

**SUPPLEMENTAL BOARD BOOK
OF
November 10, 2022**



Leo Vasquez III, Chair
Kenny Marchant, Vice-Chair
Ajay Thomas, Member
Brandon Batch, Member
Anna Maria Farias, Member

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
GOVERNING BOARD MEETING**

**A G E N D A
10:00 AM
November 10, 2022**

**Capitol Extension, Hearing Room E2.030
1100 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 the Board meeting minutes summary for October 13, 2022

Beau Eccles
Board
Secretary

COMMUNITY AFFAIRS

- b) Presentation, Discussion, and Possible Action on the 2023 Section 8 Payment Standards for the Housing Choice Voucher Program (HCVP)

Michael De Young
Director of Community
Affairs

ASSET MANAGEMENT

- c) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application

Rosalio Banuelos
Director of Asset
Management

| | | |
|-------|--------------------------------|---------|
| 19330 | Avanti Legacy at Emerald Point | McAllen |
| 19331 | Avanti at Emerald Point | McAllen |
| 21608 | Fiji Lofts | Dallas |

- d) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement

| | | |
|-------|-------------------|--------|
| 19603 | Northgate Village | Dallas |
|-------|-------------------|--------|

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.

- e) Presentation, discussion, and possible action regarding a Material Amendment to the HOME Land Use Restriction Agreement

531001 Crystal Falls Crossing

Leander

MULTIFAMILY BOND FINANCE

- f) Presentation, discussion, and possible action on Inducement Resolution No. 23-005 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing an Application for Private Activity Bond Authority for Palladium Oak Grove (#22617)

Teresa Morales
Director of
Multifamily Bond

RULES

- g) Presentation, discussion, and possible action on amendment to 10 TAC §10.622 Special Rules Regarding Rents and Rent Limit Violations, and directing that this be published for adoption in the *Texas Register*
- h) Presentation, discussion, and possible action on an order proposing the readoption with amendments of 10 TAC §1.11, Definition of Service-Enriched Housing and directing its publication for public comment in the *Texas Register*
- i) Presentation, discussion, and possible action on an order proposing new 10 TAC Chapter 1 Subchapter A, §1.9 Housing Finance Corporation Reporting Requirements and directing that it be published for public comment in the *Texas Register*
- j) Presentation, discussion, and possible action on the proposed repeal and proposed new sections 10 TAC §7.8, §7.25, §7.34, §7.36, §7.39, and §7.40, and directing their publication for public comment in the *Texas Register*.

Wendy Quackenbush
Director of Multifamily
Compliance

Elizabeth Yevich,
Director of
Housing Resource
Center

Brooke Boston
Deputy Director
of Programs

Abigail Versyp
Director of Single Family
and Homeless Programs

SINGLE FAMILY & HOMELESS PROGRAMS

- k) Presentation, discussion, and possible action on State Fiscal Year 2021 Homeless Housing and Services Program Reallocations and Authorization to Reallocate Future Deobligated Funds.

Abigail Versyp
Director of Single Family
and Homeless Programs

LEGAL

- l) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning SA Union Pines II (HTC 02092 / CMTS 3243) and Rene O. Campos

Nina Wiggins
Associate General
Counsel

MULTIFAMILY FINANCE

- m) Presentation, discussion, and possible action on multiple 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 in the 2021 competitive 9% tax credit round

Cody Campbell
Director of Multifamily
Programs

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

- a) Media Analysis and Outreach Report, September 2022
- b) Report on TDHCA One-Time or Temporary Allocations – Pandemic Response and Other Initiatives
- c) Report on the Department’s 4th Quarter Investment Report relating to funds held under Bond Trust Indentures
- d) Report on the closing of the Department’s Residential Mortgage Revenue Bonds Series 2022B (Non-AMT) (Social Bonds)
- e) Report on the Department’s 4th Quarter Investment Report in accordance with the Public Funds Investment Act

Michael Lyttle
Director of
External Affairs

Brooke Boston
Deputy Director
of Programs

Scott Fletcher
Director of Bond
Finance

Scott Fletcher
Director of Bond
Finance

Joe Guevara
Interim Director of
Administration

ACTION ITEMS

Executive Session: the Chair may call an Executive Session at this point in the agenda in accordance with the below-cited provisions¹

Leo Vasquez
Chair

ITEM 3: EXECUTIVE

Executive Director’s Report

Bobby Wilkinson
Executive Director, TDHCA

ITEM 4: ASSET MANAGEMENT

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application

Rosalio Banuelos
Director of Asset Management

21017 Hughes House Fort Worth

ITEM 5: LEGAL

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Mission Pointe Club f/k/a Country Villa (HTC 91040 / CMTS 958)

Nina Wiggins
Associate General Counsel

ITEM 6: BOND FINANCE

- a) Presentation, discussion, and possible action regarding Resolution No. 23-006 authorizing the implementation of Texas Department of Housing and Community Affairs Mortgage Credit Certificate Program 103, approving the form and substance of the program manual and the program summary, authorizing the execution of documents and instruments necessary or convenient to carry out Mortgage Credit Certificate Program 103, and containing other provisions relating to the subject
- b) Presentation, discussion, and possible action on Resolution No. 23-007 authorizing the filing of one or more applications for reservation with the Texas Bond Review Board with respect to qualified mortgage bonds and containing other provisions relating to the subject
- c) Presentation, discussion, and possible action on Resolution No. 23-008 authorizing the issuance, sale and delivery of Texas Department of Housing and Community Affairs Single Family Mortgage Revenue Bonds, 2022 Series B (Non-AMT), approving the form and substance of related documents, authorizing the execution of documents and instruments necessary or convenient to carry out the purposes of this resolution, and containing other provisions relating to the subject
- d) Presentation, discussion, and possible action on Resolution No. 23-009 authorizing the filing of one or more applications for reservation with the Texas Bond Review Board with respect to qualified mortgage bonds, authorizing state debt application, and containing other provisions relating to the subject
- e) Presentation, discussion, and possible action regarding Resolution No. 23-010 authorizing request for Unencumbered State Ceiling and containing other provisions relating to the subject

Scott Fletcher
Director of Bond Finance

ITEM 7: RULES

- a) 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 Bond

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

b) Presentation, discussion, and possible action on the adoption of the repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, adoption of new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and directing their publication for adoption in the *Texas Register*

Cody Campbell
Director of Multifamily
Programs

ITEM 8: MULTIFAMILY FINANCE

Presentation, discussion, and possible action on the timely appeal of termination of HTC application 22106, Mariposa Apartment Homes at Plano Parkway, and waiver of 10 TAC §11.901(6) under the Department's Multifamily Program Rules

Cody Campbell
Director of Multifamily
Programs

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;

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 Danielle Leath, 512-475-4606, 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 Danielle Leath, al siguiente número 512-475-4606 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

1g

BOARD ACTION REQUEST

COMPLIANCE DIVISION

NOVEMBER 10, 2022

Presentation, discussion, and possible action on adoption of an amendment to 10 TAC §10.622 Special Rules Regarding Rents and Rent Limit Violations, and directing that this be published for adoption in the *Texas Register*

RECOMMENDED ACTION

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

WHEREAS, at its meeting of July 7, 2022, the Board approved for publication and public comment in the *Texas Register* proposed amendments to 10 TAC Chapter 10 Subchapter F concerning the Compliance Monitoring Rule;

WHEREAS, public comment was accepted from July 29, 2022, through August 29, 2022, and staff received comment from eight entities on §10.622 Special Rules Regarding Rents and Rent Limit Violations;

WHEREAS, at the Board meeting of October 13, 2022, the Board directed staff to reconsider some of the comment received and staff has now prepared a revised reasoned response; and

WHEREAS, staff intends to take this rule back out for public comment at a later time to address the notification item, but seeks to implement the rest of the edits being adopted in this section;

NOW, therefore, it is hereby

RESOLVED, that the amendment to 10 TAC §10.622 Special Rules Regarding Rents and Rent Limit Violations together with the preambles presented at this meeting, are hereby adopted for publication in the *Texas Register*; and

FURTHER RESOLVED, the Executive Director and his designees be and each of them hereby are authorized empowered, and directed, for and on behalf of the Department, to cause the adoption actions herein in the form presented to this meeting, to be published in the *Texas Register*, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing including any requested revisions to the preambles.

BACKGROUND

At the meeting of July 7, 2022, the Board approved the publication of proposed amendments to the Compliance Monitoring Rule. Several comments were received related to the proposed change to 10 TAC §10.622. Staff reviewed all comments and provided a reasoned response to these comments.

At the meeting of October 13, 2022, the Board approved the adoption of the amendments to the Compliance Monitoring Rule, with the exception of §10.622 Special Rules Regarding Rents and Rent Limit Violations. The Board delayed adoption of this section because additional public comment was received during the Board meeting regarding the proposed rule that requires a 90-day written notice if rent is increased \$75 or more. The commenters expressed concerns with this proposed rule since their organization issues annual rent increases soon after the release of the Multifamily Tax Subsidy limits (Housing Tax Credit rent limits). Waiting 90 days to raise rents would have a negative financial impact on each of their properties, which the commenter estimated would result in \$15,000 or more loss of revenue. Therefore, the Board did not adopt this section of the rule and directed staff to return the item for consideration.

Therefore, staff is now again recommending adoption of this rule section, but with previously proposed subsection (l) no longer reflected as part of the adoption. Behind the preamble for the adoption of the amendment, a draft of the rule section is shown. To assist reviewers with understanding what changed from the version of the rule last posted in the *Texas Register*, a black-lined version of the amended sections is provided, reflecting the changes proposed by the Department after consideration of public comment prior to and during the meeting of October 13, 2022.

Attachment 1: Preamble, for adopting amendment to 10 TAC §10.622 Special Rules Regarding Rents and Rent Limit Violations

The Texas Department of Housing and Community Affairs (the Department) adopts the amendment to 10 TAC §10.622 Special Rules Regarding Rents and Rent Limit Violations with changes to the proposed text as published in the July 29, 2022, issue of the *Texas Register*.

The purpose of this amendment is to include HOME-ARP rent requirements, clarify that rent refunds may include a “rent credit” to low-income households and that owners may set up a single trust account. In addition, the rule clarifies that transfers to a unit with additional bedrooms is not considered a rental increase during a 12-month period.

