRE appreciates TDHCA's proposed changes to increase the radius used to measure proximity to jobs. We suggest that in the interest of consistency within each sub-region that the test related to population be eliminated, and that instead all sites in Urban subregions utilize a 2 mile radius, and all sites in a Rural subregion utilize a 4 mile radius.

§11.9(e)(7)(B) Right of First Refusal for Single Family – PMRE suggests removing this scoring item from the 2022 QAP. There are numerous complex issues that are associated with offering a ROFR on individual single family homes within a larger development, and those issues require time to work through prior to implementation of the scoring item.

Please contact me at (512) 658-6386 or Audrey@purplemartinre.com with any questions.

Sincerely,

Audrey Martin
Principal, Purple Martin Real Estate, LLC

Comment 28

RRHA OF TEXAS

RURAL RENTAL HOUSING ASSOCIATION OF TEXAS, INC.

October 7, 2021

ATTN: Brooke Boston
TDHCA, Multi-Family Finance
221 E. 11th Street
Austin, Texas 78701-2410

Sent via email to: brooke.boston@tdhca.state.tx.us
Sent via email (copy) to: htc.public-comment@tdhca.state.tx.us

RE: 2022 QAP PUBLIC COMMENT: RURAL RENTAL HOUSING ASSOCIATION OF TEXAS, INC.

Dear Brooke:

Please find the Rural Rental Housing Association's public comment to Staff's 2022 Qualified Application Plan "Draft," attached to this letter. The Association thanks Staff for consideration of our comment and including the 5% increase in allowable construction costs. Further, we always appreciate Multi-Family Staff requesting our input and your consideration thereof annually.

The Rural Rental Housing Association of Texas, Inc. ("RRHA") represents almost 670 rural properties consisting of approximately 23,375 units that house more than 34,500 residents and has considered the staff proposed "options" during the 2020 Qualified Allocation Plan ("QAP") meetings. A significant focus of Chapter 2306, Texas Government Code, is the preservation of existing affordable multifamily housing and our portfolio represents existing properties, many of which are in need of rehabilitation. In consideration of the residents we serve, we are very grateful for your consideration of the attached comments.

If you need any additional information or clarification, please feel free to contact Dennis Hoover, Development Chair, at 512-756-6809, ext. 212, or via email at dennishoover@hamiltonvalley.com. Thank you for consideration of our concerns.

Very respectfully,

Brent Guldahl

Brent Guldahl
President

2 N. 9th Street, Suite B • Temple, Texas 76501 • (254) 778-6111 • FAX (254) 778-6110
E-Mail: office@rrhatx.com

Suggested revisions to 2022 QAP "Staff Draft:"

1. TIE-BREAKERS FOR "AT-RISK"

Our Development Committee provided preliminary comment that the "At-Risk" and "USDA" set aside should have its own set of tie-breakers. Please find our member's proposed language below, containing two criteria:

§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. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held. The tie breaker factors are not intended to specifically address a tie between equally underserved subregions in the rural or statewide collapse.

(a) General Applications:

.....

(b) At-Risk Set Aside:

(1) Applications whom have the longest period of years from the initial placement in service or year of construction and that have not received a Housing Tax Credit and/or federal funding award from the Department for rehabilitation. Years are measured by deducting the most recent year of award on the property inventory of the Site Demographic Characteristics Report from January 1 of the current year.

(2) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development that serves the same Target Population and that was awarded less than 15 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph according to the property inventory included in the HTC Site Demographic Characteristics Report. The linear measurement will be performed from closest boundary to closest boundary of the Site presented at Pre-Application, if a pre-application is submitted, or the Site presented at full Application, whichever is closest."

As the set-aside is inherently different than other applications, we believe this portfolio would be better served by certain tie-breakers. Alternatively, we would support a separate set of tie-breakers applying to only the USDA set-aside, or both set-asides, as well. Our main policy concern is placing focus on properties that score well and are in most need of current preservation. We request the set-asides have their own set of tie-breakers as provided above.

2. Construction Costs

We appreciate Staff's diligence and recognition of the need for a 5% increase in allowable costs. Moving forward, we encourage Staff to continue to review the data supporting the dramatic increases in cost the construction industry has faced in recent years. We will continue to provide input and data as requested to support further increases in allowable costs.

3. Direct Loan Funds

As a general consensus we believe the added requirements brought on by layering an application with these funds is not worth the additional compliance. We are in support of a point incentive system that would make the use of these funds more attractive as an applicant.

[END]

Commenter 29

SANDERSON CONSULTING

October 8, 2021

Cody Campbell
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701

RE: Comment on the Draft 2022 Qualified Allocation Plan

Dear Mr Campbell:

The following comments are in response to the draft 2022 Qualified Allocation Plan. I thank Staff for their work on this document throughout the year and the opportunity to provide input.

11.8(b)(2)(B)Pre-Application Notification Recipients

The 2021 QAP added the following requirement: "Regardless of the method of delivery, the Applicant must provide an accurate mailing address in the Pre-application." In 2021, the majority of applicants did not comply and staff did not issue any deficiencies for this item until the Department was alerted to the requirement through the RFAD process. If this information is not a necessity for staff, we propose that this requirement be removed. If the Department chooses to keep this item, we request that it be done through an uploaded Excel file, rather than entering information directly into the Pre Application form online.

11.9(c)(6) Residents with Special Housing Needs

Subparagraph C has been added to this section concerning development sites located in a county of over 1 million and within 2 miles of a veteran health facility. Because At-Risk and USDA applications compete statewide and there are a limited number of counites over 1 million people, I propose that At-risk or USDA set asides are not eligible for this scoring item.

§11.9(c)(7) Proximity to Jobs Area

We oppose any change to the draft language at this time. The fact is that the entire industry has already started the site selection process based on the proposed draft. Any change to this will be extremely disruptive to the process.

§11.9(d)(7)(A) Concerted Revitalization Plan

We appreciate the propose changes to the CRP scoring item, and agree that QCTs should get priority for revitalizations areas as outlined in Section 42. Additionally we believe this will prevent revitalization plan deals that receive priority in several urban regions from being located in high opportunity areas, which has happened in past tax credit rounds.

§11.9(e)(7)(B) Right of First Refusal

Subsection B was added to the draft, which gives 3 points for developments proposing single-family detached homes only. Giving such a priority to single family developments is a significant change to the program's priorities and was not discussed with stakeholders prior to its inclusion in the draft. It should be noted that traditional

1305 E 6th Street • Suite 12 • Austin • TX • 78702
P: (512) 554-4721

apartment developments may be converted to condominiums where individual units could be sold to residents. If this section is to remain in the QAP, then it should be available to any construction type.

We understand that this is in response to harmonizing Sec. 42 and the QAP, but given the large number of issues that have to be contemplated for the program to go this direction including Underwriting and Compliance we feel it would be better to leave this issue to be discussed for the 2023 cycle.

§11.101(b)(1)(C) Ineligibility of Developments within Certain School Attendance Zones

The TEA will not have testing and school ratings for a second year due to COVID. Because the most recent data on school ratings is several years old, it seems unfair to completely redline development locations based on schools that were underperforming several years ago but may be performing now. For 2022 only, we propose that Development Sites located in a school attendance zone that is rated F for the most recent year available prior to Application and an Improvement Required Rating for the most recent available year preceding be eligible if the Application includes documentation and a letter from the ISD Superintendent that outlines specific improvements that have been made to the schools and also that the Application commits to providing an after school educational services for tenants.

§11.101(b)(6)(A) and §11.9(b)(1)(A)(i) Unit Sizes

With the addition of the provision of units for homeless populations, we need to be able to provide more efficiency units at a lower cost. The best way to accomplish this is to reduce the minimum size for efficiency units for threshold and scoring. We suggest that the minimum for threshold be 400 sqft and for scoring 450 sqft. These sizes are more in line with what the general market is providing for efficiency units.

§11.204(6) Experience Requirement

Per discussion with TDHCA staff during the September 20th roundtable, the date change regarding the experience requirement was simply advancing the dates by one year. Given the provisions are largely the same from 2014 forward, we request that the year 2014 serve as an 'anchor' year so that any experience from 2014 forward be allowed to satisfy the requirements of this section. Therefore, the date range would be updated to read "2014-2021".

Thank you for your attention to these comments – please contact me directly with any questions.

Sincerely,

Sarah Anderson
sarah@sarahandersonconsulting.com
512-554-4721

CITY OF SAN ANTONIO
NEIGHBORHOOD & HOUSING SERVICES DEPARTMENT

October 8, 2021

Texas Department of Housing and Community Affairs
Attn: Brooke Boston and Matt Griego
Rules Comments
P.O. Box 13941
Austin, TX 78711
brooke.boston@tdhca.state.tx.us

Re: Comments Regarding 2022 Qualified Allocation Plan and Uniform Multifamily Rules

Dear Ms. Boston and Mr. Griego,

The City of San Antonio's Neighborhood and Housing Services Department (NHSD) appreciates the opportunity to provide feedback on the Staff Draft of the 2022 Qualified Allocation Plan (QAP). NHSD is dedicated to enhancing the quality of life for the residents of San Antonio. We believe the Housing Tax Credit programs administered by TDHCA are integral to our efforts to provide quality, safe, and affordable housing throughout San Antonio. We offer the following comments for your consideration.

Subchapter F. Supplemental Tax Credits

We appreciate the Supplemental Allocations of Tax Credits to 2019 and 2020 9% HTC projects in light of the challenges these developments have faced over the last two years. However, we have several concerns related to the proposed distribution of these credits.

First, the timeline for the Supplemental Allocation does not align with the 9% HTC applications. The 2022 9% HTC applications are due March 1; the commitments for Supplemental Allocations are estimated to be made in April. A project truly in need of Supplemental Allocations knows they need them at this point. The applications should be moved earlier, before the full 2022 9% HTC applications are due to the state, and we ask that a due date for these applications be published as soon as possible.

Second, we ask that TDHCA revisit the use of the same de-concentration factors for 2022 projects and projects receiving Supplemental Allocations. The two-mile same year rule should not be applied as the projects are from different years Good projects in 2022 might be disqualified simply because a project from 2019 or 2020 is given priority.

If these changes cannot be made, we request that cities be permitted to provide waivers to the two-mile same year rule after 2022 projects are submitted and after Supplemental Allocations are awarded. Based on the timeline proposed, developers will not know prior to the submission date if a project is seeking supplemental credits. We understand the two-mile same year rule is a legislative issue, and hope we can work administratively to maximize the benefit to projects in both the Supplemental and 2022 9% rounds.

Proposed Amended Language:

The Two-Mile Same Year Rule will not apply to 2022 9% HTC projects within two linear miles of a 2019 or 2020 project seeking a Supplemental Allocation as the projects applied under different years and were required to meet different requirements as prescribed by different Qualified Allocation Plans.

Proximity to Job Areas Scoring

We do not support expanding the job radius from 1 mile to 2 miles. Individuals and families living in HTC developments benefit when they have access to jobs, services, and amenities associated with job centers. Keeping the proximity to jobs at one mile will make it easier for people to live, work, and play in their neighborhoods of choice.

Proposed Amended Language:
Keep the same scoring for number of jobs and job radius for Proximity to Jobs as appeared in the 2021 QAP.

Housing De-Concentration Factors. (b) Two-Mile Same Year Rule (1).

It is important cities can accommodate their rapidly growing population with an adequate supply of affordable units, and we are concerned the two-mile same year rule impedes this process. Newcomers of all incomes need to be able to live near jobs. The two-mile same year rule has limited the ability of large cities in Texas (with the exception of Houston) to support highly qualified developments that have the potential to significantly benefit the immediate area and the City as a whole.

In practice, this rule has caused developers to compete over support and delay development, essentially negating the intent of the section. Having to wait two years between developments can create an unnecessary bottle neck in areas where there is a high demand for affordable housing and a concentration of jobs in addition to increasing costs. We share TDHCA's desire not to concentrate poverty, and as developments increasingly tend towards mixed-income, we believe two developments can be in close proximity without concentrating poverty.

The addition of Proximity to Jobs points in the 2020 QAP has made more areas of the city competitive meaning blanket de-concentration rules are less necessary. Growing cities know their local landscape best and should be empowered to waive this rule if it is in the best interest of the community. If a city believes too many projects are concentrated in one area, they may choose not to issue Resolutions for certain projects, or may choose not to waive the rule.

Proposed Amended Language:
Recommend additional language that any political subdivision subject to the Two-Mile rule (e.g. communities contained within counties with populations exceeding one million) have the ability to waive it if approved by local officials.

Section 11.3. Housing De-Concentration Factors. (b) Two-Mile Same Year Rule (2).