Tex. Gov’t Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

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 amendment will be in effect, the amended rule does not create or eliminate a government program, but relate to changes to an existing activity, compliance monitoring.
2. The amended rule does not require a change in work that would require the creation of new employee positions, nor are the amended changes significant enough to reduce workload to a degree that any existing employee positions are eliminated.
3. The amended rule does not require additional future legislative appropriations.
4. The amended rule does not result in an increase in fees paid to the Department or in a substantial decrease in fees paid to the Department.
5. The amended rule is not creating a new regulation.
6. The amended rule will not repeal an existing regulation.
7. The amended rule will not increase or decrease the number of individuals subject to the rule’s applicability.
8. The amended rule 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.

1. The Department has evaluated this rule action and determined that none of the adverse effect strategies outlined in Tex. Gov’t Code §2006.002(b) are applicable.
2. This rule relates to the procedures for the handling of compliance monitoring activities of multifamily developments awarded funds through various Department programs. Other than the possible instance of a small or micro-business that is an owner or a party to one of the Department’s properties, no small or micro-businesses are subject to the rule. If a small or micro-business is such an owner or participant, the proposed rule provides for more clear, transparent processes and does not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the amended rule because this rule is applicable only to the owners or operators of properties in the Department’s portfolio, not municipalities.

3. The Department has determined that because this rule relates only to the process in use for compliance monitoring activities of the Department’s portfolio, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV’T CODE §2007.043. The amended rule action 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 amended rule action as to its possible effects on local economies and has determined that for the first five years the proposed actions are in effect, there will be no economic effect on local employment, therefore, no local employment impact statement is required to be prepared for the rule.

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 no impact is expected on a statewide basis, there are also no “probable” effects of the new rule on particular geographic regions.

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 adopted rule is in effect, the public benefit anticipated as a result of the action will be a clearer and more germane rule. 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 also has determined that, for each year of the first five years the adopted rule action is in effect, enforcing or administering the rule action does not have any foreseeable implications related to costs or revenues of the state or local governments.

This rule amendment has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE: The Department accepted public comment between July 29, 2022, and August 29, 2022. Comments regarding the proposed amendments were accepted in writing and by e-mail with comments received from:

1. Darlene Sidebottom, Compliance Director, Dayrise Residential
2. Robert Dryman, President, Brownstone Residential
3. Dena Moreland, Compliance Director, Accolade Property Management
4. Patricia Murphy, Consultant, Murphy HTC, LLC
5. Brandi Swearingen, Director of Compliance, ITEX Group
6. Brian Gamble, Compliance Manager, Housing Authority of the City of Austin
7. Sally Gaskin, President, SGI Ventures, Inc.
8. Megan Lasch, President, O-SDA Industries, LLC
9. Lisa Stephens, President, Saigebrook Development
10. Roger Arriaga, Executive Director, TAAHP

Commenters 2 and 6 did not provide comments on 10 TAC §10.622; however, they did comment on other sections of the rules that were adopted during the October 13, 2022 board meeting.

§10.622 Special Rules Regarding Rents and Rent Limit Violations

COMMENT SUMMARY: Commenter 1 disagrees with the proposed requirement to provide 120-day notice if increasing rent more than \$75. She feels that the 60-day notice required by most leases is sufficient, and to meet the requirements of both the rule and her lease, she would need to issue two separate notices.

Commenter 3 believes this to be a financial burden to owners and believes the 35-day notice required by their leases is sufficient.

Commenter 4 proposes a clarification to language about the rent limit for HOME-ARP. Instead of saying that the population must pay “rent specified in 24 CFR”, she proposes the rule state, “rent not greater than the rent specified in 24 CFR.”

Commenter 5 proposes a change of language to make the notification period for an increase of \$75 or more be 90 days instead of 120. Their policies already require a 90-day notice of renewal, and this would be easily incorporated with the rule.

Commenter 7 opposes this requirement and feels it to be overly burdensome in a time when owners are facing financial uncertainties. They believe this would, in effect, set a rent control for 120 days. Commenter 7 goes on to say that State statute prohibits municipalities in Texas from setting rent controls, and as long as rents are restricted under HUD limits, that should be sufficient.

Commenter 8 agrees with Commenter 7 and provides an analysis of how this rule could affect one of their properties:

| Property A | | | |
|----------------------------|-------|---------|---------|
| 1 bedroom | 30% | 50% | 60% |
| # of units | 1 | 4 | 5 |
| 2021 rent limit | \$475 | \$847 | \$1,032 |
| 2021 UA | \$81 | \$81 | \$81 |
| 2021 max tenant rent | \$394 | \$766 | \$951 |
| 2022 rent limit | \$539 | \$953 | \$1,160 |
| 2022 UA | \$82 | \$82 | \$82 |
| 2022 max tenant rent | \$457 | \$871 | \$1,078 |
| allowable rent increase | \$63 | \$105 | \$127 |
| potential impact per month | | \$420 | \$635 |
| 3 months' lost rent | | \$1,260 | \$1,905 |

| | | | |
|----------------------|-------|---------|---------|
| 2 bedrooms | 30% | 50% | 60% |
| # of units | 2 | 10 | 13 |
| 2021 rent limit | \$566 | \$1,012 | \$1,235 |
| 2021 UA | \$101 | \$101 | \$101 |
| 2021 max tenant rent | \$465 | \$911 | \$1,134 |
| 2022 rent limit | \$642 | \$1,139 | \$1,387 |
| 2022 UA | \$102 | \$102 | \$102 |

| | | | |
|----------------------------|--------------|----------------|----------------|
| 2022 max tenant rent | \$540 | \$1,037 | \$1,285 |
| allowable rent increase | \$75 | \$126 | \$151 |
| potential impact per month | \$150 | \$1,260 | \$1,963 |
| 3 months' lost rent | \$450 | \$3,780 | \$5,889 |

| | | | |
|----------------------------|--------------|----------------|----------------|
| 3 bedrooms | 30% | 50% | 60% |
| # of units | 3 | 10 | 12 |
| 2021 rent limit | \$650 | \$1,165 | \$1,422 |
| 2021 UA | \$121 | \$121 | \$121 |
| 2021 max tenant rent | \$529 | \$1,044 | \$1,301 |
| 2022 rent limit | \$738 | \$1,312 | \$1,599 |
| 2022 UA | \$122 | \$122 | \$122 |
| 2022 max tenant rent | \$616 | \$1,190 | \$1,477 |
| allowable rent increase | \$87 | \$146 | \$176 |
| potential impact per month | \$261 | \$1,460 | \$2,112 |
| 3 months' lost rent | \$783 | \$4,380 | \$6,336 |

Total potential impact: \$24,783

Commenter 9 agrees with Commenters 7 and 8 and also provided a similar analysis of the potential impact for one of their properties. However, the analysis used three different utility allowances amounts for each unit size and the Department staff could not reasonably determine financial impact.

Commenter 10 feels the \$75 amount of increase and 120-day notification requirements are arbitrary. Furthermore, they feel that not being able to raise rent for 120 days is overly burdensome and jeopardizes developments' economic viability in a time of increasing costs.

Commenter 10 appreciates the changes that allow tenants to elect overpaid rents be credited to their accounts instead of refunded. They suggest a revised structure to the rule, but not to the content.

Commenters 9 and 10 also support the removal of violations of rent due to application deposits not promptly converted into a security deposit under the HTC program.

STAFF RESPONSE:

In response to Commenters 1, 3 and 5 regarding notification requirements of the lease, staff does not conclude it is overly burdensome to revise a lease addendum to change the notification requirements. In order to solicit feedback on potential revisions to the Compliance Rules, TDHCA hosted a roundtable on April 8, 2022, during which a 120-day notification period was proposed for rental increases exceeding \$100. Our housing partners were very vocal in support of this proposal and actually suggested the amount be reduced to \$75 in recognition of how rising costs affect low-income households. However, since commenters spoke against this revision at the Board meeting of October 13, 2022, staff

subsequently has withdrawn this specific change from the rule (previously proposed as subsection (I)) at this time.

Staff agrees with Commenter 4 regarding HOME-ARP rents and proposes Commenter's language be adopted. Staff appreciates the support from Commenters 9 and 10 on application deposits and rental refunds, but does not feel a revision to the structure of the rule is necessary. No further changes are recommended.

§10.622. Special Rules Regarding Rents and Rent Limit Violations.

(a) Rent or Utility Allowance Violations of the maximum allowable limit for the HTC program. Under the HTC program, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees, cannot exceed the maximum applicable limit (as determined by the minimum set-aside elected by the Owner) published by the Department. If it is determined that an HTC Development, during the Compliance Period, collected rent in excess of the rent limit established by the minimum set-aside, the Owner must correct the violation by reducing the rent charged. The Department will report the violation as corrected on January 1st of the year following the violation. The refunding of overcharged rent does not avoid the disallowance of the credit by the IRS.

(b) Rent or Utility Allowance Violations of additional rent restrictions under the HTC program. If Owners agreed to additional rent and occupancy restrictions, the Department will monitor to confirm compliance. If noncompliance is discovered, the Department will require the Owner to restore compliance by refunding (not a credit to amounts owed the Development) any excess rents to a sufficient number of households to meet the set aside.

(c) Rent Violations of the maximum allowable limit due to application fees. Under the HTC program, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses.

(1) The amount of time Development staff spends checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add up to \$5.50 per Unit for their other out of pocket costs for processing an application without providing documentation. Example 622(2): A Development's out of pocket cost for processing an application is \$17.00 per adult. The property may charge \$22.50 for the first adult and \$17.00 for each additional adult.

(2) Documentation of Development costs for application processing or screening fees must be made available during monitoring reviews or upon request. The Department will review application fee documentation during [onsite] monitoring reviews. If the Development pays a flat monthly fee to a third party for credit or criminal background checks, Owners must calculate the appropriate fee to be charged applicants by using the total number of applications processed, not just approved applications. Developments that pay a flat monthly fee must determine the appropriate application fee at least annually based on the prior year's activity. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee or collected impermissible deposits, the noncompliance will be reported to the IRS on Form 8823 under the category "gross rent(s) exceeds tax credit limits." The noncompliance will be corrected on January 1st of the next year.

(3) Owners are not required to refund the overcharged fee amount. To correct the issue, Owners must reduce the application fee for prospective applicants. Once the fee is reduced for prospective applicants, the Department will report the affected back in compliance on January 1st of the year after they were overcharged the application fee or an impermissible deposit.

(4) Throughout the Affordability Period, Owners may not charge a deposit or any type of fee (other than an application fee) for a household to be placed on a waiting list.

(d) Rent or Utility Allowance Violations on MFDL programs, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees and any rental assistance (unless otherwise described in the LURA) cannot exceed the designated applicable limit published by the Department. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund or credit the affected residents the amount of rent that was overcharged. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household's account. In the absence of a household's election, a full refund check must be presented to the household within thirty days.

(e) Rent or Utility Allowance Violations on HTC Developments after the Compliance Period, HTC properties for three years after the LURA is released as a result of a foreclosure or deed in lieu of foreclosure (as applicable), BOND, and THTF the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees cannot exceed the designated applicable limit published by the Department. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund or credit the affected residents the amount of rent that was overcharged. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In the absence of a tenant election, a full refund check must be presented to the household within thirty days.

(f) Trust Account to be established. If the Owner is required to refund rent under subsection (b) or (d) of this section and cannot locate the resident, the excess monies must be deposited into a trust account for the household. If the violation effects multiple households, the Owner may set up a single account with all of the unclaimed funds. The account must remain open for the shorter of a four year period, [or] until all funds are claimed, or the expiration of the Extended Use Agreement. If funds are not claimed after the required period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be disbursed as required by Texas unclaimed property statutes. All unclaimed property remissions to the Comptroller must be broken out by individuals and particular amounts.

(g) Rent Adjustments for HOME, TCAP RF, and HOME-ARP Developments:

(1) 100% HOME/TCAP-RF/HOME-ARP assisted Developments. If a household's income exceeds 80% at recertification, the Owner must charge rent equal to 30% of the household's adjusted income;

(2) HOME/TCAP-RF/HOME-ARP Developments with any Market Rate Units. If a household's income exceeds 80% at recertification, the Owner must charge rent equal to the lesser of 30% of the household's adjusted income or the comparable Market rent; and

(3) HOME/TCAP-RF/HOME-ARP Developments layered with other Department affordable housing programs. If a household's income exceeds 80% at recertification, the owner must charge rent equal to the lesser of 30% of the household's adjusted income or the rent allowable under the other Program.

(h) Rent Adjustments for HOME-ARP Qualified Populations:

(1) Units restricted for occupancy by Qualifying Populations with incomes equal or less than 50% will have rents of 30% of the adjusted income of the household, with adjustments for number of bedrooms in the unit.

(2) Units restricted for occupancy by Qualifying Populations with incomes greater than 50% of median income but at or below 80% of the median income must pay rent not greater than the rent specified in 24 CFR §92.252(a), high HOME rent.

(3) Units restricted for occupancy by Qualifying Populations with incomes greater than 80% of median income will follow the rent adjustments of §10.622(g).

(i) Employee Occupied Units (HTC and THTF Developments). IRS Revenue Rulings 92-61, 2004-82 and Chief Counsel Advice Memorandum POSTN-111812-14 provide guidance on employee occupied units. In general, employee occupied units are considered facilities reasonably required for the project(s) and not residential rental units. Since the building's applicable fraction is calculated using the residential rental units/space in a building, employee occupied units are taken out of both the numerator and the denominator.

(j) Owners of HOME, NSP, TCAP-RF, NHTF, and HOME-ARP must comply with §10.403 of this chapter which requires annual rent review and approval by the Department's Asset Management Division or Department-procured vendor. Failure to do so will result in an Event of Noncompliance.

(k) Owners are not permitted to increase the household portion of rent more than once during a 12 month period, even if there are increases in rent limits or decreases in utility allowances, unless the Unit or household is governed by a federal housing program that requires such changes or the household transfers to a Unit with additional Bedrooms. If it is determined that the Development increases rent more than once in a 12 month period, the Department will require the Owner to refund or credit the affected household. The Owner must obtain in writing, from the household, the election to receive a full refund check or to have the entire overpaid amount credited to their household account. In the absence of a tenant election, a full refund check must be presented to the household.

1h

BOARD ACTION REQUEST
HOUSING RESOURCE CENTER
NOVEMBER 10, 2022

Presentation, discussion, and possible action on an order proposing the readoption with amendments of 10 TAC §1.11, Definition of Service-Enriched Housing and directing its publication for public comment in the *Texas Register*

RECOMMENDED ACTION

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

WHEREAS, pursuant to Tex. Gov't Code, §2001.039, state agencies are required to review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist and based on the assessment of the rule determine if the rule should be readopted as is, readopted with amendments, or repealed;

WHEREAS, Tex. Gov't Code, §2306.1091(b), requires the Department, with the advice and assistance of the Housing and Health Services Coordination Council (Council), to define Service-Enriched Housing, which it does through 10 TAC §1.11, Definition of Service-Enriched Housing;

WHEREAS, on October 12, 2022, the Council provided input to staff that they supported the readoption of the rule with the noted amendments, and staff therefore is recommending that the rule be readopted with amendments; and

WHEREAS, such proposed readoption with amendments will be published in the *Texas Register* for public comment;

NOW, therefore, it is hereby

RESOLVED, that the Department has determined during its assessment of 10 TAC §1.11 Definition of Service-Enriched Housing, that as provided for in §2001.039, there is a continuing need for this rule and staff proposes its readoption with amendments;

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 proposed readoption with amendments of 10 TAC §1.11 Definition of Service-Enriched Housing, in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles; and

FURTHER RESOLVED, that if the Department receives no substantive comment on the proposed readoption with amendments, then the Department will readopt 10 TAC §1.11 Definition of Service-Enriched Housing, without returning to the Board for further approval.

BACKGROUND

10 TAC §1.11 Definition of Service-Enriched Housing

The Housing and Health Services Coordination Council (HHSCC or the Council) is codified in Tex. Gov't Code, §2306.1091. The purpose of the Council is to increase state efforts to offer service-enriched housing through increased coordination of housing and health services. In accordance with Tex. Gov't Code, §2306.1091(b): "With the advice and assistance of the council, the department by rule shall define 'service-enriched housing' for the purposes of this subchapter." In January of 2010, the Department, with the advice and assistance of the Council, developed the definition of Service-Enriched Housing. The definition was brought before stakeholders at four statewide public forums in order to receive additional opinions and feedback. After receiving feedback a revised definition was approved by Council at its March 2010 meeting. The TDHCA Governing Board adopted a final rule using the approved definition on May 12, 2010, and effective in the *Texas Register* in June 2010.

The rule was readopted with changes on September 6, 2018, by the TDHCA Governing Board and was effective in the *Texas Register* October 2018.

While Tex. Gov't Code §2306.1091 does require that the Department adopt a definition for the term Service-Enriched Housing, the statute does not specify what that definition must be. Therefore, this rule does set policy, from the Department and the Council, not provided for in state statute or federal regulations, for how the term is defined.

Staff recommends that this rule be retained with the proposed amendments. This action allows the Department to continue to ensure compliance with Tex. Gov't Code §2306.1091, and continue to have a required definition for Service-Enriched Housing.

Upon Board approval, the proposed rule review will be published in the *Texas Register* and released for public comment from November 21, 2022, through December 21, 2022. It is anticipated that the final proposed rule amendments would be presented for approval at the Board meeting of January 12, 2023. However, if no comments are received, this action allows for adoption without returning to the Board.

Attachment A: Preamble and proposed readoption with amendments of 10 TAC Chapter 1, §1.11

The Texas Department of Housing and Community Affairs (the Department) proposes the readoption, with amendments, to §1.11 Definition of Service-Enriched Housing. After review of this rule in compliance with Tex. Gov't Code, §2001.039, the Department has assessed this rule and determined that there is a continuing need for this rule and that the proposed amendments are warranted.

FISCAL NOTE. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the readopted rule is in effect, enforcing or administering the rule does not have any foreseeable implications related to costs or revenues of the state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT. Mr. Wilkinson also has determined that, for the first five years the readopted rule would be in effect:

1. The proposed readopted rule will not create or eliminate a government program;
2. The proposed readopted rule will not require a change in the number of employees of the Department;
3. The proposed readopted rule will not require additional future legislative appropriations;
4. The proposed readopted rule will result in neither an increase nor a decrease in fees paid to the Department;
5. The proposed readopted rule will not create a new regulation;
6. The proposed action will not repeal an existing regulation;
7. The proposed readopted rule will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The proposed readopted rule will neither positively nor negatively affect this state's economy.

PUBLIC BENEFIT/COST NOTE. Mr. Wilkinson also has determined that, for each year of the first five years the readopted rule is in effect, the public benefit anticipated as a result of the action will be the clarification of a required definition. There will not be any economic cost to any individuals required to comply with the repealed section.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES. The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

REQUEST FOR PUBLIC COMMENT. All comments or questions in response to this notice of rule review may be submitted in writing from November 25, 2022, through December 27, 2022. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941, or email

info@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 pm Austin local time, December 27, 2022.

STATUTORY AUTHORITY. The proposed action 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.

§1.11. Definition of Service-Enriched Housing.

(a) Purpose. It is the purpose of this section to define service-enriched housing for the Housing and Health Services Coordination Council.

(b) Definition. For the purpose of directing the work of the Housing and Health Services Coordination Council and its work products, including the biennial plan, Service-Enriched Housing is defined as community integrated, affordable, ~~and~~-accessible rental housing that provides residents with the opportunity to receive on-site and/or off-site health-related and other services and supports that foster independence in living and decision-making for individuals including those with disabilities, ~~and persons~~ people who are elderly, persons who are experiencing or have experienced homelessness, veterans, youth exiting foster care and Violence Against Women Act covered populations.

(c) Preferences and limitations for individual properties are governed by the tenant selection criteria found in Chapters 1, 10, 11, 12, and 13 of this Title and by specific requirements found in Land Use Restriction Agreements.