The QAP allows for a municipality with a population of two million or more where a federal disaster has been declared within the past five years to waive the Two-Mile Same Year rule provided the governing body has voted to waive the rule, and is authorized to administer disaster recovery funds as a subgrant recipient for the disaster identified in the federal disaster declaration.

As municipalities continue to struggle with COVID-19, this rule should be extended. All cities trusted to administer disaster recovery funds during this federal disaster should have the ability to waive this rule.

Proposed Amended Language:
Recommend additional language that any political subdivision authorized to administer disaster recovery funds related to COVID-19 have the ability to waive it if approved by local officials regardless of population.

Housing De-Concentration Factors. (g) One Award per Census Tract Limitation

Similar to the two-year one-mile rule, the one award per census tract rule has limited the ability of large cities in Texas to support highly qualified developments that have the potential to significantly benefit the immediate area and the City as a whole.

In practice, this rule has caused developers to compete over support and delay development, essentially negating the intent of the section. This rule combined with lower scoring for projects in the same census tract as previously awarded developments creates an unnecessary bottle neck in areas where there is a high demand for affordable housing and a concentration of jobs. We share TDHCA's desire not to concentrate poverty, but as developments increasingly tend towards mixed-income, we believe two developments can be in close proximity without concentrating poverty.

The addition of Proximity to Jobs points in the 2020 QAP has made more areas of the city competitive meaning blanket de-concentration rules are less necessary. Growing cities know their local landscape best and should be empowered to waive this rule if it is in the best interest of the community. If a city believes too many projects are concentrated in one area, they may choose not to issue Resolutions for certain projects, or may choose not to waive the rule.

Proposed Amended Language:
Recommend additional language that any political subdivision have the ability to waive the one award per census tract limitation, if approved by local officials.

(d)(7) Concerted Revitalization Plan

In the past, the requirements outlined for Concerted Revitalization Plans (CRPs) were overly prescriptive and there was concern they prevented the municipality from determining what development plans are eligible, thus compromising local control. However, the need was for a better, clearer definition for CRPs and how they functioned in the QAP, not for the removal of the municipality's input.

The proposed changes to this scoring item completely remove a municipality from identifying projects that contribute to its own planning and revitalization efforts. CRPs often are city plans for expansion and addressing their housing needs. The removal of municipal input here usurps local control and improvement efforts. We recommend continuing to allow cities to identify one project per CRP that will contribute most to the city's revitalization efforts through a Resolution. This resolution should continue to be worth 2 points. We are supportive of removing the CRP letters as a scoring item in this section as they present an unnecessary administrative burden on both local and TDHCA staff.

Proposed Amended Language
If the Application includes an acceptable Concerted Revitalization Plan, up to seven (7) points will be awarded based on as follows:

(I) the proposed Development Site is located within a Qualified Census Tract (5 points)

(II) the proposed Development Site is not located with a Qualified Census Tract (3 points)

(III) A resolution by the municipality (or county if the Development Site is completely outside of a municipality) that explicitly identifies the proposed Development as contributing more than any other to the concerted revitalization efforts of the municipality or county (as applicable). A municipality or county may only identify one Development per CRP area during each Application Round for the additional points under this subclause, unless the concerted revitalization plan includes more than one distinct area within the city or county, in which case a resolution may be provided for each Development in its respective area. The resolution from the Governing Body of the municipality or county that approved the plan is required to be submitted in the Application. If multiple Applications submit resolutions under this subclause from the same Governing Body for the same CRP area, none of the Applications shall be eligible for the additional points, unless the resolutions address the respective and distinct areas described in the plan (2 points)

Section 11.5 Competitive HTC Set-Asides (3) At-Risk Set-Aside

Not all developments with expiring affordability covenants are associated with a public housing authority or public finance corporation. These requirements are limiting who can apply for these funds.

Proposed Amended Language:
Remove language restricting access to this set-aside to public housing authority and public finance corporation projects.

Section 11.101 (3) Neighborhood Risk Factors

We support not requiring mitigation for schools for Applications submitted under the 2022 QAP due to COVID-19 school closures.

CITY OF SAN ANTONIO
NEIGHBORHOOD & HOUSING SERVICES DEPARTMENT

The City of San Antonio and the developers working within city limits have been using the average income set aside heavily. We know TDHCA continues to ask for compliance guidance related to the average income set aside. While we wait for more guidance from the IRS, we request compliance surrounding the average income set aside be discussed during future QAP roundtables.

We understand there are limits in statute pertaining to what staff can change regarding the QAP. NHSD is continuing to advocate for changes needing legislative action. In the meantime, we welcome the opportunity to work with TDHCA to develop methods to advance our shared visions without legislative interventions.

Thank you for your consideration. Please contact me if you have any questions.

Regards,

Verónica R. Soto, FAICP
Director, Neighborhood and Housing Services Department
Veronica.Soto@sanantonio.gov
210-207-6620

Cc: htc.public-comment@tdhca.state.tx.us

SIERRA CLUB
LONE STAR CHAPTER

October 7, 2021

Texas Department of Housing and Community Affairs

Rules Comments
P.O. Box 13941

Austin, Texas 78711-3941

Attn: Brooke Boston and Matt Griego
Email: brooke.boston@tdhca.state.tx.us

The Lone Star Chapter of the Sierra Club is the Texas chapter of the Sierra Club, a 501-C-4 advocacy organization with over 3 million members and supporters. In Texas, we have more than 180,000 members and supporters. The QAP is an important tool for the construction of affordable multi-family units in Texas. With a changing climate assuring that these buildings are modern, water and energy efficient and resilient is important.

The Lone Star Chapter is pleased to provide brief comment on the proposed 2021 QAP plan. Our comments are limited to issues related to green building and energy efficiency measures overall.

Our main and most important comment is that we believe TDHCA should and must adopt minimum energy efficiency standards for overall energy use as well as for installed appliances that all applicants should meet as a threshold criteria. TDHCA should as part of both the QAP but also for all of its programs related to multifamily standards adopt minimum energy efficiency standards, as required by Texas Government Code 2306.187 and by Chapter 388 of the Texas Health and Safety Code. Indeed, recently TDHCA has already taken this action for its single-family programs, a proposal supported by the Sierra Club.

Thus, we would suggest that as we have stated previously, TDHCA should adopt the 2015 IECC as a minimum standard for all applicants applying to the QAP, as required by state law, while also making sure that new and replacement fans, electrical fixtures, equipment and appliances, as well as ductless heating and cooling systems and windows meet Energy Star certification requirements and that plumbing fixtures are WaterSense. These should be required for all applicants.

Because under Chapter 388 of the Health and Safety Code, SECO Is expected to consider updating the minimum Texas Building Energy Codes to reflect the 2021 IECC, though it is likely to be implemented immediately, we would suggest giving additional points to any builders that are building to the 2021 IECC, since it has been found to be roughly 10% more energy efficient than previous versions of the code.

We do note that in (4) Mandatory Development Amenities the QAP does require certain efficient appliances. However, we are concerned by the words "or equivalently" when discussing required Energy Star appliances and measures found in the 2021 QAP. While there might be a legitimate reason for including these words, we believe it could undermine efforts to improve energy efficiency as part of the QAP. We are concerned there will be no way to measure energy efficient appliances without them being designated as "Energy Star." Again, we would also support adding water-sense plumbing appliances to the these required mandatory development amenities rather than having them be "extra" points to be earned.

We do support the continued inclusion of the 2018 IGCC as a new "Green Building Standard" that applicants can earn additional points if they show they can meet these standards. We believe the addition of the 2018 IGCC will encourage some developers to seek additional points by meeting these standards, which represent an above-code green building program. We would also encourage the TDHCA to also add passive solar standards as another standard that could earn up to four points. In the U.S., the certification for such buildings is known as the PHIUS+ 2015 passive building energy standard.

We appreciate the special attention put in the document to "(B) Unit, Development Construction, and Energy and Water Efficiency Features" added to the document in Section 11.101 (b) (6) (B). However, we believe many of these measures are already required as mandatory and it doesn't make sense to give additional points for these measures. Thus, energy-star dishwashers and refrigerators are already required as mandatory, so why give additional points just because they have an ice-maker or are front-loading?

We also question the need to give points for LED recessed lighting or LED lighting fixtures in kitchen and living areas. LED lights are now the standard are in essence required for all new construction in Texas under the 2015 IECC. In

fact, under the 2021 IECC, all indoor lighting must be high-efficacy. We favor making such amenities to be required, rather than subject to additional point. Giving developers extra points for what is essentially the standard is unnecessary.

We would also suggest that an even higher rated HVAC system such as an 18 or 20 SEER HVAC system be added for up to two points.

Finally we would note that there appears to be no mention of a PV rooftop solar option as a feature for which a developer could earn points. We would suggest that somewhere in the document a PV system that could provide some percentage of the buildings total energy use be eligible for extra points. Thus, we would suggest adding a PV-system that supplies at least 10 percent of the overall energy use as eligible for one point as well.

The Lone Star Chapter is pleased to offer these comments, and hopes you will consider modifications to the proposed 2021 QAP based upon these comments. Again, our main comment is that TDHCA should add the 2015 IECC as the minimum threshold standard, and consider adding the 2021 IECC for some additional points since it is likely to become the standard soon.

Please don't hesitate to contact me if you have questions or concerns.

Sincerely,

Cyrus Reed
Conservation Director
Lone Star Chapter, Sierra Club.
512-740-4086
cyrus.reed@sierraclub.org

TEXAS AFFILIATION OF AFFORDABLE HOUSING PROVIDERS

TEXAS AFFILIATION OF AFFORDABLE HOUSING PROVIDERS | 2401 E. 6th Street, Ste. 3037, PMB 153 | Austin, TX 78702 | tel 512.476.9901 | taahp.org

October 7, 2021

Mr. Cody Campbell, Multifamily Finance Director
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701
cody.campbell@tdhca.state.tx.us

Re: Texas Affiliation of Affordable Housing Providers comments to the 2022 Draft Qualified Allocation Plan and Multifamily Rules

Dear Mr. Campbell:

The Texas Affiliation of Affordable Housing Providers (TAAHP) appreciates the opportunity to submit public comments regarding the draft 2022 Qualified Allocation Plan (QAP) and Multifamily Rules. Our membership represents a variety of disciplines that work diligently to provide affordable housing to low- and moderate-income families in the State of Texas. It is TAAHP's policy to submit only those recommendations that represent consensus among our membership.

On behalf of TAAHP, we respectfully offer the following recommendations for staff consideration and implementation in the final drafting of the 2022 QAP.

§11.7 Tie Breakers – Currently, tie-breaker language related to the three-year average poverty rate for all awarded Competitive HTC Applications provides much uncertainty in the process since the average is not known until the updated site demographics report is published in October/November each year. This time frame is well beyond the time Applicants begin the site selection process.

In an effort to provide certainty for Applicants that are actively searching for sites prior to the issuance of the site demographics report, the membership respectfully requests two minor changes to the current tie-breaker methodology. First, the membership requests the "three-year average" calculation be removed and a flat 20% poverty rate threshold be used for all regions other than 11 and 13. For region 11, it would be a flat 35% and region 13 would be a flat 25%. These poverty rates are consistent with the Opportunity Index threshold criteria.

The membership further requests the first tiebreaker be separated into two independent tie breaker criteria, which ultimately results into three distinct tie breakers: (1) poverty rate, (2) rent burden, and (3) distance to the nearest HTC development. The membership believes this separation will provide a clearer path to determine tiebreakers for both staff and the development community.

§11.9(c)(7) Proximity to Jobs Area – The membership is appreciative of TDHCA's willingness to expand the proximity to jobs radius from 1-mile to 2-miles for some higher density areas and from 2-miles to 4 miles for other areas of the state and believe this increased radius will help to mitigate the issue of small, high-priced, commercial-oriented sites that have been evident in the major urban subregions the last few cycles. However, the membership further requests that the 2-mile radius only apply to **all urban** subregions and the 4-mile radius apply only to **all rural** subregions rather than using the population factors as laid out in the draft QAP.

Because there are smaller, suburban municipalities like Pasadena in Harris County or Garland in Dallas County, which have a population of 499,999 or less within a county with a population of 1 million or more, the current language is problematic. As written, the proposed rule would allow two sites, one within the boundaries of the municipality and one immediately outside of it in the unincorporated area of a county with a population of 1 million or more, to utilize two different methodologies to derive these points. These two sites would be directly competing against one another, yet the site in the unincorporated area could more easily meet the jobs test while being further from a concentration of jobs.

It is for these reasons the membership respectfully asks for the population factors be removed entirely, with the 2-mile radius applying to all urban subregions and the 4-mile radius applying to all rural subregions.