1i

BOARD ACTION REQUEST
HOUSING RESOURCE CENTER
NOVEMBER 10, 2022

Presentation, discussion, and possible action on an order proposing new 10 TAC Chapter 1 Subchapter A, §1.9 Housing Finance Corporation Reporting Requirements and directing that it be published for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, Tex. Local Gov't Code §394.027 requires that before August 31 of each year, a housing finance corporation (HFC) organized under Chapter 394 of the Tex. Local Gov't Code shall file a report on their single family and multifamily activity with the Texas Department of Housing and Community Affairs (TDHCA or the Department);

WHEREAS, Tex. Local Gov't Code §394.027(a) specifically directs the Department to prescribe the form for the report submission by HFCs by rule;

WHEREAS, the Department has been collecting the noted reports from HFCs, but had not formalized the form by rule, and such a rule will provide consistency by standardizing the collection process in rule; and

WHEREAS, such proposed rulemaking will be published in the *Texas Register* for public comment from October 28, 2022, through November 28, 2022, and subsequently returned to the Board for final adoption;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be authorized, empowered, and directed on behalf of the Department to cause the proposed order taking action regarding 10 TAC Chapter 1 Subchapter A, §1.9 Housing Finance Corporation Reporting Requirements, in the form presented to this meeting, to be published in the *Texas Register* for public comment, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The Texas Housing Finance Corporations Act of 1987 (the Act) provides for the establishment of nonprofit HFC's organized and controlled by units of government to provide financing for single family and multifamily activity within the state of Texas. Tex. Local Gov't Code §394.027 requires each HFC to submit by August 31 of each calendar year a report to the Department on each single-family home mortgage loan made during the preceding 12 months ending June 30. The HFC must also report similar information with regard to any multifamily units financed by the HFC. Pursuant to the statute, the report is to include the "data reported by originating lenders under the Federal Home Mortgage Disclosure Act" and in a form prescribed by the Department.

The statutory language is excerpted below:

Sec. 394.027. ANNUAL REPORT. (a) Before August 31 of each year, a housing finance corporation shall file with the Texas Department of Housing and Community Affairs a report in accordance with this section. The department by rule shall prescribe the form of the report.

(b) The report must include for each single-family home mortgage loan made by the housing finance corporation during the preceding 12 months ending June 30 of the year the report is filed, the data reported by originating lenders under the Federal Home Mortgage Disclosure Act.

(c) The report must include for persons residing in multifamily housing units financed by the housing finance corporation information similar to the geographic and demographic information contained in the Texas Department of Housing and Community Affairs compliance monitoring form and tenant income certification, including household size, total household income, and project location.

Historically, the Department has sent a notice and collection instrument to all known HFC's in the state and has received responses on bond activity; however, in recent years bonds have not been the prevalent method by which funding assistance for housing has occurred. The data collected has included the following: physical address and census tract of each property, amount of the loan, household size and income, as well as optional information regarding ethnicity and special needs of the household.

Although Tex. Local Gov't Code §394.027 does not have such a limitation, the Department's collection tool has previously been geared toward collecting only mortgage information through bond transactions, and therefore many HFC's have reported no activity. The draft rule proposes requiring the collection of data to include households that have been assisted by the HFC through all financing mechanisms, which is more aligned with the statute. For example, many HFC's have, in recent years, shifted away from the bond market in favor of the "To Be Announced (TBA)" market. Similar to the bond market, the TBA market relies on mortgage loans that are pooled together as pass-through securities issued by Freddie Mac, Fannie Mae, and Ginnie Mae. Another example of a form of assistance that has grown in use, but for which information has not been collected, is the mortgage credit certificate (MCC). The MCC can also only be issued by an HFC, and can be combined with a TBA funded mortgage but not with a bond-funded mortgage.

For multifamily activity, previous collection of data only included new bond issuances. The draft rule proposes that the Department collect information on all multifamily properties financed by the HFC, including but not limited to, pass through state and federal funds, private activity bond funds, and §501(c)(3) bond funds. Again, staff believes this creates greater consistency with the statutory requirement.

In addition to the changes noted above, the draft rule proposes adding additional data points to the Annual Report form that are reported under the Federal Home Mortgage Disclosure Act. These added data points include the type of loan product (FHA, VA, USDA or conventional), loan originator, loan amount and form (grant or loan and terms) of down payment assistance, and term of the loan.

Staff recommends publication of the proposed draft rule as provided in Attachment 1.

Attachment 1: Preamble and proposed new 10 TAC Chapter 1, Administration, Subchapter A, §1.9 Housing Finance Corporation Reporting Requirements

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 1, Administration, Subchapter A, §1.9 Housing Finance Corporation Reporting Requirements. The purpose of the proposed rule is to provide guidance concerning the requirement that the annual activity of housing finance corporations (HFCs) in Texas be reported to the Department. While this is a new rule, the reporting requirement has been in place since 1995, and many housing finance corporations have responded to the Department's annual request to provide information to the Department. A rule regarding the form of the report, as directed by Tex. Local Gov't Code §394.027(a), is now being proposed.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action under category (c)(9), because the rule is necessary to implement legislation, specifically Tex. Local Gov't Code Chapter 394. However, it has been determined that no costs are associated with this action, as HFCs are already collecting the information required by this statute, and therefore no costs warrant being offset.

The Department has analyzed this proposed 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. Robert Wilkinson, Executive Director, has determined that, for the first five years the proposed rule would be in effect, the proposed rule does not create or eliminate a government program, but relates to the implementation of a new rule to provide compliance with Tex. Local Code §394.027 and provide the format by which HFCs submit reports to the Department.
2. The proposed rule does not require a change in work that would require the creation of new employee positions, nor is the proposed rule significant enough to reduce work load to a degree that any existing employee positions are eliminated.
3. The proposed rule does not require additional future legislative appropriations.
4. The proposed rule does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.
5. The proposed rule is creating a new regulation, however the activities required by the rule are already occurring. The rule will moderately augment the extent of information required to be submitted.
6. The proposed action will not repeal an existing regulation.
7. The proposed rule will increase the number of individuals subject to the rule's applicability, however those subject to the rule are already required to submit reporting to the Department in accordance with Tex. Local Gov't Code §394.027.
8. The proposed rule 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.

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. This rule relates to the procedures for the submission of reports to the Department by HFCs. As HFCs are not generally small or micro-businesses, they are subject to the rule. There are not likely to be rural communities subject to the proposed rule because this rule is applicable only to HFCs, not municipalities.

3. The Department has determined that because this rule relates only to the reporting requirements for HFCs, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed rule 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 proposed rule as to its possible effects on local economies and has determined that for the first five years the proposed rule will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule. Additionally, because this rule only provides for administrative processes required of HFCs, no activities under this rule would support additional local employment opportunities. Alternatively, the rule would also not cause any negative impact on employment.

Tex. 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 no impact is expected on a statewide basis, there are also no "probable" effects of the new rule on particular geographic regions.

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 section is in effect, the public benefit anticipated as a result of the proposed rule is more consistency and transparency in the content of the reports and therefore in identifying who HFCs are serving in the state of Texas. There will be no material economic impact to any individuals required to comply with the new rule.

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 section is in effect, enforcing or administering the proposed rule does not have any foreseeable implications related to costs or revenues of the state or local government, as the housing finance corporations will now have to report on more of the information already being collected by the originating lender and provide it in a format specified by the Department.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held October 28, 2022, to November 28, 2022, to receive input on the proposed new rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Elizabeth Yevich, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time.

STATUTORY AUTHORITY. This new section is proposed pursuant to Tex. Local Gov't Code, §394.027, which authorizes the Department to adopt rules for this purpose. Except as described herein, the new sections affect no other code, article, or statute.

§1.9. Housing Finance Corporation Reporting Requirements

(a) Purpose. The purpose of this section is to outline the process, documentation, and format for reporting the information that housing finance corporations (HFCs) are required to submit to the Texas Department of Housing and Community Affairs (the Department) annually pursuant to Tex. Local Gov't Code, §394.027.

(b) Reporting Format.

(1) The Department will create a report form in a commonly available format, which contains the data fields described in subsection (c) of this section and which is required to be submitted as part of the annual report. The Department will make said forms available on the Department's web site no later than July 1 of every year to collect information from the prior year.

(2) The HFC must provide the report to the Department in an electronic spreadsheet format acceptable to the Department that contains data for all fields applicable to each respective HFC in a format that can be imported into common database software.

(c) Reporting Content.

The HFC must include complete information in the report for all of the fields described in paragraphs (1) to (3) of this subsection no later than August 31 of each year. The report content must include all information for all HFC activity for the preceding 12 months ending June 30 of the year the report is filed.

(1) General Information. The HFC must include in the report the general information fields identified in subparagraphs (A) to (H) of this paragraph.

(A) The counties and cities served by the HFC;

(B) The name and contact information (phone number and email) for the contact person for the HFC;

(C) The series number or identifying name of any and each single or multifamily bond program, single family To Be Announced (TBA) or Mortgage Credit Certificate (MCC) program or any other single family or multifamily financing program issued by the HFC during the reporting period;

(D) The total number and total face value dollar amount of mortgage loans made via the HFCs programs;

(E) The total number and dollar value of properties assisted with MCCs issued by the HFC;

(F) The number of multifamily properties and units financed through the HFC during the reporting period;

(G) The face value of assistance by assistance type and total; and

(H) The number of properties, number of units and number of persons residing in properties financed by HFC during the reporting time period that are still under affordability restrictions.

(2) Single Family Data. The HFC must include in the report the information fields regarding each household served with assistance for single-family residences identified in subparagraphs (A) to (K) of this paragraph during the reporting period.

(A) The financing method of the loan;

(B) The address and census tract of each property;

(C) The face value of the loan;

(D) The term of the loan;

- (E) The annual percentage rate associated with the loan;
- (F) The type of loan product (FHA, VA, USDA or conventional);
- (G) The name of the loan originator or firm;
- (H) The amount and form (grant or loan and terms) of down payment assistance;
- (I) The household size and income;
- (J) Ethnicity of borrower, if available; and
- (K) Special needs of the household, if available.

(3) Multifamily Data. The HFC must include in the report the information fields regarding each multifamily property financed during the reporting period and subject to restrictions imposed by the HFC as a result of HFC financing in prior years, as identified in subparagraphs (A) to (E) of this paragraph:

- (A) The name, address, and census tract of each property;
- (B) The property manager's contact information;
- (C) The term of the loan;
- (D) The Bond caption or original source of HFC funds; and

(E) For multifamily properties with three or fewer Units: Information specific to each unit available for lease and if leased the household information at the close of the reporting period as provided in clauses (i) to (xi) of this subparagraph.

- (i) Unit Number;
- (ii) Whether the unit is vacant or occupied;
- (iii) Monthly rent charged;
- (iv) Number of bedrooms in the unit;
- (v) The size of the household; and
- (vi) Annual household income;

(F) For multifamily properties with more than three Units: Information specific to each unit available for lease and if leased the household information at the close of the reporting period as provided in clauses (i) to (xi) of this subparagraph.

- (i) Unit Number;
- (ii) Whether the unit is vacant or occupied;
- (iii) Monthly rent charged;
- (iv) Number of bedrooms in the unit;
- (v) The size of the household;
- (vi) Annual household income;
- (vii) Whether the household is assisted with rental assistance of any kind;
- (viii) Race of head of household occupying unit, if available;
- (ix) Ethnicity of head of household occupying unit, if available;
- (x) Whether a member of the household has requested specific special needs accommodations; and
- (xi) Whether a unit is mobility and/or auditory/visual accessible by either the Uniform Federal Accessibility Standards (UFAS) or 2010 ADA Standards, including those designed with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 Federal Register 29671.

(d) The Department may compile and may publish the information received within the reports from HFCs in summary form on its website or elsewhere. In all cases any information compiled from the HFC reports will exclude any personally identifiable information, and publication may be further limited by state and federal statutory exclusions, or exceptions to public information laws. Information made public will only include averages calculated based on not fewer than three households.

1j

BOARD ACTION REQUEST

HOME AND HOMELESSNESS PROGRAMS DIVISION

NOVEMBER 10, 2022

Presentation, discussion, and possible action on the proposed repeal and proposed new sections 10 TAC §7.8, §7.25, §7.34, §7.36, §7.39, and §7.40, and directing their publication for public comment in the *Texas Register*.

RECOMMENDED ACTION

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

WHEREAS, staff proposes repeal and proposed new sections at §7.8 General Policies and Procedures; §7.25 Program Income; §7.34, Continuing Awards; §7.36, General Threshold Criteria; §7.39 Uniform Selection Criteria; and §7.40, Competitive Program Participant Services Selection Criteria;

WHEREAS, staff recommends to the Board that there is a need for these rule sections to be updated to assist Applicants in planning and preparation of requests for funds, and to assist Subrecipients in administration of their grants; and

WHEREAS, upon Board approval these actions will be published in the *Texas Register* for public comment, which will be accepted from November 25, 2022 through December 27, 2022, and then presented to the Board for final adoption;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal and proposed new §7.8 General Policies and Procedures; §7.25 Program Income; §7.34, Continuing Awards; §7.36, General Threshold Criteria; §7.39 Uniform Selection Criteria; and §7.40, Competitive Program Participant Services Selection Criteria with the preamble presented to this meeting, are hereby approved for publication in the *Texas Register* for public comment; and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed actions to be published for public comment in the *Texas Register*, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles.

BACKGROUND

In spring of 2022, 10 TAC Chapter 7 went through a substantial update after careful consideration of input from Stakeholders. While applying these rules, staff has identified updates and clarifications necessary to better administer the Emergency Solutions Grant (ESG) and Homeless Housing Services (HHSP) Programs.

Subchapter A, General Policies and Procedures

Staff is proposing updates through the repeal, and simultaneous new proposal, to one section of 10 TAC Chapter 7, Subchapter A to include additional needed updates as follows:

- §7.8 Record Retention. Updated to reflect current applicable State regulations.

Subchapter B, Homeless Housing and Services Program (HHSP)

Staff is proposing updates through the repeal, and simultaneous new proposal, to one sections of 10 TAC Chapter 7, Subchapter B to include additional needed updates as follows:

- §7.25 Program Income. Definitions updated to align with the current State regulations.

Subchapter C, Emergency Solutions Grants (ESG)

Staff is proposing updates through the repeal, and simultaneous new proposal, to sections 10 TAC §7.34, 10 TAC §7.36, 10 TAC §7.39, and 10 TAC §7.40 within Subchapter C to include additional needed updates as follows:

- §7.34 Continuing Awards. Update provides clarification noting percentages will not be rounded up to the nearest whole number.
- §7.36 General Threshold Criteria. This section updated certain Application threshold requirements.
- §7.39 Uniform Selection Criteria. Update provides clarification noting percentages will not be rounded up to the nearest whole number.
- §7.40 Competitive Program Participant Services Selection Criteria. Proposed updates to staff qualifications in order to more clearly align with the intent of the rule and to correct a citation.

Attachment A: Preamble, including required analysis, for proposed repeal of 10 TAC §7.8

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC §7.8 Records Retention. The purpose of the proposed repeal is to remove an outdated regulation citation while adopting a new updated rule under separate action.

The Department has analyzed this proposed 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 proposed repeal would be in effect:

1. The proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the administration of the Homeless Programs.
2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.
3. The proposed repeal does not require additional future legislative appropriations.
4. The proposed 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 proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of homeless programs.
7. The proposed repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed 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 proposed repeal and determined that the proposed 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 proposed repeal does not contemplate or 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 proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed 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 determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be more clarity on the administration of the Emergency Solutions Grants Program. 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 also has

determined that for each year of the first five years the proposed 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.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 25, 2022, to December 27, 2022, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email rosy.falcon@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, December 27, 2022.

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.

10 TAC Chapter 7, Subchapter A, General Policies and Procedures

§7.8 Records Retention

Attachment B: Preamble for proposed new 10 TAC §7.8

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC §7.8 Records Retention. The purpose of the proposed new section is to provide clarification and updates to requirements related to the adherence to updated State regulation.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed 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 proposed new rule would be in effect:

1. The proposed rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing administration of the Homeless Programs.
2. The proposed 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 proposed rule does not require additional future legislative appropriations.
4. The proposed rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The proposed rule will not expand, limit, or repeal an existing regulation.
7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed rule will not negatively or positively affect the 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, in drafting this proposed 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, Ch. 2306.

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 no small or micro-businesses subject to the proposed rule because these funds are limited to units of local government or designated nonprofits per 10 TAC §7.35 for the programs.
3. The Department has determined that based on the considerations in item two above, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed rule does not contemplate or 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 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 new rule has no economic effect on local employment because this rule will channel funds, which may be limited, only to municipalities and nonprofits; it is not anticipated that the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rule would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rule.

Tex. 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 no impact is expected, there are no "probable" effects of the new rule on particular geographic regions.

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 subchapter is in effect, the public benefit anticipated as a result of the new subchapter will be a rule that has greater clarity into the processes and definitions of the administration of homeless programs. There will not be any economic cost to any individuals required to comply with the new subchapter because the processes described by the rule have already been in place through the rule found at this subchapter being repealed.

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 subchapter is in effect, enforcing or administering the new subchapter does not have any foreseeable implications related to costs or revenues of the state or local governments because the costs for administering the program in included in eligible activities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 25, 2022, to December 27, 2022, to receive input on the new proposed subchapter. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email rosy.falcon@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, December 27, 2022.

STATUTORY AUTHORITY. The new subchapter is proposed pursuant to Tex. Gov't 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 7
SUBCHAPTER A
RULE §7.8

HOMELESSNESS PROGRAMS
GENERAL POLICIES AND PROCEDURES
Records Retention

- (a) Records must be kept in accordance with §1.409 of this Title (relating to Records Retention).
- (b) Record retention for construction/rehabilitation/conversion of emergency shelters or Dwelling Units must be retained until the expiration of the LURA.
- (c) For ESG, retention for records relevant to the ESG Contract (including but not limited to shelter and habitability inspections) shall be kept in accordance with 24 CFR §576.500 and ~~UGMS~~ TXGMS, as defined at §1.401 of this title (relating to Definitions), as applicable except if any litigation, claim, negotiation, audit, monitoring, inspection or other action has started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later. The record retention period does not begin until one year after the expiration of the Contract.
- (d) For state funds, retention for records relevant to the Contract (including but not limited to shelter and habitability inspections) shall be kept in accordance with ~~UGMS~~ or TXGMS, as applicable, and retained by the Subrecipient for a period of three years from the expiration of the Contract except if any litigation, claim, negotiation, audit, monitoring, inspection or other action has started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

Attachment C: Preamble, including required analysis, for proposed repeal of 10 TAC §7.25

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of section 10 TAC §7.25 Program Income. The purpose of the proposed repeal is to remove an outdated definition while adopting a new updated rule under separate action.

The Department has analyzed this proposed 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 proposed repeal would be in effect:

1. The proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the administration of the Homeless Programs.
2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.
3. The proposed repeal does not require additional future legislative appropriations.
4. The proposed 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 proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of homeless programs.
7. The proposed repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed 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 proposed repeal and determined that the proposed 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 proposed repeal does not contemplate or 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 proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed 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 determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be more clarity on the administration of the Emergency Solutions Grants Program. 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 also has

determined that for each year of the first five years the proposed 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.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 25, 2022, to December 27, 2022, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email rosy.falcon@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, December 27, 2022.

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.

10 TAC Chapter 7, Subchapter B, Homeless Housing and Services Program

§7.25 Program Income

Attachment D: Preamble for proposed new 10 TAC §7.25

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC §7.25 Program Income. The purpose of the proposed new section is to update the definition of Program Income to align with State regulations.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed 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 proposed new rule would be in effect:

1. The proposed rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing administration of the Homeless Programs.
2. The proposed 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 proposed rule does not require additional future legislative appropriations.
4. The proposed rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The proposed rule will not expand, limit, or repeal an existing regulation.
7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed rule will not negatively or positively affect the 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, in drafting this proposed 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, Ch. 2306.

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 no small or micro-businesses subject to the proposed rule because these funds are limited to units of local government or designated nonprofits per 10 TAC §7.35 for the programs.
3. The Department has determined that based on the considerations in item two above, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed rule does not contemplate or 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 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 new rule has no economic effect on local employment because this rule will channel funds, which may be limited, only to municipalities and nonprofits; it is not anticipated that the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rule would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rule.