§11.9(d)(7)(A) Concerted Revitalization Plan – The membership is in support of TDHCA's measured steps to simplify the requirements to qualify for points under this scoring category. The purpose of this scoring criteria is to locate developments in areas undergoing revitalization as an alternative to areas of high opportunity. However, sites that are not located in a Qualified Census Tract (QCT), but are still within a CRP area, should have the ability to achieve parity with sites that are located in a QCT.

The membership would like to recommend that a 2-point option be added for those sites located within a CRP area, but not within a QCT. To qualify for the 2 points, an Applicant would need to provide "A letter from the appropriate local official for the municipality (or county if the Development Site is completely outside of a municipality) that explicitly identifies the proposed Development as contributing to the concerted revitalization efforts of the municipality or county (as applicable)." The membership further believes that securing a letter from the local government rather than a resolution is within the spirt of simplifying the process while making more 'Concerted Revitalization Plan' sites competitive relative to 'Opportunity Index' sites.

§11.9(e)(7)(B) Right of First Refusal – Per TDHCA staff comments during the September 20th roundtable, this subsection has been added to the draft 2022 QAP in order to satisfy certain requires of IRC Section 42. It was also noted that TDHCA staff plans to implement other changes in the 2023 QAP to bring the program rules in compliance with IRC Section 42.

The membership respectfully requests this newly added scoring criteria be removed in its entirety from the draft 2022 QAP. Given the complexity of 'rent-to-own' programs as outlined in this newly added subsection, an open discussion of the pros and cons with this scoring item need to be weighed and proper protocols implemented to ensure that unforeseen issues do not arise as a result of this change.

The membership further requests that all 'Section 42 compliance' topics contemplated to be added to the next cycle's QAP be made the subject of a roundtable discussion early next year prior to their addition to the 2023 draft QAP.

§11.204(6) Experience Requirement – Per discussion with TDHCA staff during the September 20th roundtable, the date change regarding the experience requirement was simply advancing the dates by one year. Given the provisions are largely the same from 2014 forward, the membership requests that the year 2014 serve as an 'anchor' year so that any experience from 2014 forward be allowed to satisfy the requirements of this section. Therefore, the date range would be updated to read "2014-2021".

Subchapter F. Supplemental Housing Tax Credits

§11.502 Program Calendar for Supplemental Housing Tax Credits – As discussed at the September 20th roundtable, the membership requests that a notice of intent to submit an application for supplemental housing credits be made a requirement. Ideally, the notices would be due by early November (~November 5th) so that the development community can evaluate those potential applications as it weighs traditional 2022 applications. The membership also requests that the roundtable discussion related to moving up the application due dates and decision timing by a month be made a part of the final draft. That would include an application deadline of roughly December 10, 2021 with board approval in March 2022.

§11.503(b) Maximum Supplemental Housing Tax Credits, Requests and Award Limits – After further discussion and review, TAAHP requests the cap on supplemental credits be reduced from 15% to 7%. Lowering the cap would allow more existing 2020/2019 transactions access to the supplemental credits rather than the few applications in each subregion. We must do all that we can to stretch this limited resource and reach as many transactions as possible.

§11.505(c) Supplemental Credit Allocation Process – Based on TDHCA staff discussion at the September 20th roundtable, staff will rank the applications by original score. TAAHP concurs with the approach and does not object to using the competitive 9% scores from the applicable cycle to determine prioritization for Supplemental Credits. In the event of a tie, TAAHP proposes utilizing "tie-breakers" to further prioritize these Applications. The first "tie-breaker" would be those transactions that are closed and under construction and the second "tie-breaker" is to follow, in order, the currently proposed tie-breaker criteria: 1) poverty rate; 2) rent burden; and 3) distance to the nearest HTC development.

§11.507 Required Documentation for Supplemental Credit Application Submission – As part of the application documentation, the membership requests that an applicant be required to provide evidence from their investor that the additional credits will be purchased, and the dollar value associated with that acquisition. This will provide REA the information they need to wholly evaluate the application and ensure that allocated credits will be used.

On behalf of our membership, we again thank you for the opportunity to provide public comment to the 2022 draft QAP and Uniform Multifamily Rules for your consideration and implementation.

If you have any questions or would like to discuss any of these items further, please do not hesitate to contact Nathan Kelley at (281) 833-1086 or via email at nkelley@blazerbuilding.com any time.

Sincerely,

Nathan Kelley
TAAHP QAP Co-Chair

Lora Myrick
TAAHP QAP Co-Chair

cc: Mr. Bobby Wilkinson, TDHCA
Mr. Homero Cabello, TDHCA
Ms. Brooke Boston, TDHCA
TDHCA Governing Board
TAAHP Membership

TEXAS HOUSERS
TEXAS LOW INCOME HOUSING INFORMATION SERVICE

1800 W 6th Street
Austin, TX 78703

TexasHousers.org

October 7, 2021

Texas Department of Housing and Community Affairs
Attn: Brooke Boston and Matt Griego
Rules Comments
P.O. Box 13941
Austin, Texas 78711-3941
Submitted via email to: brooke.boston@tdhca.state.tx.us and htc.public-comment@tdhca.state.tx.us

Re: Texas Housers' Comments on the TDHCA Governing Board Approved Draft of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan

Dear Ms. Boston and Mr. Griego:

Texas Housers is a 501(c)(3) nonprofit organization founded in 1988 to work for housing justice and fair and equal treatment by government of communities. Our mission is to support low-income Texans' efforts to achieve the American dream of a decent, affordable home in a quality neighborhood of their choosing. We work toward these goals through research, policy, and collaboration with community organizations.

We appreciate the opportunity to provide input on the allocation rules for the low-income housing tax credit program in our state. Thank you for all of your work in creating this draft and responding to the public comments. Please accept the following comments on the Housing Tax Credit (HTC) Qualified Allocation Plan (QAP) affecting projects to be awarded in 2022.

Our comments are organized into (I) the most essential areas where we hope to see changes on in this new QAP: Opportunity Index and mitigation for poorly performing schools. The second section (II) provides more input on other QAP topics.

I. Essential Areas of Change in the 2022 QAP: Opportunity Index and Mitigation for Poorly Performing Schools

Support and Strengthen – Opportunity Index: Distances and Mutually-Exclusive Points

In §11.9(c)(4), we support the continued inclusion of the Opportunity Index to reward projects for development in low-poverty areas close to amenities that are useful to

tenants. HTC can provide a unique option for low-income people to live in housing they can afford near high performing schools, grocery stores, parks, transit, and other needs. Without strong incentives to build in high opportunity areas, HTC development will naturally gravitate toward low opportunity areas where land is cheaper, to the detriment of low-income tenants.

In order to strengthen the Opportunity Index, we offer two suggestions:

A. Reduce distances to amenities to those listed in the 2020 QAP, as seen in the left-hand column:

a. Urban

Amenity	**Allowable Distance for Points in 2020 Rule**	**Allowable Distance for Points in Current Draft**
Full-service Grocery Store	1 mile	2 miles
Pharmacy	1 mile	2 miles
Health Facility	3 miles	4 miles
Childcare or Pre-School	2 miles	3 miles
Library	1 mile	2 miles
University or College	5 miles	6 miles
Indoor Recreation Site	1 mile	2 miles
Public Outdoor Recreation Site	1 mile	2 miles
Civic Organization Offering Services	1 mile	2 miles

b. Rural

Amenity	**Allowable Distance for Points in 2020 Rule**	**Allowable Distance for Points in Current Draft**
Full-service Grocery Store	4 miles	5 miles
Pharmacy	4 miles	5 miles
Health Facility	4 miles	5 miles
Childcare or Pre-School	4 miles	5 miles
Library	4 miles	5 miles
Public Park with Playground	4 miles	5 miles
Indoor Recreation Site	3 miles	4 miles
Public Outdoor Recreation Site	3 miles	4 miles
Civic Organization Offering Services	3 miles	4 miles

The changes last year *doubled* the point-scoring distances to most amenities, but it is essential that the amenities be in close enough proximity that tenants can easily reach them. By changing the distance to many urban amenities in this section from one mile

(typically a 20-minute walk) to two miles (a 40-minute walk), the increased distance makes these places much less accessible to the average tenant without a car or to a tenant with a disability. The increased distances also reduce competition in a section where the QAP would benefit from further distinguishing projects instead.

B. **Increase the Opportunity Index total points available to 15 points (currently seven points), and reduce the scope to a few key factors that are mutually exclusive for points, with the menu of many options available for the remainder.** In the current scheme, only Low Poverty points in section (A) are mutually exclusive, and an additional 15 options in urban and 14 options in rural compete for developers' attention as a menu in section (B). Instead, **the QAP should create mutually exclusive sections of two points each for (A) low poverty, (B) sidewalks and transit, (C) full-service grocery stores, and (D) attendance zone for highly rated public schools.** The additional amenities currently in the menu list could remain in that menu format in new section (E), for an additional seven points that would not compete exclusively with the more essential Opportunity Index factors.

Oppose – Waiving Mitigation Requirements for Poorly Performing Schools

In §11.101(a)(3)(C) and (D) in Neighborhood Risk Factors, the draft QAP waives compliance with mitigation requirements for low-performing schools for applications submitted in 2022. **We strongly oppose this waiver, and urge Staff to maintain mitigation requirements in this QAP.** In the QAP, we recommend striking the waiver and removing the 2022 updates:

> (C) … ~~Due to school closures as a result of COVID-19, mitigation for schools as described in subparagraphs (C) and (D) of this paragraph is not required for Applications submitted in 2021.~~

Proximity to high quality schools is of utmost importance to HTC residents with children. The QAP effectively chooses for residents where their children will go to school, and therefore the Department should exercise the type of judgement tenants would make for their own families. Attending a high performing school is critical in determining students' educational performance and long-term life outcomes. Changing students' environment from low to high performing schools has been shown to boost academic success in as little as a year and particularly impact low-income students.[1] Higher school quality positively affects children's graduation rates, college attendance, and likelihood

[1] Spencer Allen Shanholtz, *Do Qualified Allocation Plans Influence Developers' LIHTC Siting Decisions: The Case of Access to High-Performing Schools* (2016), 5-8 [Master's thesis, Virginia Polytechnic Institute and State University] Virginia Tech Electronic Theses and Dissertations. https://vtechworks.lib.vt.edu/bitstream/handle/10919/73740/Shanholtz_SA_T_2016.pdf.

of arrest.[2] Researchers find a "persisting connection" between housing location and attendance at a high performing school, *even in districts with school choice or "open enrollment" policies* meant to provide families with greater options.[3]

While it is important to improve housing options for families near poorly performing schools as well, the QAP should incentivize developments that maximize choice and opportunity. Providing low-income units near excellent schools gives families a much better opportunity for success than providing more housing near poorly performing schools, which does little to change their circumstances. The purpose of the QAP is to promote the state's policy to site affordable rental housing in neighborhoods where people with housing choice would want to live. This includes access to high performing schools. The QAP also advances the very important goal of reducing intergenerational poverty, and reducing the devastating cost that persistent poverty inflicts on families and on our state's economy.

We are talking about *very poor performance* here. The Improvement Required rating sounds benign but is a hard low to achieve. In 2018, only 4% of campuses received the Improvement Required rating, while 96% of school campuses received the TEA Met Standard/Met Alternative Standard rating.[4] Accountability scores of F and D are also relatively rare in the grand scheme of Texas schools. In 2018 and 2019, fewer than 5% of campuses received an F rating; and in 2019 only 8.5% received a D rating.[5] Based on these numbers, when a school has received a very low rating, the likelihood that they vastly improve in the following year are slim.

The proposal to eliminate the current mitigation requirement is akin to expecting that mitigation will naturally take place, when in reality mitigation does not widely occur.[6] Without mitigation plans or a replacement, the QAP process will not identify whether a particular attendance zone is likely to be one of those successes. **Even if the draft language is approved to waive mitigation requirements in (C) and (D), the**

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[2] M. Lori Thomas et al., *Moore Place Permanent Supportive Housing Evaluation Study Final Report*, Charlotte, NC: University of North Carolina at Charlotte, Department of Social Work (2015). Available at https://www.csh.org/wp-content/uploads/2015/05/Moore-Place-Evaluation-Project_Final-Report_4-28-15.pdf.