Tex. 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 no impact is expected, there are no "probable" effects of the new rule on particular geographic regions.

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 subchapter is in effect, the public benefit anticipated as a result of the new subchapter will be a rule that has greater clarity into the processes and definitions of the administration of homeless programs. There will not be any economic cost to any individuals required to comply with the new subchapter because the processes described by the rule have already been in place through the rule found at this subchapter being repealed.

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 subchapter is in effect, enforcing or administering the new subchapter does not have any foreseeable implications related to costs or revenues of the state or local governments because the costs for administering the program in included in eligible activities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 25, 2022, to December 27, 2022, to receive input on the new proposed subchapter. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email rosy.falcon@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, December 27, 2022.

STATUTORY AUTHORITY. The new subchapter is proposed pursuant to Tex. Gov't 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.

RULE §7.25 Program Income

(a) Program income ~~is includes but is not limited to:~~ income from fees for services performed, ~~from~~ the use or rental of real or personal property acquired ~~with under this award grant funds,~~ ~~from~~ the sale of commodities or items fabricated under ~~a grant agreement~~ this award, and from payments of principal and interest on loans made with ~~grant funds~~ this award, where authorized. Program income does not include interest on federal grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them. Interest earned in excess of \$250 on grants or loans from purely state sources is considered program income.

(b) Security and utility deposits must be reimbursed to the Program Participant and are not considered program income. The deposit must remain with the Program Participant and be returned only to the Program Participant.

(c) In accounting for program income, the Subrecipient must accurately reflect the receipt of such funds separate from the receipt of program funds and Subrecipient funds.

(d) Program income that is received during the Contract Term may be expended for HHSP eligible costs during the Contract Term, and reported in the Monthly Expenditure Report.

(e) Program income that is received after the end of the Contract Term, or not expended within the Contract Term, must be returned to the Department within 10 calendar days of receipt.

Attachment E: Preamble, including required analysis, for proposed repeal of 10 TAC §7.34, 10 TAC §7.36, §7.39, and 10 TAC §7.40

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC §7.34, Continuing Awards; 10 TAC §7.36, General Threshold Criteria; §7.39, Uniform Selection Criteria; and §7.40, Competitive Program Participant Services Selection Criteria. The purpose of the proposed repeal is to remove ambiguity in eligibility determination in the rule and streamlining the application requirements while adopting a new updated rule under separate action.

The Department has analyzed this proposed 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 proposed repeal would be in effect:

1. The proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the administration of the Emergency Solutions Grants (ESG) Program.
2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.
3. The proposed repeal does not require additional future legislative appropriations.
4. The proposed 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 proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of homeless programs.
7. The proposed repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed 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 proposed repeal and determined that the proposed 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 proposed repeal does not contemplate or 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 proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed 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 determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be more clarity on the

administration of the Emergency Solutions Grants Program. 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 also has determined that for each year of the first five years the proposed 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.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 25, 2022, to December 27, 2022, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email rosy.falcon@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, December 27, 2022.

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.

10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants (ESG)

§7.34 Continuing Awards

§7.36 General Threshold Criteria

§7.39 Uniform Selection Criteria

§7.40 Competitive Program Participant Services Selection Criteria

Attachment F: Preamble for proposed new 10 TAC §7.34, 10 TAC §7.36, §7.39, and 10 TAC §7.40

The Texas Department of Housing and Community Affairs (the Department) proposes new sections 10 TAC §7.34, Continuing Awards, 10 TAC §7.36, General Threshold Criteria, §7.39 Uniform Selection Criteria, and 10 TAC §7.40 Competitive Program Participant Services Selection Criteria. The purpose of the proposed new sections is to provide clarifications and updates to requirements related to the award process for the ESG Program, including updating threshold requirements and updating scoring processes and award procedures for award cycles.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed 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 proposed new rule would be in effect:

1. The proposed rule does not create or eliminate a government program, but relates to the re-adoption of this rule which makes changes to an existing activity, administration of the Emergency Solutions Grants or Emergency Solutions Grants CARES programs.
2. The proposed 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 proposed rule does not require additional future legislative appropriations.
4. The proposed rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The proposed rule will not expand, limit, or repeal an existing regulation.
7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed rule will not negatively or positively affect the 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, in drafting this proposed 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, Ch. 2306.

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 no small or micro-businesses subject to the proposed rule because these funds are limited to units of local government or designated nonprofits per 10 TAC §7.35 for the programs.
3. The Department has determined that based on the considerations in item two above, there

will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed rule does not contemplate or 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 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 new rule has no economic effect on local employment because this rule will channel funds, which may be limited, only to municipalities and nonprofits; it is not anticipated that the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rule would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rule.

Tex. 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 no impact is expected, there are no "probable" effects of the new rule on particular geographic regions.

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 subchapter is in effect, the public benefit anticipated as a result of the new subchapter will be a rule that has greater clarity into the processes and definitions of the administration of homeless programs. There will not be any economic cost to any individuals required to comply with the new subchapter because the processes described by the rule have already been in place through the rule found at this subchapter being repealed.

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 subchapter is in effect, enforcing or administering the new subchapter does not have any foreseeable implications related to costs or revenues of the state or local governments because the costs for administering the program is included in eligible activities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 25, 2022, to December 27, 2022, to receive input on the new proposed subchapter. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Rosy Falcon, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email rosy.falcon@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, December 27, 2022.

STATUTORY AUTHORITY. The new subchapter is proposed pursuant to Tex. Gov't 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 7 HOMELESSNESS PROGRAMS

SUBCHAPTER C EMERGENCY SOLUTIONS GRANTS (ESG)

RULE §7.34 Continuing Awards

(a) TDHCA will withhold a portion of funds from the competition for funds to be used for continuing awards to prior Subrecipients of its ESG allocation, not including ESG CARES or Contracts for reallocated funds from prior years only, in accordance with §7.33 of this subchapter (related to Apportionment of ESG Funds).

(b) ESG funds withheld for continuing awards by the Department will be allocated in accordance with the Allocation Formula, and are not subject to the award process and requirements outlined in §7.38 of this subchapter (relating to Award and Funding Process for Allocated Funds).

(c) The subsequent years of allocation of ESG funds received by the Department will be offered to eligible Subrecipients of ESG funds (not including ESG CARES) that were awarded funds from at least three of the prior four allocations of ESG. An ESG Subrecipient is eligible for an offer of a continuing award of funds if the Subrecipient meets the following requirements:

(1) Submits an abbreviated Application for funding within 21 days of the request from the Department as promulgated by the Department;

(2) Resolves administrative deficiencies within the timeframe and in the manner outlined in §7.37 of this subchapter (relating to Application Review and Administrative Deficiency Process for Department NOFAs);

(3) Submitted four or fewer delinquent monthly reports for each of their active ESG Contracts (not including ESG CARES) for reports due in the six month period preceding the application submission deadline;

(4) Satisfies the requirements of the Previous Participation Review as provided for in §1.302 of this title (relating to Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter);

(5) Does not have unresolved monitoring findings in any TDHCA funded program after the corrective action period;

(6) Does not apply for funds within the same COC Region under the competitive Application process for Program Participant service(s) in which they are already funded for a Continuing Award;

(7) Expended a minimum of 95% of their contracted award amount, as amended in their most recently closed ESG Contract (not including ESG CARES); (8) Did not voluntarily deobligate an amount that exceeds 5% of their contracted award amount, as amended for increases due to reallocated funds, on their most recently closed ESG Contract (not including ESG CARES); and

(9) Is approved by the Department's Governing Board.

(d) Any offer of ESG funds made under this section is contingent on retaining similar terms and conditions or agreeing to adjustments reflective of funding amount, including but not limited to performance and match requirements, in the active ESG annual Contract issued under a NOFA.

(e) Offers of funding will be based on the prior year's award, excluding Contracts comprised exclusively of reallocated funds, before amendments, and will be proportionally increased or decreased in proportion to the total amount of ESG funds available subject to the allocation formula.

(f) If additional funds are made available due to reduced continuing awards in the region, awards may be increased proportionate to the increased withheld funds. In any event, an increased

award from funds made available from reduced awards may not exceed 115% of the award amount under the allocation or the maximum award amount established in the NOFA.

(g) Funds that remain available after all eligible continuing awards have been accepted will be transferred to the competition for funds for the regional competition in accordance with §7.38 of this subchapter.

(h) Percentages identified in this section will not be rounded up to the nearest whole number.

RULE §7.36 General Threshold Criteria

(a) Applications submitted to the Department are subject to general threshold criteria. Applications which do not meet the general threshold criteria or which cannot resolve an administrative deficiency related to general threshold criteria are subject to termination. Applicants applying directly to the Department to administer the ESG Program must submit an Application on or before the deadlines specified in the NOFA, notification of a direct Subgrant, or notification of availability of a continuing award, and must include items in paragraphs (1) - (13) of this subsection:

(1) Application materials as published by the Department including, but not limited to, program description, budget, and performance statement.

(2) An ESG budget that does not exceed the total amount available within the CoC region, other geographic limitation, Subgrant, or offer of continuing award, as applicable.

(3) A copy of the Applicant's written standards that comply with the requirements of 24 CFR §576.400 and certification of compliance with these standards. Any occupancy standard set by the Subrecipient must not conflict with local regulations or Texas Property Code §92.010.

(4) A copy of the Applicant's policy for termination of assistance that complies with the requirements of 24 CFR §576.402 and certification of compliance with these standards.

(5) A Service Area which consists of at least the entirety of one county or multiple counties within the CoC region under which Application is made, unless a CoC region does not include an entire county. When the CoC region does not encompass at least the entirety of one county, the Service Area must encompass the entire CoC region. The Service Area selected within an Application must be fully contained within one CoC region.

(6) Commitment in the budget to the provision of 100% Match, or request for a Match waiver, as applicable. Match waivers will be considered by the Department based on the rank of the Application. Applicants requesting an award of funds in excess of the minimum award amount as described in the NOFA for Program Participant services are not eligible to request or receive a Match waiver. In the event that the Match waivers requested exceed \$100,000, the waivers will be considered only for the highest scoring eligible Applications, subject to availability of excess Match provided by ESG Applicants. Applicants that do not receive the waiver and are unable to provide a source of Match will be ineligible for an ESG award.