[3] Megan Gallagher et al., Moving to Educational Opportunity: A Housing Demonstration to Improve School Outcomes (2013). Available at https://www.urban.org/sites/default/files/publication/24271/412972-Moving-to-Educational-Opportunity-A-Housing-Demonstration-to-Improve-School-Outcomes.PDF. Julian Vasquez Heilig and Jennifer Jellison Holme, *Nearly 50 Years Post-Jim Crow: Persisting and Expansive School Segregation for African American, Latina/o and ELL students in Texas*, 20(10) Educ. & Urban Society 1 (2013). Available at http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1001.41&rep=rep1&type=pdf.

[4] Texas Education Agency, Division of Communications, *TEA Releases 2018 Campus Accountability Ratings* (2018). Available at https://tea.texas.gov/about-tea/news-and-multimedia/news-releases/news-2018/tea-releases-2018-campus-accountability-ratings.

[5] Texas Education Agency, Division of Performance Reporting, *A-F Accountability System Overview* (2019). Available at https://tea.texas.gov/sites/default/files/TXSchools_Districts_4-pager_final_acc_FORWEB_0.pdf.

[6] In 2019, 26% of campuses improved their letter grade from the prior year, 18% decreased their letter grade from the prior year, and 56% kept the same letter grade. Texas Education Agency, Division of Performance Reporting, *A-F Accountability System Overview* (2019). Available at https://tea.texas.gov/sites/default/files/TXSchools_Districts_4-pager_final_acc_FORWEB_0.pdf.

Department should still enforce a process by which Applicants comply with the extant requirements that remain in §11.101(a)(3)(B),

> **"In order to be considered an eligible Site despite the presence of Neighborhood Risk Factors, an Applicant must demonstrate actions being taken that would lead staff to conclude that there is a high probability and reasonable expectation the risk factor will be sufficiently mitigated or significantly improved prior to placement in service and that the risk factor demonstrates a positive trend and continued improvement."**

Incentivizing HTC development near high quality schools is important for addressing racial segregation throughout the state. HUD's Affirmatively Furthering Fair Housing data shows that areas with higher levels of residential segregation, where Black and Hispanic residents live most apart from white residents, tend to have larger disparities in access to high-performing elementary schools across race and ethnicity.[7] A 2013 analysis of Texas schools examined the association between segregation by race/ethnicity, economic disadvantage, and language proficiency with TEA accountability ratings, and the authors found that segregation by socioeconomic status and race/ethnicity is a highly significant predictor of low school performance.[8] Without the QAP incentive to develop affordable housing near good schools, or show mitigation trends toward improvement near mediocre schools, these students will likely attend low performing schools. In 2019 in wealthier areas, 82% of district schools received an A rating, versus in the areas with the most poverty only 9% of district schools received an A.[9] The status quo for low-income renters is low performing schools. "Supply-side" housing policies such as placement of HTC hold great potential to break the link between economic status and educational opportunity by providing low-income people with the opportunity to live in higher income areas they could not otherwise access, providing entry to better schools.[10]

Mitigation for schools listed in subsection (D) includes meaningful evidence and services for students that can and should still be accomplished during the pandemic. Just because we are in a pandemic now does not mean that children living in HTC 5, 10, or 20 years from now should suffer in poor performing schools. Instead, the Staff and Board should continue to support development of affordable housing only near high performing schools, or near low performing schools with full mitigation as written in the QAP.

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[7] Ruth Gourevitch, *Federal Fair Housing Data Can Tell Us about Access to Quality Schools*, Urban Institute (2018). Available at https://housingmatters.urban.org/articles/federal-fair-housing-data-can-tell-us-about-access-quality-schools.

[8] Julian Vasquez Heilig and Jennifer Jellison Holme, *Nearly 50 Years Post-Jim Crow: Persisting and Expansive School Segregation for African American, Latina/o and ELL students in Texas*, 20(10) Educ. & Urban Society 1 (2013). Available at http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1001.41&rep=rep1&type=pdf.

[9] Texas Education Agency, *supra* note 4, at 2.

[10] Megan Gallagher et al., Moving to Educational Opportunity: A Housing Demonstration to Improve School Outcomes (2013). Available at https://www.urban.org/sites/default/files/publication/24271/412972-Moving-to-Educational-Opportunity-A-Housing-Demonstration-to-Improve-School-Outcomes.PDF, at 4.

We favor a return to past standards requiring HTC developments to be located near standard performing schools, with additional points awarded to applications that are served by exemplary schools. Unfortunately, the Department has moved away from incentives such as these which give tenants with children access to the single most desirable feature when they seek housing. At the very least, the QAP should not retreat further from incentivizing this critical amenity.

II. Additional Input on the 2022 QAP: Various Topics

Oppose – Specifying Criminal Screening Criteria in Supportive Housing Definition

In §11.1(d)(124)(B)(v) within the Supportive Housing definition, criminal screening criteria are specified. This was a new addition to the QAP a year ago, and Texas Housers continues to oppose inclusion of this criteria in the definition for several reasons:

- The criminal screening requirement will have a discriminatory effect on the basis of race. Looking at felonies, which are covered in the QAP criminal screening in (b) and (c) combined, the Sentencing Project finds that while 2.5% of the Texas population is disenfranchised due to past felony convictions, a full 7.4% of the state's African American population is disenfranchised by past felony convictions.[11] Black people compose only 13% of the general U.S. population but represent 38% of persons convicted of a felony in state courts and in state prisons.[12] Based on such disparities, **Black people in Texas are more likely to be excluded from renting in HTC Supportive Housing properties based on criminal records than people of other races.** The effect of the QAP change will fall unfairly and disproportionately on African Americans, a protected class under federal fair housing laws.

- Even a legitimate, nondiscriminatory interest by the Department in safety and neighborhood approval of projects does not allow this broad language. Such an interest could be achieved with less discriminatory effect by tailored requirements at Supportive Housing projects such as security cameras that do not disproportionately block Black tenants from renting at the properties. Even if disparate impact analysis did not render this criminal screening illegal in Texas under the Fair Housing Act, the Department has the ethical burden of avoiding disproportional racial impacts and should not support this clearly discriminatory language in Texas regulations.

[11] Sentencing Project, *State-by-State Data* (2016 data, accessed in 2020). Available at https://www.sentencingproject.org/the-facts/#detail?state1Option=U.S.%20Total&state2Option=0.

[12] American Civil Liberties Union, *Racial Disparities in Sentencing* (2014). Available at https://www.aclu.org/sites/default/files/assets/141027_iachr_racial_disparities_aclu_submission_0.pdf.

- Department Staff has stated that they do not track information on crime in or around HTC properties, thus there is no factual basis for a reduction in crime that this criminal screening might aim to achieve.

- Texans with criminal records experience difficulty finding housing, and their exclusion from housing programs including HTC Supportive Housing drives homelessness. Recently incarcerated people face an increased risk of housing insecurity and homelessness for reasons that range from individual challenges (such as employability or behavioral health challenges) to systemic barriers (such as criminal background restrictions or landlord discrimination).[13] The Department should work to ensure all Texans are housed, including people have been convicted of crimes and have lawfully completed their penalties and need to be supported to go on to live productive and fulfilling lives.

Please amend §11.1(d)(124)(B)(v) to state in full:

"(v) have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures)," **omitting all the other text in the sub-parts of section (v).**

New – Incentivize Highest Number of Housing Units as Tie Breaker

In §11.7 Tie Breaker Factors, the QAP should include a high-ranking factor for the project creating more units. With the vast unmet need for low-income housing in the state, and HTC's status as the largest contributor to meeting that need, the number of units created by a development should be a significant factor in project selection. Current trends are moving toward more expense per unit. The average tax credits per low-income unit has increased over 40% in the past five years. In 2020 a few outlier projects were awarded many more credits per unit (30% over the median), at the cost of not funding more units elsewhere. The Department must use incentives in the QAP to reward developments that create more units per tax credit. **We suggest adding a new tie breaker that awards the tied project with the most units.** This could be placed after the first tie breaker on poverty.

In addition, the Department should place a cap on tax credits per unit, which could be adjusted for different project types and locations.

In the future, we recommend that the Department consider ways to incentivize and award more multi-bedroom units in the HTC program. There is a need among families for 2- and 3-bedroom units, and that could be more strongly prioritized in award decisions.

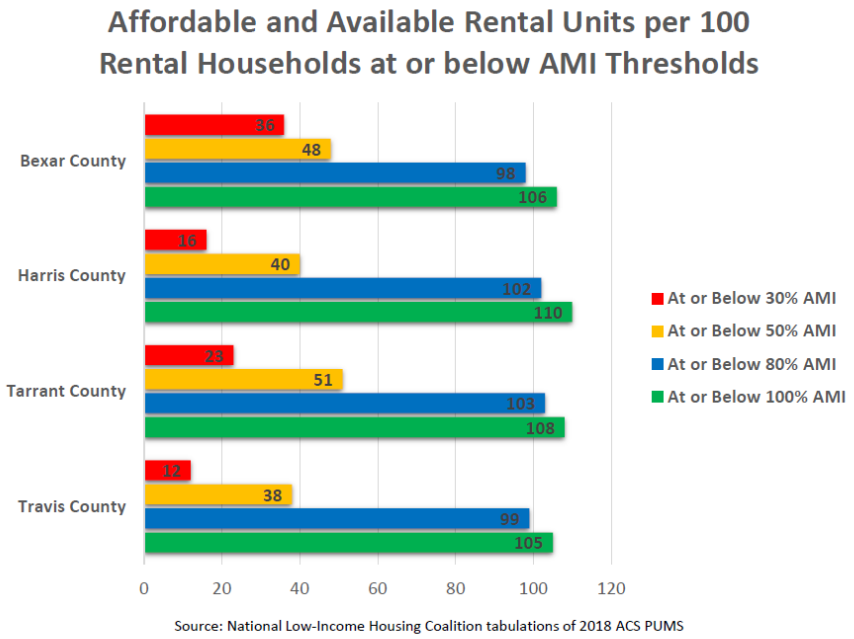
[13] Nancy G. La Vigne et al., *One Year Out: Tracking the Experiences of Male Prisoners Returning to Houston, Texas*, Urban Institute Justice Policy Center (2009). Available at https://www.urban.org/sites/default/files/publication/30436/411911-One-Year-Out-The-Experiences-of-Male-Returning-Prisoners-in-Houston-Texas.PDF.

Support and Strengthen – Rent/Income Targeting to Extremely Low Income Households

In §11.9(c)(2) Rent Levels of Tenants, Applications can receive up to 13 points for rent and income restricting a development for the entire Affordability Period. **We support this deep income targeting and suggest strengthening it by increasing the percentage of units for each item, as follows:**

> "(A) At least ~~20%~~ 40% of all Low-Income Units at 30% or less of AMGI for Supportive Housing Developments proposed by a Qualified Nonprofit (13 points);
>
> (B) At least ~~10%~~ 35% of all Low-Income Units at 30% or less of AMGI or, for a Development located in a Rural Area, ~~7.5%~~ 30% of all Low-Income Units at 30% or less of AMGI (11 points); or
>
> (C) At least ~~5%~~ 30% of all Low-Income Units at 30% or less of AMGI (7 points)."

Right now across the state, 838,414 Texan households who make 30% AMI or less are competing for 244,220 existing housing units that they can afford without being rent burdened.[14] The following chart shows the rental units available *per 100 households* at different income thresholds in populous Texas counties.



[14] National Low Income Housing Coalition, "All Gap Data for Texas," from *The Gap: A Shortage of Affordable Rental Homes*. Available at https://reports.nlihc.org/gap/2016/tx.

The market need is clear for more housing for Texans with extremely low incomes, defined as 30% AMI or below. The HTC program is uniquely positioned to send resources to assist communities to provide housing to this population, which is more vulnerable to homelessness and instability due to the lack of affordable housing. If Texas is going to meaningfully reduce homelessness, we need to provide inexpensive rental homes for people currently on the street and those at risk of becoming homeless. Directing HTC dollars to this area will have an impact more than many other policies, due to the vast amount of money at play.

The proposed increase in HTC from $1.5M to $2M per project is based at least in part on the expectation of increased federal investment in the HTC in the near future. Any increase in dollars to a project should be tied directly to an increase in ELI-targeted units at that development; we recommend requiring at least 30% of low-income units at 30% AMI levels in order to get the HTC boost. Increased investment needs to be tied to the ability to meet the market demand and to house our most vulnerable citizens.

Support and Strengthen– Special Housing Needs Beds Dedicated to Continuum of Care Homelessness Connection

We support the existing provisions in §11.9(c)(6)(A) and (B) that grant points for dedicating beds and marketing to residents with Special Housing Needs including homelessness. The Continuum of Care organizations throughout the state play a pivotal role in coordinating homelessness systems, and due to federal requirements each Continuum of Care maintains a "coordinated entry" prioritized list of homeless people who can be housed in these units. Inclusion of these provisions in the QAP is a powerful way to support local efforts to end homelessness.

In order to strengthen the Special Housing Needs provisions, we recommend that language in both (A) and (B) be amended from "Throughout the Compliance Period…" to "Throughout the Affordability Period…" By adding the extended use period to the current requirement, even more people experiencing homelessness or with other needs can be assisted in these units.

Oppose – Striking Reminder about Fair Housing Obligations in Local Government Support

In §11.9(d)(1) Local Government Support, the new draft suggests striking language that reminds local governments to consult their own staff and legal counsel regarding consistency of their actions with fair housing laws. While technically all local governments should be doing such consultations, and should be placing HTC housing in their communities in a way that affirmatively furthers fair housing, Texas Housers has deep concerns that this is not consistently happening. **We recommend reducing the**

amount of text that is stricken here, leaving in the QAP the existing sentence: "A municipality or county should consult its own staff and legal counsel as to whether its handling of their actions regarding such resolution(s) are consistent with Fair Housing laws as they may apply." This achieves the aim of reducing unwieldy, redundant language that lists a smattering of possible documents to violate, while still reminding local governments of their obligations that are triggered by weighing in on HTC placement. The Department has a duty under federal law to affirmatively further fair housing. This includes educating other units of government who interact with the Department's programs about compliance with fair housing laws.

Amend – Reduce Points for State Representative Letter

This comment affects §11.9(d)(5) Community Support from State Representative.

Tex. Gov't Code §2306.6710(b)(1) designates how the QAP point system must score and rank Applications. It provides an ordered list of criteria that must be "prioritize[d] in descending order" that *ends* with a state representative's written statement. This statute requires that the state representative's statement be weighted less than many other factors, including second-to-last quantifiable community participation from neighborhood organizations.

In the QAP (current and this draft), §11.9(d)(5) gives from 8 points to *negative* 8 points based on the state representative statement. This is a point spread of 16 points. The framing of negative points obscures the power of this item a bit, but the reality is that this item differentiates projects by up to 16 points. The neighborhood organization item at §11.9(d)(4) gives a maximum of 9 points, with no negative points.

Negative points can result in a priority. Pretending that negative points don't increase the priority of a scoring item would lead to the absurd result that any item could offer, e.g., negative 50 points for failing to reach the highest point option. Such a system with negative points clearly increases the priority of a scoring item by making that item as important as the total number of points at stake, whether positive or negative.

Here, the fact that the points are out of alignment with the statute requires an immediate change. There are a variety of ways to address this, up to rearranging all the points for items above in the Tex. Gov't Code §2306.6710(b)(1) list. However, the easiest fix and what we recommend is to simply reduce the points from the state representative statement in §11.9(d)(5) from a 16-point spread to an 8-point spread. **We recommend the following changes:**

> (5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2; §2306.6710(g)) Applications may receive up to ~~eight (8)~~ four (4) points for express support, zero points for neutral statements, or have deducted up to ~~eight (8)~~ four (4) points for express opposition.
>
> …

(B) No Letter from a State Representative…

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

(I) ~~Eight (8)~~ Four (4) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; or

(III) Negative ~~eight (-8)~~ four (-4) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development.

(ii) Within the extraterritorial jurisdiction of a municipality, the Application will receive points under subclause (I) or (II) or (III) of this subparagraph and under subclause (IV) or (V) or (VI) of this subparagraph:

(I) ~~Four (4)~~ Two (2) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; or

(III) Negative ~~four (-4)~~ two (-2) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development; and

(IV) ~~Four (4)~~ Two (2) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(V) Zero (0) points for no resolution or a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development; or

(VI) Negative ~~four (-4)~~ two (-2) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development.

(iii) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

(I) ~~Eight (8)~~ Four (4) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(III) Negative ~~eight (-8)~~ four (-4) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development.

Support – Extended Affordability Periods

In §11.9(e)(5) Extended Affordability, we support maintaining the current language granting points for Applicants who commit to extend the Affordability Period to 35, 40, or 45 years. The Department has taken an important step toward ensuring that the public investment in HTC developments in Texas pays off and that these properties remain affordable in the long term for low-income residents. In the future we hope to see this section strengthened by adding points for affordability up to 55 years, and/or for *mandating* a longer affordability requirement for at least 50 years. This protects our joint investment in these properties and would help ameliorate our housing crisis in the state that most affects the lowest-income Texans.

Support and Strengthen – Right of First Refusal (ROFR)

In §11.9(e)(7) Right of First Refusal, Applicants may receive one point for agreeing to provide a ROFR upon the end of the Compliance Period.

1. Prevent automatic changes to LURA that reduce ROFR time period.

Current owners of HTC developments regularly approach the Department Staff and Board to reduce their contractual ROFR period from two years to 180 days. The Staff approves the change automatically as a procedural matter, and the Board approves these as a matter of course in their consent agenda. We estimate dozens of properties every year are reducing their contractual LURA through this inappropriate process. A LURA is a contract that does not simply change, and these owners are bypassing what should be a difficult process, reducing the likelihood that the public investment in the HTC property is preserved as low-income housing over the long term. Even with a two year ROFR period, it does not seem that many preservation buyers are identified; and with only l80 days, it becomes nearly impossible. The argument we have heard from Department Staff is that because the Texas Legislature reduced the required ROFR period to two years, that they feel obligated to automatically apply this retroactively to existing LURAs. However, this is not what the Legislature enacted and is not how contracts work. If the law changes to make a provision illegal, a procedural change like this might be appropriate. In this instance though, the law changed in a way that should have no bearing on the content of existing LURAs, which have taken into account past promises and points awarded to result in a certain ROFR provision. Reducing the ROFR period is a significant change that warrants deep policy consideration as it can reduce the ability for the Department to find a preservation buyer.

While an owner might be financially benefited by a reduced ROFR term, the tenants in the development are exposed to serious possible harm, including rent increases and displacement into a very tight housing market. The Department should not expand on the

action of the Legislature when such serious and disproportionate harm could accrue to the Texans that the Department was created to serve.

While a change to the QAP should not be necessary to stop this problematic practice by the Department, we suggest the following to provide a clarification to all parties:

> Append to the end of §11.9(e)(7) Right of First Refusal. "…Such ROFR must be included in the LURA, specifying the required time period for the ROFR."

Perhaps the current LURAs being changed have some open-ended language that is allowing these changes, and specifying in the LURA the designated time period should be sufficient to stop the Department from making changes to the LURA for no one's benefit but the owners'. The nearly automatic change to the LURA reduces trust, consistency, and reliability in the whole QAP and selection process.

2. Make commitment to a ROFR a threshold requirement for 4% and 9% HTC.

With very costly public investment provided to HTC developments, more attention should be paid to preserving the assets for long-term affordability. This will increase our housing supply for low-income Texans where there is still unmet need, and it will make our public investment go farther. The ROFR is one tool to help increase preservation of HTC affordability.

The QAP can support this by making commitment to a ROFR a threshold requirement for both 4% and 9% HTC. Suggested language:

Development Owners must agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Tex. Gov't Code, §2306.6726 and the Department's rules including §10.407 of this part (relating to Right of First Refusal) and §10.408 of this part (relating to Qualified Contract Requirements).

3. Require a two-year ROFR notice period.

Ideally this could be incorporated into the threshold requirement suggested above. If that is not instated, then it could be incorporated into the existing §11.9(e)(7) one point for Competitive HTC Applicants agreeing to a ROFR.

New – Grant Points to Waive Right to Qualified Contract

We recommend adding a point to developments that waive their right to use the qualified contract process to exit the HTC program. This could be placed at the end of §11.9(e), "Criteria promoting the efficient use of limited resources and applicant accountability," as a new item (9). Suggested language:

§11.9(e)(9) Waive Right to Qualified Contract. An Application may qualify to receive one point for Development Owners that will agree to waive their right to a qualified contract. Such waiver must be included in the LURA.

The Department should study and regularly share information on when projects exit the HTC program through qualified contracts.

Support and Strengthen – Applicability of Site and Development Requirements to Rehabilitation Projects

The existing QAP at §11.101 Site and Development Requirements and Restrictions includes an array of rules that protect future tenants of HTC housing from unsafe and unhealthy conditions. We support maintaining and strengthening these protections in the future. **One change that should be made immediately is to apply these existing standards to Rehabilitation projects.** In the QAP text, this would be effectuated by amending the text as follows:

§11.101(a)(1) Floodplain: "New Construction or Reconstruction or Rehabilitation Developments located within a 100 year floodplain…" and "~~Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from HUD or USDA are exempt from this requirement… as certified to by a Third Party engineer.~~"

§11.101(a)(2) Undesirable Site Features. "~~Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (VA) may be granted an exemption…Historic Developments that would otherwise qualify… prior to the filing of the Application.~~"

Safety in a floodplain is of utmost importance to low-income residents of HTC properties. Those properties in Galveston and other parts of the state prone to natural disasters rely on developers, owners, property managers, and the Department for their safety; these provisions are where the Department can make its mark. The QAP as written recognizes the importance of the flood provisions in this section by their very inclusion, and they must be applicable to all people who are going to be living in Rehabilitated HTC developments for decades to come. An HTC Rehabilitation development infuses a property with improvements, and the result should be no less safe or desirable than other HTC developments. Just as these rules protect future residents of New Construction and Reconstruction, they should also protect future residents of Rehabilitation.[15]

[15] Note that Sandpiper Cove Apartments, a HTC property currently in the Department's inventory, is the type of project that could benefit from these improvements. Sarah Smith, *Living Hell: We Need Out of Here*, Houston Chronicle. Available at https://www.houstonchronicle.com/news/investigations/article/Living-Hell-housing-tenants-hud-properties-problem-16000650.php.

Support – Ineligibility to Build Near Poorest Performing Schools

In §11.101(b)(1)(C), we support the current draft that maintains the ineligibility of developments within certain school attendance zones. Rightly, schools that had the lowest state ratings (F *and* Improvement Required) in *both* the most recent years of TEA data should not be the local option for children living in HTC developments. We applaud the Department for ensuring that families in HTC properties have local access to educational opportunity, one of the strongest factors to exit generational poverty.

Support and Strengthen – Add Ineligibility of Certain Applicants

In §11.202. Ineligible Applicants and Applications, the QAP outlines reasons for which an Applicant may be deemed ineligible for Department funding. We suggest an addition to this list of reasons for ineligibility.

Applicants who have been in control of TDHCA-portfolio properties with abysmal inspection scores for more than two years should be ineligible to receive HTC. Section 11.202(1)(F) addresses this in part by blocking Applicants who have been found ineligible based on previous participation review. However, despite the detail and care placed in creating those previous participation rules and accountability systems, some owners have behaved so poorly and yet escape accountability. The prime example is Millennia Companies, current owner since 2005 of Sandpiper Cove Apartments in Galveston, Texas. Despite recognition through low REAC scores and HUD's own admission that this HTC property currently in the Department's inventory is in an awful state, there is no clear rule disallowing them from applying for new HTC right now. To determine whether they would be ineligible, they would have to apply and the Department would conduct a previous participation review before the public could know whether they might be awarded. A simple and straight forward assertion in this section of the QAP would alert such owners of the certain consequences of their negligent actions that harm Texans.

> §11.202(1) Applicants. An Applicant may be considered ineligible if any of the criteria in subparagraphs (A) - ~~(N)~~(O) of this paragraph apply to those identified on the organizational chart for the Applicant, Developer and Guarantor. An Applicant is ineligible if the Applicant, Developer, or Guarantor: …
>
> (O) Has at any point in the past thirty years been in control of a property in the Department's inventory where the REAC score was below 50 (or the equivalent UPCS score) for two consecutive years. To be disqualified based on this

subsection, the party must have been in control of the property for two full years prior to the two years of inadequate inspections.

As part of the application process, Applicants can be asked to certify that they comply with this rule. Any noncompliance should be revealed by the Applicant or could be brought forward by a third party if necessary.

Oppose - Developer Fee Based on Costs

In §11.302(e)(7)(A), Developer Fee for HTC is based on costs of the project. This is a lost opportunity to incentivize something that would have greater benefit to Texans overall: more housing units. **We recommend amending the Developer Fee such that the fee is based on number of units rather than on costs.** With a massive need for more low-income housing units for Texans, this would allow developers to benefit from being creative and resourceful to maximize the output of units, making more places for people to live. The current structure has the wrong incentives, forcing developers to look at overall costs as the way *they* get paid for their work. To best utilize the public investment in this program, the metric of unit count aligns the developers' interests with the interests of Texans who need housing and the interests of Texans who want to see less homelessness and housing instability in their communities.