~~(7) Evidence from the CoC Lead Agency in the region that the Applicant consulted with the CoC in the preparation of their ESG Application and that the CoC Lead Agency agrees that the Application meets CoC priorities for serving persons experiencing homelessness and/or persons~~

~~At-risk of Homelessness.~~

(~~87~~) Applicant certification of compliance with State and federal laws, rules and guidance governing the ESG Program as provided in the Application.

(~~89~~) Evidence of a Unique Entity Identifier (UEI) number for Applicant.

(~~910~~) Documentation of existing Section 501(c) tax-exempt status, as applicable.

(~~101~~) Completed previous participation review materials, as outlined in Chapter 1, Subchapter C of this title (relating to Previous Participation), for Applicant.

(~~112~~) Local government approval per 24 CFR §576.202(a)(2) for an Applicant that will be providing shelter activities with ESG or as ESG Match, as applicable. This documentation must be submitted not later than 30 calendar days after the Application submission deadline as specified in the NOFA, or prior to execution of a Contract for Subrecipients subject to a direct Subgrant, or continuing award. Receipt of the local government approval is a condition prior to the Department obligating ESG funding.

(~~123~~) A resolution or other governing body action from the Applicant's direct governing body which includes:

(A) Authorization of the submission of the Application;

(B) Title of the person authorized to represent the entity and who also has signature authority to execute a Contract; and

(C) Date that the resolution was passed by the governing body, which must be not older than 12 months preceding the date the Application is submitted.

(b) An Application must be substantially complete when received by the Department. An Application may be terminated if the Application is so unclear or incomplete that a thorough review cannot reasonably be performed, as determined by the Department. Such Application will be terminated without being processed as an administrative deficiency. Specific reasons for a Department termination will be included in the notification sent to the Applicant but, because the termination may occur prior to completion of the full review, will not necessarily include a comprehensive list of all deficiencies in the Application. Termination of an Application may be subject to §1.7 of this title (relating to Appeals Process).

RULE §7.39 Uniform Selection Criteria

An Application for funding allocated in accordance with §7.33(b) of this section (relating to Apportionment of ESG Funds) and made to the Department may be awarded points under the following uniform selection criteria. The total of the score under this part will be the uniform Application score. The uniform Application score will be comprised of points awarded under each of the following criteria:

(1) Homeless participation. An Application may receive a maximum of three points for the participation of persons who are Homeless in the Applicant's program design. Points may be earned under subparagraphs (A) and (B) of this paragraph for a total of up to three points.

(A) An Application may receive a maximum of two points when at least one person who is

Homeless or formerly Homeless is a member of or consults with the Applicant's policy-making entity for facilities, services, or assistance under ESG; and

(B) An Application may receive a maximum of one point when at least one person who is Homeless or formerly Homeless is employed in a paid position with duties that include constructing, renovating, maintaining, or operating the Applicant's ESG facilities, or providing services for occupants of its ESG facilities.

(2) Organizational or management experience. An Application may receive a maximum of eight points for an Applicant or its management staff's experience administering federal or State homeless programs.

(A) An Application may receive a maximum of three points for an Applicant or its management staff with at least two but less than four years of experience;

(B) An Application may receive a maximum of five points for an Applicant or its management staff with at least four but less than six years of experience; or

(C) An Application may receive a maximum of eight points for an Applicant or its management staff with six or more years of experience.

(3) Percentage of prior ESG awarded funds expended. An Application may receive a maximum of six points for the Applicant's past expenditure performance of ESG funds proportionate to the award of funds from TDHCA to the Applicant. This will apply to any and all ESG Contract(s), exclusive of ESG CARES Contracts, administered by the Applicant that were closed within 12 months prior to the date of the Application deadline established in the by the Department. Contract Expenditures will be averaged among all ESG Contracts that were closed within 12 months of the Application deadline, without requiring an amendment if the Applicant was awarded multiple Contracts. The percentage of ESG funds expended will be calculated utilizing the amount of the Contract as of its closing as stated in the Contract prior to amendments, except where the Applicant voluntarily return funds in accordance with this subchapter. Expenditure will be defined as the Applicant having reported the funds as expended. Applications may receive:

(A) Two points if the Applicant expended 91-94% of its prior ESG Contract funds as of its closing as stated in the Contract prior to amendments;

(B) Three points if the Applicant expended 95% to less than 100% of its prior ESG Contract funds as of its closing as stated in the Contract prior to amendments; or

(C) Six points if the Applicant expended 100% of its prior ESG Contract funds as of its closing as stated in the Contract prior to amendments.

(4) Contract History on Reporting and percentage of Outcomes. An Applicant may receive a maximum of twelve points for its prior timeliness of reports and performance achieved for previously awarded ESG Contract(s), exclusive of ESG CARES Contracts, that closed within 12 months prior to the date of the Application deadline established by the Department. Points may be requested under subparagraphs (A) - (E) of this paragraph, not to exceed a total of ten points. The Outcome percentages will be averaged among all prior ESG Contracts, exclusive of ESG CARES Contracts, that closed within 12 months prior to the date of the Application deadline to determine the final percentage amount for this scoring criterion. Applications may receive points as follows:

(A) Two points if the Applicant submitted the last three reports on or before the Contract end date within the reports' respective reporting deadlines;

(B) Two points if the Applicant met 100% or more of their street outreach target of persons exiting to temporary or transitional or permanent housing destination;

(C) Two points if the Applicant met 100% or more of their emergency shelter exits to permanent housing;

(D) Two points if the Applicant met 100% or more of their Homeless prevention target for maintaining housing for three months or more;

(E) Two points if the Applicant met 100% or more of their rapid re-housing target for maintaining housing for three months or more; and

(F) Two points if the Applicant met 100% or more of their Match obligation.

(G) Twelve points if the Applicant has not previously been awarded an ESG Contract closed within 12 months prior to the date of the Application deadline.

(5) Monitoring history. Applications may receive a maximum of five points for the Applicant's previous ESG and ESG CARES monitoring history. The Department will consider the monitoring history for three years before the date that Applications are first accepted under the NOFA when determining the points awarded under this criterion. Findings that were subsequently rescinded will not be considered Findings for the purposes of this scoring criterion. Applications may be limited to a maximum of:

(A) Five points if the Applicant has not received any monitoring Findings, including Applicants with no previous monitoring history;

(B) Not more than three points if the monitoring history has a close-out letter that included Findings, but the Findings were not related to Household eligibility or violations of procurement requirements;

(C) Not more than two points if the monitoring history has a close-out letter that included Findings related to Household eligibility;

(D) Not more than one point if the monitoring history has a monitoring close-out letter that included Findings related to violations of procurement requirements; or

(E) Zero points may be requested under this criterion if the Applicant received a Finding resulting in disallowed costs in excess of \$5,000 which required repayment to the Department.

(6) Priority for certain communities. Applications may receive two points if at least one Colonia, as defined in Tex. Gov't Code §2306.083, is included in the Service Area identified in the Application. Applicants awarded points under this criterion will be contractually required to maintain a Service Area that includes at least one Colonia as identified on the Office of Attorney General's website.

(7) Previously unserved areas. Applications may receive a maximum of 10 points for provision of ESG services if at least one county in the Service Area included in the Application has not received ESG funds from the Department or directly from HUD within the previous federal funding year for services. Applications may receive a maximum (of ten points if at least one county within the Service Area as stated in the Application did not receive an award of ESG annual funds from the Department within the previous federal funding year.

(8) Percentages identified in this section will not be rounded up to the nearest whole number.

RULE §7.40 Competitive Program Participant Services Selection Criteria

(a) An Application for competitive funding allocated under §7.33(b) of this subchapter (relating to Apportionment of ESG Funds), and made to the Department, may be awarded points for Program Participant services under each category. Points awarded for Program Participant services will be separately tabulated and added to the uniform Application score to determine a score for each of the Program Participant services Applications submitted. All scoring criteria that are based upon measurable future performance expectations will be measured and expected to be fulfilled by being included as a performance requirement in the Contract should the Application be awarded funds.

(b) Street outreach. An Application proposing street outreach may receive points under the following criteria:

(1) Matching funds for street outreach. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for street outreach.

(2) Street outreach serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(~~b~~)(3~~14~~) of this chapter (relating to Definitions). An Applicant providing street outreach may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(3) Street outreach exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the Application due date who exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with street outreach who exited to positive housing destinations;

(B) Three points based on 35% of persons served with street outreach who exited to positive housing destinations;

(C) Four points based on 45% of persons served with street outreach who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with street outreach who exited to positive housing destinations.

(4) Street outreach staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the street outreach component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in one or more ~~than one~~ languages identified in the Applicant's Language Access Plan as necessary to provide equitable, meaningful access for persons with Limited English Proficiency; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Street outreach temporary/transitional/permanent housing target. An Application may receive a maximum of three points based on the percentage of persons targeted to be served with street outreach who will be placed in temporary, transitional or permanent housing. An Application may receive a maximum of:

(A) One point based on a minimum target of 35% of persons served with street outreach who will be placed in temporary housing;

(B) Two points based on a minimum target of 45% of persons served with street outreach who will be placed in temporary housing; or

(C) Three points based on a minimum target of 55% of persons served with street outreach who will be placed in temporary housing.

(6) Street outreach services. An Application may receive a maximum of five points based on the number of street outreach services provided through ESG or other funds including engagement, case management, emergency health services, emergency mental health services, and transportation services. Emergency health services and emergency mental services may only be provided by ESG funds if these services are inaccessible or unavailable within the area. An Application may receive a maximum of:

(A) Two points if the Applicant provides street outreach engagement and case management;

(B) Three points if the Applicant provides street outreach engagement and case management, and one other service;

(C) Four points if the Applicant provides street outreach engagement and case management, and two other services; or

(D) Five points if the Applicant provides street outreach engagement and case management, and three other services.

(7) Experience providing street outreach. An Application may receive a maximum of 10 points based on the Applicant's experience providing street outreach services.