Again, we thank you for all of your time and attention in reviewing these comments! Please be in touch using my contact information below if you'd like to discuss anything further.

Sincerely,

Elizabeth Roehm

Elizabeth Roehm
Staff Attorney
Texas Housers
elizabeth@texashousing.org
(512) 677-5809

Friday, October 8, 2021

Brooke Boston, Deputy Executive Director of Programs
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

RE: Public Comments to Texas Department of Housing and Community Affairs (TDHCA) Draft 2022 Housing Tax Credit Program Qualified Allocation Plan (QAP)

Dear Brooke:

On behalf of The Land Experts, a Texas Certified HUB, please accept this written correspondence as our formal submission of public comments to the current draft of the TDHCA 2022 Housing Tax Credit Program QAP.

I. **§11.3 Housing De-Concentration Factors**:
We are strongly opposed to the changes allowing Supplemental Allocations of 2022 credits to be considered eligible for review under the Two Mile Same Year Rule and One Award per Census Tract Limitation deeming other Applications illegible for review. This change is punitive to new 2022 transactions. Although the 2019 and 2020 transactions are under consideration for an allocation of 2022 credits, without the extraordinary circumstances we are currently experiencing these developments would have already been factored for deconcentration.

We are advocating to remove this language or allow for the Governing Body to deem that the proposed Development is consistent with the with the jurisdiction's obligation to affirmatively further fair housing and that the Governing Body of the appropriate municipality or county containing the Development has no objection to the Application.

Since it is unknown which 2019 and 2020 transactions will submit a Supplemental Application for 2022 credits, we strongly request that a Notice of Intent is required by TDHCA in advance for planning purposes for new 2022 Developments.

II. **§11.9 Competitive HTC Selection Criteria**:

a. **§11.9(7)(A) Proximity to Job Areas.**: We ask that strong consideration is made to keep the jobs scoring as currently written in the draft QAP. The **4**-mile radius for municipalities of **499,999** or less allows these municipalities the opportunity to receive an award. Historically, these municipalities have not been competitive. A prime example is in Region 3, where for the first time in several years smaller municipalities such as McKinney and Denton are competitive for **9%** awards.

This is very important because smaller cities as these municipalities are experiencing exponential growth and their housing needs are just as vast and important as larger

municipalities. The current radius allows these municipalities the opportunity to address their communities housing needs. I'll cite cities such cities as McKinney Irving and Denton as excellent examples that have been shut out of the 9% program in recent years.

b. **§11.9(7)(A)(iv) Concerted Revitalization Plan:** Concerted Revitalization Plans are a very important tool for municipalities to revitalize areas or neighborhoods that have had significant disinvestment and lack quality housing. It is imperative for municipalities to continue to determine and drive where the new investment or development should occur to support their revitalization plans.

   We disagree with the language allowing **7** points to CRPs that are located within a QCT and CRPs that are within a non-QCT receive only **5** points. We would like to suggest having the Governing Body of the municipality determine or provide a resolution for CRPs that are located with non-QCTs to receive an additional **2** points. This allows the municipality the ability to decide and opportunity to implement their adopted CRPs in terms of housing investment.

Please feel free to contact me with any questions or concerns.

Respectfully,

Kim Parker

Kim Parker
Managing Member

Brooke Boston

From: tim irvine <tirvine49@gmail.com>
Sent: Friday, October 8, 2021 10:13 AM
To: Brooke Boston
Subject: Re: Comments on proposed qualified allocation plan

You are most welcome. You are welcome to ascribe the comment to me by name since all you had to go on was my email address. I also consent to the release of the email address. It may be obvious from the tenor of my comments, but stuff coming in from third parties (as well as permitted and documented communications under the ex parte provisions) ought to be kept in folders separate from the actual application until and unless they are incorporated via formal amendment or supplementation. Cheers!

Timothy K. Irvine

On Fri, Oct 8, 2021 at 9:43 AM tim irvine <tirvine49@gmail.com> wrote:

> The Board, as well as the Governor, who must approve and may alter the qualified allocation plan ("QAP"), establish the threshold requirements and the substantive scoring priorities in accordance with statute and the discretion afforded thereby and create the tie breakers. Therefore the final adopted QAP reflects the policies of both the Board and the Governor. As required by state law, the QAP must adhere to applicable statutes.
>
> It is recommended that the Board or Governor add to §11.1
>
> In administering this QAP those applications in each set-side that meet all threshold and other requirements and are substantively entitled to the highest scores and tie breaker factors will best fulfill the policy objectives of this QAP. Accordingly, staff should use as liberally as possible the administrative deficiency process and any and all other processes provided for by applicable statutes and/or rules to enable such applicants to fulfill the required documentation of all aspects of their applications including, but not limited to, matters bearing on scoring, tie breakers, compliance with threshold requirements, and eligibility.
>
> It is recommended that the Third Party Request for Administrative Deficiency Process be addressed as follows:
>
> The application in any set-aside that is entitled to the highest score and best tie breaker outcome is, as a substantive matter of fact, the application which best fulfills the Board's and Governor's policy objectives, yet in recent years the application of the rules has been used in a way that may deprive those applications of the points to which they are substantively entitled through processes involving highly technical flaws. One

example of this has been the application of the third party request for administrative deficiency or "RFAD" process. In substance, it has become a process by which applicants are appealing other applications, and it creates a record beyond the application itself being included in what the Board considers in making awards. Neither of these occurrences aligns with applicable statutes.

It is recommended that §11.10, relating to Third Party Request for Administrative Deficiency for Competitive HTC Applications, be struck in its entirety. In support of this recommendation this commenter refers to the express language in Tex. Gov't Code §2306.6715(e), which provides that in deciding an appeal the Board may not consider anything other than the application. The manner in which the RFAD process has been administered includes another applicant, who is in effect a challenger (prohibited by Tex. Gov't Code §2306.6715(b)), effectively amending the application being challenged, something prohibited by Tex. Gov't Code §2306.6708, which specifies the method by which an application may be amended or supplemented.

-

In the event the Board and the Governor do not concur in the striking of this provision, it is recommended that §11.10 be replaced with the following:

If any third party provides staff with information that they believe or contend indicates a deficiency in one or more aspects of another person's application, the staff's determination as to how to handle the matter shall not be subject to appeal, and any materials submitted in connection therewith shall not become part of the application solely by virtue of their being submitted for the staff's consideration. If the staff determines, however, to address such a matter by means of one or more of the mechanisms in this qualified allocation plan, including but not limited to issuance of an administrative deficiency, issuance of a new or revised scoring notice, issuance of a notice of a determination of ineligibility, or notice of termination, the application may be amended or supplemented in accordance with such provisions, but no party other than staff or the applicant may amend or supplement the application in addressing such matters. The Board may consider those staff and/or applicant-generated amending or supplementing materials that have become part of the application in any public proceedings before the Board relating to that application. No third party may present additional materials not already contained in the application for the Board to consider, whether in direct testimony or presentation, via staff or in a Board proceeding, and the Board must make its decision based only on those materials contained in the application, as amended and/or supplemented, in accordance with this qualified allocation plan.

TROPICANA BUILDING II, LLC

2505 E. Missouri, Suite 300
El Paso, TX 79903
(915) 821-3550

September 29, 2021

Brooke Boston
TDHCA
Sent Via email to: Brooke.boston@tdhca.state.tx.us

RE: COMMENTS ON PROPOSED 2022 QAP

Dear Brooke,

We write to support language in Subchapter F of the 2022 QAP with the following comments:

1. **11.1001(a). General:** We support this language as written, allowing only 2019 and 2020 applications to apply for supplemental credits. There has been some discussion about allowing 2021 applications to apply for supplemental credits, which we oppose. By allowing 2021 applications to apply for credits this will dilute and limit much needed additional funding for 2019 and 2020 tax credit developments that were caught completely off guard by the staggering inflation the construction industry is experiencing in 2021. Further, there were signs that this inflation was going to happen prior to the close of the 2021 application period, so developers should have made appropriate cost adjustments to their 2021 applications.

2. **11.1001(d). General:** We support the consensus of public comment that was received at the roundtable discussion that would clarify (in addition to items already clarified by the draft rule) that the "Cost of Development per Square Foot" scoring item from the original application will not be impacted by this supplemental application and award of credits. Additionally, it should be clarified that the "Leveraging of Private, State and Federal Resources" scoring item from the original application will not be impacted by this supplemental application and award of credits.

3. **11.1002. Program Calendar for Supplemental Housing Tax Credits:** We support the consensus of public comments received

at the roundtable discussion regarding pushing the Calendar dates forward one month, so that applications are due in December and awards can be made in March (or sooner). We also support the consensus of public comments from the roundtable to include a requirement for a "notice of intent to apply" for supplemental credits prior to the Governor's signing of the 2022 QAP.

4. **11.1003(a). Maximum Supplemental Housing Tax Credits, Requests and Award Limits:** We support a slight increase to the Supplemental Credit allocation to $6.5 million as opposed to the $5 million amount published. This would equate to 10% of the amount of estimated credits from the approved 2022 RAF methodology (staff draft published on TDHCA website and dated 5/13/2021). By increasing this amount, it will allow for a larger number of 2019 and 2020 to be saved from the Force Majure event of unforeseen inflation due to labor and supply shortages, while still making 90% of the funds available for 2022 allocations. Further, we believe that Congress and the President are going to increase the amount of 9% Low Income Housing Tax Credits (LIHTCs) available to states, as broad, bi-partisan momentum continues to gather for passage of the Affordable Housing Credit Improvement Act (AHCIA). The AHCIA would increase the allocations of 9% LIHTCs to the states by 50%.

5. **11.1003(b). Maximum Supplemental Housing Tax Credits, Requests and Award Limits:** We believe that in order to try and help as many developments as possible, the proposed 15% cap on supplemental credit requests should be cut in half to 7.5%. This will allow twice as many developments from the 2019-2020 rounds to be helped through this Force Majure event as proposed in the current rule.

6. **11.1008. Supplemental Credit Applications Underwriting and Loan Policy:** We support this item as written. It is well drafted and ensures that this additional allocation of credits goes towards mitigating the costs of the hyperinflation being experienced in the market and does not go towards increasing developer fees or decreasing deferred amounts of developer fees.

Sincerely,

R. L. "Bobby" Bowling IV,
President

TRUE CASA CONSULTING, LLC

October 7, 2021

Texas Department of Housing and Community Affairs
Attn: Matthew Griego
QAP Public Comment
P.O. Box 13941
Austin, TX 78711-3941
Submitted Via Email: htc.public-comment@tdhca.state.tx.us

Re: Comments to the Staff Draft of the 2022 Qualified Allocation Plan

Dear Mr. Griego –

Thank you for the opportunity to comment on the DRAFT 2022 Qualified Allocation Plan. I want to begin by thanking staff for being open to input from the developer community and making big changes to the Proximity to Jobs and Cost per Square Foot sections of the QAP.

My comments are below:

Section 11.1(d)(124)(B)(iv) – Definition of "Supportive Housing":

From experience, this requirement of a "guaranty agreement" is not needed in the case of a tax credit financed Supportive Housing development. A tax credit financed development will automatically have a Guaranty Agreement with an operating deficit guarantee requirement. This caused a great deal of confusion on the last tax credit financed Supportive Housing development I closed. The revision below is suggested:

(iv) provide a fully executed guaranty agreement whereby the Applicant or its Affiliate assume financial responsibility of any outstanding operating deficits, as they arise, and throughout the entire Affordability Period. Not required for Applications seeking housing tax credits; and

Section 11.1(d)(124)(E)(ii)(V) – Definition of "Supportive Housing":

In an effort to remove "gotchas" from the QAP, the following section was added to the Supportive Housing definition last year and the intent is not clear. I am not sure why this would be a requirement of only Supportive Housing projects with must-pay debt vs. a project without debt? Most nonprofit organizations are, by nature, also Community Housing Development Organizations that already require in their bylaws a specific number of board members be residents of affordable housing communities. Nonprofit Board structure and governance is a non-stop job for most nonprofits and this random requirement, while seemingly innocent in nature, causes re-writing of bylaws, shuffling of board seats and on-boarding of new board members at a time when a new board member would not naturally be added.

Please remove **Section 11.1(d)(124)(E)(ii)(V).**

Section 11.4(c)(3)(E)

Now that Section 11.9(d)(7) has been changed to require an Application selecting Concerted Revitalization Plan points to be located in a QCT, this basis boost item is not possible. Instead of removing this boost option, I support TAAHP's recommendation allowing a second option under 11.9(d)(7) that would allow for a letter by the local political subdivision that explicitly identifies the proposed Development as contributing to the concerted revitalization efforts of the municipality or county (as applicable) to count for 2 points.

Section 11.5(1) – Nonprofit Set-Aside

In my work consulting for non-profits the clause below has caused confusion, so I have suggested some clean-up that reflects how these structures are almost always organized:

If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must the Manager of the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the Manager of the controlling Managing Member.

Section 11.5(2) – At-Risk Set-Aside

I would like there to be some clarity on the interpretation of the 5% cap for developments meeting the USDA requirements. This 5% cap came into question during the 2021 cycle when after meeting the 5% set-aside awards in the At-Risk Set-Aside were made by score which resulted in multiple USDA projects receiving an award beyond that 5% cap. The troubling issue with this decision is that USDA projects will win a tie-breaker every single time as they are located in mostly rural areas vs. At-Risk projects that are most often located in Urban areas. Average distance in tie break for 2021 USDA was 15 miles. Average distance At-Risk excluding USDA was 1.5 miles. This simply is not fair. Another issue with this process is that there are actually two references to At-Risk being made – one relating to the Set-Aside as a whole and the other relating to the specific "At-Risk" sub-section of the Set-Aside. If the pre-application includes a selection of USDA or At-Risk and you must select one, then that is your Set-Aside. **Once that 5% amount is surpassed for USDA Set-Aside, the balance should go to projects that selected the "At-Risk" Set-Aside in their pre-application.**

I support the comments of Tracey Fine with National Church Residences in the modification of this section to limit the USDA set-aside to only 5% and once that 5% is reached to then fund developments that meet the At-Risk Set-Aside Development definition and that selected the At-Risk Set-Aside at pre-application by score and tie-breaker prioritization.

Section 11.8(b)(2)(B) – Pre-Application Requirements (Competitive HTC Only)

There was massive confusion caused by the following wording added to the QAP last year: "Regardless of the method of delivery, the Applicant must provide an accurate mailing address in the Pre-Application." This posed a GOTCA for the majority of applicants last year. **Please remove this requirement as it serves no purpose other than to be a GOTCHA.** Further, not all notifications are sent via physical address and many Applicants choose to notify via email with documentation of receipt. There is only space in the pre-application for address entry for the neighborhood organizations. Even if

TDHCA modifies the application to require entry of these addresses, I am still not clear of the purpose served when alternative forms of notification are available.

Section 11.9(c)(7) Proximity to Jobs Area

I strongly support staff's modification of this section to increase the jobs radius and am hopeful this will mitigate the issue of small, high-priced, commercial-oriented sites.

11.9(d)(7)(A) Concerted Revitalization Plan

I am grateful of staff's modification of this section to greatly reduce the burden on Applicants of collecting and assembling documentation to meet past requirements as well as the burden on municipalities/counties and TDHCA staff. I do not support requiring the CRP areas to only be QCT-qualified areas as this would eliminate areas that are currently revitalizing and may no longer qualify as a QCT, but would otherwise very clearly meet the requirement of a Concerted Revitalization area. **I strongly support TAAHP's recommendation to add an option for sites not located in a QCT to provide a letter from the local government rather than a resolution that explicitly identifies the Development as contributing to the concerted revitalization efforts of the municipality or county.**

11.9(e)(7)(B) Right of First Refusal

Staff has indicated that this section has been added in an effort to satisfy certain requires of IRC Section 42. It was also noted that TDHCA staff plans to implement other changes in the 2023 QAP to bring the program rules in compliance with IRC Section 42.

This new section is an entirely new scoring concept that is not straight-forward in execution or process. **I ask that staff remove this section from the 2022 QAP and seek input from the industry on this section and any others involving newly initiated Section 42 compliance for the 2023 cycle.**

Subchapter F. Supplemental Housing Tax Credits

Thank you to staff on the though process that has gone into this section. **I ask that the cap on supplemental credit request per applicant be reduced from 15% to 7% due allow the $5M to stretch further and touch more Applicants.**

Thank you so very much on the opportunity to comment on this year's DRAFT QAP and Rules.

My Best,

Jenn Hicks

Volunteers of America® | NATIONAL SERVICES

October 7, 2021

Ms. Brooke Boston
Texas Department of Housing and Community Affairs
Rules Comments
P. O. Box 13941
Austin, Texas 78711-3941

RE: 2022 QAP Comment

Dear Brooke:

Thank you for the opportunity to provide public comment for the 2022 QAP. Below are the comments from Volunteers of America National Services

USDA Set Aside must be capped at 5%

- In both the 2021 and draft 2022 QAP, tie breakers are an issue for At Risk transactions if USDA exceeds 5%. The QAP is designed for a USDA transaction to receive a perfect score and because the tie breaker (if over 16% poverty) is the distance to the next LIHTC deal, USDA will win every time as was the case in 2021. **The average distance for the 2021 USDA properties was 15 miles. The average distance for At Risk excluding USDA was 1.5 miles.** The urban and metro areas will lose every time when compared to USDA/Rural on distance to nearest LIHTC in a flat scoring QAP. Typically USDA applications are less likely to have an existing LIHTC project in their census tract. Both the Underserved Points and the Tie-Breaker favor applicants in the most remote and least populated areas of the state.

- USDA applications have different scoring such as if located in an **urban** area they can score as a **rural** area property therefore receiving the automatic 7 CRP points. This is an unfair advantage and allows a higher number of perfect scoring applications, further pushing out the remaining At Risk competition.

- In order to receive Pre-Application points an application MAY NOT change the set aside selected. In previous rounds the USDA applicant selected USDA but not At Risk. If it is determined in the unlikely scenario that a USDA does qualify for At Risk outside of the USDA 5% allocation, they must have selected At Risk set aside or lose the 6 pre-application points.

Volunteers of America® | NATIONAL SERVICES

Therefore please consider capping the USDA Set Aside at 5%.

Thank you alos for addressing the **Sponsor Characteristics** by offering Option C to promote more service enriched housing sponsored by non-profits.

Again thank you so very much for the opportunity to provide comments and for the in person roundtables that you have scheduled. The dialogue that results in these meetings is so valuable to all.

Sincerely,

Deborah Welchel

Deborah Welchel
Senior Development Director

ZIMMERMAN™
PROPERTIES

Beyond Buildings.

October 8, 2021

Ms. Brooke Boston
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, TX 78701

RE: Public Comment on Proposed 2022 Qualified Allocation Plan (QAP)

Dear Ms. Boston:

We appreciate staff's thoughtful development of the proposed 2022 QAP (10 TAC Chapter 11) and the opportunity to provide public comment on it. We have provided comment in this document on several sections that we believe need adjustments to better serve both TDHCA staff and the development community. Comments are provided in the sequential order of the QAP.

Please do not hesitate to contact us if you have any questions.

Sincerely,

Andrew Sinnott

Andrew Sinnott
Zimmerman Properties, LLC

cc: Matthew Griego, Multifamily Policy Research Specialist

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Beyond Buildings.

11.1(e) Data

Revise language to state: "Where this chapter requires the use of American Community Survey or Housing & Urban Development data, the Department shall use the most current data available as of October 1 of the year prior to Application, unless specifically otherwise provided in federal or state law or in the rules and with the exception of census tract boundaries, for which 2010 Census boundaries will continue to be used."

Rationale: While most census tract boundaries have not changed from the 2010 to 2020 decennial Census, the mapping that our team has done thus far has been based on 2010 census tracts since that was what has been available for most of the past few months. We believe using 2020 census tracts will be able to be adopted more broadly with the 2023 QAP.

11.4 Tax Credit Request, Award Limits and Increase in Eligible Basis

Revise language to state: "Any Supplemental Allocation of credits awarded to such parties will carry a value of $~~1.50~~3.00 for every $1.00 Supplemental Allocation awarded when calculating the $~~3~~8,150,000 ~~million~~ maximum for all 2022 Applications."

Rationale: We believe a more significant reduction to an Applicant's cap is necessary for Applicants requesting Supplemental Credits. Additionally, we have calculated that making a pool of up to $8,150,000 of Supplemental Credits available to all 2019 and 2020 9% awardees would allow each Applicant to request up to 5% more credits than their original allocation. Despite the increase from $3 million referenced here and $5,000,000 referenced in 11.1003, we believe that, when combined with the $3.00 penalty for every $1.00 in Supplemental Credits requested, not all $8,150,000 would be requested. Whereas $5,000,000 with a $1.50 penalty with the ability to request up to 15% or any percentage greater than 5% would assuredly exhaust all $5,000,000.

11.9(c)(7)(A) Proximity to Jobs

No change requested. We would encourage staff to keep this section of the QAP as it was proposed.

11.9(e)(7)(B) Right of First Refusal

We respectfully request that this section of the QAP be deleted.

Rationale: The term "single-family detached homes" is not referenced in:

- IRC Section 42(m)(1)(c) regarding selection criteria that must be used in QAPs. This section of the code does, however, require QAPs to include energy efficiency in the selection criteria, and the most energy efficient projects include multifamily buildings.
- Tex. Gov't Code 2306.111 (Housing Funds)
- Subchapter DD (Low Income Housing Tax Credit Program) of Texas Gov't Code Chapter 2306

While IRC Section 42(m)(1)(c)(viii) does require states to include "projects intended for eventual tenant ownership" as part of the selection criteria in a QAP, it does not specify "single-family detached homes." We believe this proposed section of the QAP would benefit from a more robust dialogue with the development community before being implemented and respectfully request that 11.9(e)(7)(B) be deleted from the 2022 QAP.

11.10(d) and (f) Third Party Request for Administrative Deficiency

These two subsections seem to contradict each other, with (d) stating: "The RFAD *and any testimony presented to the Board* regarding the result of an RFAD may not be used to appeal staff decisions regarding competing Applications," while (f) states: "When the Board receives a report on the disposition of RFADs it may, for any staff disposition contained in the report, change the conclusion if it believes the change is necessary to bring the result into compliance with applicable laws and rules as construed by the Board; or *if based on public testimony*, it believes staff's conclusion should be revisited, it may remand the RFAD to staff for further consideration, which may result in a reaffirmation, reversal, or modification." The QAP should be clear about whether or not public testimony may be used to appeal staff decisions made through the RFAD process. We would be amenable to whichever direction staff decides to go, but would just encourage staff to make this rule more clear.

11.902(f) Appeals Process

Delete 11.902(f) as proposed and replace it with: "Competitive Housing Tax Credit Application appeals must be submitted no later than four weeks prior to July Board meeting at which awards from the Application Round will be made so that all appeals can be resolved at Board meeting(s) prior to July Board meeting at which awards from the Application Round will be made."

Rationale: Having appeals for Competitive Housing Tax Credit Applications go to the late July Board meeting creates unnecessary chaos for staff and the development community, to the point where allocations may be mistakenly made given the considerations of various collapses and set-aside requirements. We would encourage staff, either in this rule or elsewhere in the QAP, to maintain a timeline whereby all appeals must be adjudicated no later than the first July Board meeting so that staff can be given adequate time to make sound allocation decisions and the development community can double-check those allocation decisions.

Subchapter F. Supplemental Housing Tax Credits

11.1001(a) General

Revise language to state: "This subchapter applies only to 2022 Housing Tax Credits (HTC) requested to supplement Competitive HTC awards from the 2019 and 2020 ceilings, hereinafter referred to as Supplemental Credits. 2017 and 2018 allocations that received Force Majeure awards in 2019 are prohibited from requesting Supplemental Credits."

Rationale: It is not clear in the rule that 2017 and 2018 allocations that received Force Majeure award in 2019 (of which there were several) are prohibited from requesting Supplemental Credits. We believe clarifying language needs to be added.

11.1002 Program Calendar for Supplemental Credits

We respectfully request that all dates in this table be moved up by one month so that Applicants that plan on submitting Pre-Applications in January 2022 for traditional allocations are aware of all Supplemental Credit Applicants. In this scenario, Supplemental Credit Requests could begin to be accepted on 12/3/21.

11.1003 Maximum Supplemental Credit Requests and Award Limits

Revise language to state: "(a) The maximum amount available for allocation of Supplemental Credits will be ~~$5,000,000~~ $8,150,000. This maximum ~~may not~~ will provide sufficient credits to fully fund all requests for Supplemental Allocations.

(b) Maximum Supplemental Request Limit for any given Development. An applicant may not request more than ~~15%~~ 5% more credits than their Original allocation."

Rationale: We have calculated that increasing the pool of available Supplemental Credits to $8,150,000 would allow all 2019 and 2020 awardees to request up to 5% of their Original allocation. In making enough Supplemental Credits available to any 2019/2020 awardee that would request them, all Supplemental Credit requests could then bypass Multifamily Finance staff in the review process and simply be evaluated by Real Estate Analysis staff since there would be no competition for these credits, potentially shortening the timeline from Supplemental Credit request to Board approval.

Competition for these credits seems unwise and unfair given that global supply chain issues and nationwide labor shortages are impacting all 2019/2020 awardees equally. Furthermore, 5% is typically the maximum amount of additional credits that an investor will purchase as stipulated in a Limited Partnership Agreement. To the extent that any 2019/2020 awardees need additional sources to make their deals pencil out, our understanding is that there are substantial amounts of Direct Loan funds that remain available.

	Allocation Year	Amount	Assumed 5% for 2022 Supplemental Credits
OVERALL	*2022 Estimate*	*$ 83,750,000*	*$ 8,126,504*
	2022 Estimate	$ 12,562,500	
At-Risk	2019 Awarded	$ 11,983,140	$ 599,157
	2020 Awarded	$ 12,311,804	$ 615,590
	2022 Estimate	$ 742,000	
Rural 1	2019 Awarded	$ 722,312	$ 36,116
	2020 Awarded	$ 703,287	$ 35,164
	2022 Estimate	$ 1,293,000	
Urban 1	2019 Awarded	$ 1,256,699	$ 62,835
	2020 Awarded	$ 1,500,000	$ 75,000
	2022 Estimate	$ 600,000	
Rural 2	2019 Awarded	$ -	$ -
	2020 Awarded	$ 824,345	$ 41,217
	2022 Estimate	$ 620,000	
Urban 2	2019 Awarded	$ 600,000	$ 30,000
	2020 Awarded	$ 823,424	$ 41,171
	2022 Estimate	$ 630,000	
Rural 3	2019 Awarded	$ 1,230,059	$ 61,503
	2020 Awarded	$ 603,503	$ 30,175
	2022 Estimate	$ 17,500,000	
Urban 3	2019 Awarded	$ 15,779,610	$ 788,981
	2020 Awarded	$ 15,469,879	$ 773,494
	2022 Estimate	$ 1,500,000	
Rural 4	2019 Awarded	$ 1,769,468	$ 88,473
	2020 Awarded	$ 1,917,721	$ 95,886
	2022 Estimate	$ 1,450,000	
Urban 4	2019 Awarded	$ 1,500,000	$ 75,000
	2020 Awarded	$ 1,124,289	$ 56,214
	2022 Estimate	$ 1,090,000	
Rural 5	2019 Awarded	$ 1,005,299	$ 50,265
	2020 Awarded	$ 1,046,000	$ 52,300
	2022 Estimate	$ 1,010,000	
Urban 5	2019 Awarded	$ 1,007,473	$ 50,374
	2020 Awarded	$ 869,106	$ 43,455
	2022 Estimate	$ 600,000	
Rural 6	2019 Awarded	$ 600,000	$ 30,000
	2020 Awarded	$ 900,000	$ 45,000
	2022 Estimate	$ 15,550,000	
Urban 6	2019 Awarded	$ 13,433,734	$ 671,687
	2020 Awarded	$ 14,903,184	$ 745,159
	2022 Estimate	$ 600,000	
Rural 7	2019 Awarded	$ 600,000	$ 30,000
	2020 Awarded	$ 883,142	$ 44,157
	2022 Estimate	$ 4,420,000	
Urban 7	2019 Awarded	$ 4,020,372	$ 201,019

	2020 Awarded	$	4,500,000	$	225,000
	2022 Estimate	$	730,000		
Rural 8	2019 Awarded	$	1,470,749	$	73,537
	2020 Awarded	$	974,013	$	48,701
	2022 Estimate	$	2,400,000		
Urban 8	2019 Awarded	$	2,684,209	$	134,210
	2020 Awarded	$	3,000,000	$	150,000
	2022 Estimate	$	600,000		
Rural 9	2019 Awarded	$	600,000	$	30,000
	2020 Awarded	$	897,273	$	44,864
	2022 Estimate	$	5,680,000		
Urban 9	2019 Awarded	$	5,608,945	$	280,447
	2020 Awarded	$	4,500,000	$	225,000
	2022 Estimate	$	715,000		
Rural 10	2019 Awarded	$	-	$	-
	2020 Awarded	$	982,809	$	49,140
	2022 Estimate	$	1,400,000		
Urban 10	2019 Awarded	$	1,850,000	$	92,500
	2020 Awarded	$	1,392,807	$	69,640
	2022 Estimate	$	1,030,000		
Rural 11	2019 Awarded	$	928,404	$	46,420
	2020 Awarded	$	1,407,261	$	70,363
	2022 Estimate	$	6,450,000		
Urban 11	2019 Awarded	$	6,000,000	$	300,000
	2020 Awarded	$	5,736,483	$	286,824
	2022 Estimate	$	600,000		
Rural 12	2019 Awarded	$	900,000	$	45,000
	2020 Awarded	$	-		
	2022 Estimate	$	910,000		
Urban 12	2019 Awarded	$	1,142,235	$	57,112
	2020 Awarded	$	1,301,492	$	65,075
	2022 Estimate	$	600,000		
Rural 13	2019 Awarded	$	900,000	$	45,000
	2020 Awarded	$	900,000	$	45,000
	2022 Estimate	$	2,467,500		
Urban 13	2019 Awarded	$	3,000,000	$	150,000
	2020 Awarded	$	2,465,555	$	123,278

New Hope Housing

October 8, 2021

Texas Department of Housing and Community Affairs
Attn: Cody Campbell, Multifamily Finance Director
221 East 11th Street
Austin, TX 78701
Email: cody.campbell@tdhca.state.tx.us

Re: 2022 Draft Qualified Allocation Plan - Public Comment

Dear Cody,

I am writing to offer comment on the 2022 published draft of the Qualified Allocation Plan ("QAP"). New Hope Housing currently manages 1,358 units of Supportive Housing for individuals and families, with an additional 220 units under construction. We are grateful to the board and staff of TDHCA for your important work in financing direly needed Supportive Housing. We believe firmly in the transformative nature of the Supportive Housing + Services you have helped make possible. We see the real human impacts every day.

We have a few brief comments regarding the draft QAP language:

§11.9(c)(7) Proximity to Jobs Area – We agree with the expansion of the jobs radius as proposed for major metro areas. Further, we support TAAHP's modification related to Urban and Rural designations in lieu of population factors.

§11.9(d)(7)(A) Concerted Revitalization Plan – We strongly support a majority of the modifications made to this section and appreciate the Department's efforts to simplify it. However, we are strongly opposed to striking the 'bonus' 2 points for developments that are identified by the municipality as contributing more than any other to concerted revitalization efforts. This scoring item allows cities and counties to dovetail local housing priorities with Department policy and ensure that programmatic goals are mutually achievable.

We support TAAHP's proposed modification to offer point parity with non-QCT tracts. This can be achieved by simply allowing 7 points for any tract within a qualified CRP, instead of splitting between QCT and non-QCT.

§11.204(6) Experience Requirement – We understand this change was a scrivener's error and that all Experience Certificates from 2014 onward still qualify. We support the correction to 2014.

Subchapter F. Supplemental Housing Tax Credits

We support the recommendations made by TAAHP related to Subchapter F. In particular:

- Supplemental credit applications should be reduced from 15% to 7%
- December 2021 application deadline with a March 2022 board review and approval
- Prioritization by overall score and deals already closed and under construction
- Requirement to provide evidence from the investor - at application - of intention to purchase credits and at what value

As always, we appreciate the opportunity to work with you on these matters. Please feel free to reach out directly if you have any additional questions.

Sincerely,

Emily Abeln
VP, Real Estate Development
emily@newhopehousing.com
713.222.0290

Commenter 41
INTERNATIONAL ASSOCIATION OF
PLUMBING AND MECHANICAL OFFICIALS

18062 FM 529 PMB 196
Cypress, Texas 77433

Ph: 713.539.3828 | http://www.iapmo.org

John Mata, Field Director
john.mata@iapmo.org

October 12, 2021

Mr. Bobby Wilkinson, Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410
bobby.wilkinson@tdhca.state.tx.us

RE: PROPOSED RULES 10 TAC 1.11.B.11.101 AND 10 TAC 1.11.C.11.201-207

Dear Mr. Wilkinson:

On September 17, 2021, the Texas Department of Housing and Community Affairs proposed new rules 10 TAC 1.11.B.11.101 and 10 TAC 1.11.c.11.201-207 which were published in the *Texas Register*. These proposed new rules are regarding a Development Site seeking multifamily funding or assistance from the Department of Housing and Community Affairs (DHCA). The proposed rules include the several options for Green Building Features.

It is my pleasure to submit these comments on behalf of the International Association of Plumbing and Mechanical Officials (IAPMO). On behalf of IAPMO, I am asking DHCA to expand the list of Green Building Features, as I will outline below.

ADDITIONAL GREEN CODES AVAILABLE

IAPMO applauds DHCA for looking to building codes and standards that further the important mission of building more sustainable buildings. At the same time, we also recognize the balance that the State of Texas is striving to achieve between increasing efficiencies in its buildings and keeping costs to taxpayers as low as possible. To help projects achieve that balance, we encourage DHCA to provide additional options of other nationally recognized green construction programs for energy and water conservation design standards available for adoption as additional pathways for compliance. These standards include but are not limited to:

- The International Living Future Institute's *Living Building Challenge* or *Core Green Building Certification* provide best practice achievements that a building must obtain to be considered a green or sustainable building.

- *Green Globes* by the Green Building Institute is an online assessment protocol, rating system, and guidance for green building design, operation and management that is interactive, flexible and affordable while providing market recognition of a building's environmental attributes through third party assessment.

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John Mata, Field Director
john.mata@iapmo.org

- ASHRAE's *Building EQ* provides an online portal for a quick energy analysis that benchmarks a building's energy performance for buildings both In Operation and As Designed. *Building EQ* identifies means to improve a building's energy performance including low-cost or no-cost energy efficiency measures and an Indoor Environmental Quality survey with recorded measurements to provide additional information to assess a building's performance.

- ASHRAE also publishes *ANSI/ASHRAE Standard 62.1-2019* and *Standard 62.2-2019* which are the recognized standards for ventilation system design and acceptable IAQ for commercial and residential structures, respectively, as well as *ANSI/ASHRAE Standard 105* for Expressing, and Comparing Building Energy Performance and Greenhouse Gas Emissions.

- IAPMO's *Water Efficiency and Sanitation Standard (WE•Stand)* and includes the new Water Demand Calculator (WDC), new safety requirements for Leak Detection Systems, indoor Water Efficiency and alternate water sources among other benefits. The WDC is also included in IAPMO's *2021 Uniform Plumbing Code*, which is already adopted as a plumbing code by the State of Texas and is developed in accordance with the requirements of the American National Standards Institute (ANSI). ANSI is recognized as the "premier authority" of the industry for openness, balance, consensus and due process.

CONCERNS ABOUT THE *INTERNATIONAL GREEN CONSTRUCTION CODE (IGCC)*

I do have some concerns about including the *IgCC* in these regulations. The development and maintenance of the *IgCC* in its current form **is not completely developed by a nationally recognized consensus-based process**. The platform upon which *IgCC* rests is *ANSI/ASHRAE/ICC/USGBC/IES Standard 189.1*. This Standard is an ASHRAE Standard, originally developed and maintained for many years only by ASHRAE, that meets the criteria of the ANSI.

The *IgCC*, on the other hand, is a document that uses the ASHRAE standard as the core requirement (such as referencing 189.1 in its entirety) but adds language at the beginning to make it a code. Therefore, the entire *IgCC* document is not ANSI approved and is not developed and revised in its entirety through a nationally recognized consensus-based process.

IAPMO is a strong proponent of the ANSI process and believe it is the best nationally recognized consensus-based process. I realize that not all of the programs listed above are ANSI recognized or accredited. However, I have highlighted that a wide assortment of green building programs and standards are already available in the United States that should also be included in these proposed rules. We would encourage DHCA to include these additional green codes as options for this important task.

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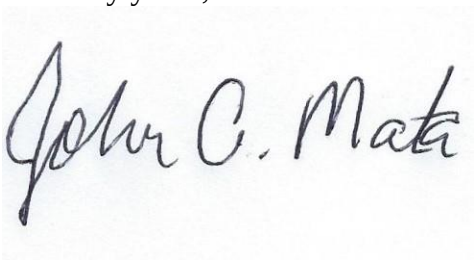
John Mata, Field Director
john.mata@iapmo.org

IAPMO, founded in 1926, has been protecting the public's health and safety for almost a century by working in concert with government and industry to implement comprehensive plumbing and mechanical systems around the world.

Sincerely yours,



John A. Mata
Director