(A) Two points if the Applicant has provided street outreach for up to two years;

(B) Four points if the Applicant has provided street outreach for up to four years;

(C) Six points if the Applicant has provided street outreach for up to six years;

(D) Eight points if the Applicant has provided street outreach for up to eight years; or

(E) Ten points if the Applicant has provided street outreach for 10 or more years.

(c) Emergency shelter. An Application proposing emergency shelter may receive points under the

following criteria:

(1) Matching funds for emergency shelter. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for emergency shelter.

(2) Emergency shelter serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(b)(314) of this chapter ([relating to Definitions](#)). An Applicant providing emergency shelter may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(3) Emergency shelter exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the Application due date exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with emergency shelter who exited to positive housing destinations;

(B) Three points based on 35% of persons served with emergency shelter who exited to positive housing destinations;

(C) Four points based on 45% of persons served with emergency shelter who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with emergency shelter who exited to positive housing destinations.

(4) Emergency shelter staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the street outreach component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in one or more ~~than one~~ languages, other than English, identified in the Applicant's Language Access Plan as necessary to provide equitable, meaningful access for persons with Limited English Proficiency; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Emergency shelter permanent housing. An Applicant may receive a maximum of three points

based on the percentage of persons served with emergency shelter targeted to be placed in permanent housing. An Application may receive a maximum of:

(A) One point based on a minimum target of 35% of persons served with emergency shelter who will be placed in permanent housing;

(B) Two points based on a minimum target of 45% of persons served with emergency shelter who will be placed in permanent housing; or

(C) Three points based on a minimum target of 55% of persons served with emergency shelter who will be placed in permanent housing.

(6) Emergency shelter services. An Applicant may receive a maximum of five points based on the number of emergency shelter services provided through ESG or other funds, as listed in 24 CFR §576.102. Emergency shelter services include case management, child care, education services, employment assistance and job training, outpatient health services, legal services, life skills training, outpatient mental health services, outpatient substance abuse treatment services, and transportation. Outpatient health services, mental services, and substance abuse treatment services should only be provided by ESG funds if these services are otherwise inaccessible or unavailable within the Service Area. This selection criterion will become a contractual requirement if the Applicant is awarded a Contract. An Application may receive a maximum of:

(A) Two points if the Applicant provides case management and two of the other services;

(B) Three points if the Applicant provides case management and three of the other services;

(C) Four points if the Applicant provides case management and four of the other services; or

(D) Five points if the Applicant provides case management and five of the other services.

(7) Experience providing emergency shelter. An Application may receive a maximum of 10 points based on the Applicant's experience providing emergency shelter services.

(A) Two points if the Applicant has provided emergency shelter for up to two years;

(B) Four points if the Applicant has provided emergency shelter for up to four years;

(C) Six points if the Applicant has provided emergency shelter for up to six years;

(D) Eight points if the Applicant has provided emergency shelter for up to eight years; or

(E) Ten points if the Applicant has provided emergency shelter for 10 or more years.

(d) Homeless prevention. An Application proposing homeless prevention may receive points under the following criteria:

(1) Matching funds for homeless prevention. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for homelessness prevention.

(2) Homelessness prevention serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2~~(b)~~(314) of this chapter (relating to Definitions). An Applicant providing homelessness prevention may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who have one or more special needs;

(B) Two points based on a minimum target of 80% of persons served who have one or more special needs;

(C) Three points based on a minimum target of 90% of persons served who have one or more special needs;

(D) Four points based on a minimum target of 95% of persons served who have one or more special needs; or

(E) Five points based on a minimum target of 100% of persons served who have one or more special needs.

(3) Homelessness prevention exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the Application due date exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with homelessness prevention who exited to positive housing destinations;

(B) Three points based on 35% of persons served with homelessness prevention who exited to positive housing destinations;

(C) Four points based on 45% of persons served with homelessness prevention who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with homelessness prevention who exited to positive housing destinations.

(4) Homeless prevention staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the homeless prevention component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in one or more ~~than one~~ languages, other than English, identified in the Applicant's Language Access Plan as necessary to provide equitable, meaningful access for persons with Limited English Proficiency; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Homeless prevention maintaining housing. An Application may receive a maximum of three points based on the percentage of persons served with Homelessness prevention who are targeted to maintain their housing for three months or more after program exit. Applications may receive a maximum of:

(A) One point based on a minimum target of 50% of persons served with homelessness prevention maintaining housing for three months;

(B) Two points based on a minimum target of (60% of persons served with homelessness prevention maintaining housing for three months; or

(C) Three points based on a minimum target of 70% of persons served with homelessness prevention maintaining housing for three months.

(6) Homeless prevention services and rental assistance. An Application may receive a maximum of five points based on the number of homeless prevention services and type of rental assistance provided through ESG or other funds. Homeless prevention services and rental assistance include

rental application fees, security deposits and last month's rent, utility payments/deposits, moving costs, housing search and placement, housing stability case management, mediation, legal services, credit repair, short-term rental assistance, and medium-term rental assistance. An Application may receive a maximum of:

(A) Two points if the Applicant provides housing stability case management and three of the other services or rental assistance;

(B) Three points if the Applicant provides housing stability case management and four of the other services or rental assistance;

(C) Four points if the Applicant provides housing stability case management and five of the other services or rental assistance; or

(D) Five points if the Applicant provides housing stability case management and six of the other services or rental assistance.

(7) Experience providing homeless prevention or rental assistance services. An Application may receive a maximum of 10 points based on the Applicant's experience providing homeless prevention or tenant-based rental assistance services.

(A) Two points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to two years;

(B) Four points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to four years;

(C) Six points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to six years;

(D) Eight points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to eight years; or

(E) Ten points if the Applicant has provided homeless prevention or tenant-based rental assistance services for 10 or more years.

(e) Rapid re-housing. An Application proposing rapid re-housing may receive points under the following criteria:

(1) Matching funds for rapid re-housing. Applications may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for rapid re-housing.

(2) Rapid re-housing serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(b)(314) of this chapter [\(relating to Definitions\)](#). Applicants providing rapid re-housing may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more

Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(3) Rapid re-housing exit to a positive housing destination. An Application may receive a maximum of five points based on the percentage of persons served within the 12 months prior to the Application due date exited homelessness to a positive housing destination per HMIS data standards:

(A) Two points based on 25% of persons served with rapid re-housing exited to positive housing destinations;

(B) Three points based on 35% of persons served with rapid re-housing who exited to positive housing destinations;

(C) Four points based on 45% of persons served with rapid re-housing who exited to positive housing destinations; or

(D) Five points based on 55% of persons served with rapid re-housing who exited to positive housing destinations.

(4) Rapid re-housing staff qualifications. An Applicant may receive a maximum of six points if a member of the staff interacting with Program Participants in the rapid re-housing component has one or more of the following qualifications:

(A) Two points if a member is a licensed mental health provider through the Texas Behavioral Executive Health Council;

(B) Two points if a member of staff is fluent in one or more ~~than one~~ languages, other than English, identified in the Applicant's Language Access Plan as necessary to provide equitable, meaningful access for persons with Limited English Proficiency; and

(C) Two points if program includes a paid staff member who has formerly experienced homelessness.

(5) Rapid re-housing maintaining housing. Applicants may receive a maximum of three points based on the percentage of persons served with rapid re-housing targeted to maintain their housing for three months or more after program exit. Applications may receive a maximum of:

(A) One point based on a minimum target of 50% of persons served with rapid re-housing maintaining housing for three months;

(B) Two points based on a minimum target of 60% of persons served with rapid re-housing maintaining housing for three months; or

(C) Three points based on a minimum target of 70% of persons served with rapid re-housing maintaining housing for three months.

(6) Rapid re-housing services and rental assistance. Applicants may receive a maximum of five points based on the number of rapid re-housing services and type of rental assistance provided through ESG or other funds. Rapid re-housing services and rental assistance include rental application fees, security deposits/last month's rent, utility payments/deposits, moving costs, housing search and placement, housing stability case management, mediation, legal services, credit repair, short-term rental assistance, medium-term rental assistance. Applications may receive a maximum of:

(A) Two points if the Applicant provides housing stability case management and three of the other services or rental assistance;

(B) Three points if the Applicant provides housing stability case management and four of the other components;

(C) Four points if the Applicant provides housing stability case management and five of the other components; or

(D) Five points if the Applicant provides housing stability case management and six of the other components.

(7) Experience providing rapid re-housing or tenant-based rental assistance services. Applications may receive a maximum of 10 points based on the Applicant's experience providing homeless prevention or tenant-based rental assistance services.

(A) Two points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to two years;

(B) Four points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to four years;

(C) Six points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to six years;

(D) Eight points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to eight years; or

(E) Ten points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for 10 or more years.

6c

BOARD ACTION REQUEST

BOND FINANCE DIVISION

NOVEMBER 10, 2022

Presentation, discussion, and possible action on Resolution No. 23-008 authorizing the issuance, sale and delivery of Texas Department of Housing and Community Affairs Single Family Mortgage Revenue Bonds, 2022 Series B (Non-AMT), approving the form and substance of related documents, authorizing the execution of documents and instruments necessary or convenient to carry out the purposes of this resolution, and containing other provisions relating to the subject

RECOMMENDED ACTION

Adopt attached resolution.

BACKGROUND

On October 19, 2022, the Department issued \$150 million Residential Mortgage Revenue Bonds, Series 2022B (Non-AMT) (Social Bonds). Mortgage loan reservations began on September 26, 2022 and were fully committed by October 17, 2022. Market conditions remain conducive to the issuance of tax-exempt, single family mortgage revenue bonds (SFMRBs) to finance mortgage loans for very low, low, and moderate income homebuyers, and provide loans with mortgage rates significantly lower than mortgage rates available under the TMP Program.

Due to high demand, staff is seeking approval for the issuance of Texas Department of Housing and Community Affairs, Single Family Mortgage Revenue Bonds, 2022 Series B (the 2022B Bonds).

2022B Bonds

The 2022B Bonds will be issued in a maximum par amount of \$190 million; total bond proceeds (par amount of bonds plus bond premium) will not exceed \$205.2 million. Proceeds of the 2022B Bonds will be used to purchase Ginnie Mae mortgage-backed securities (MBS) backed by tax-exempt eligible mortgage loans, to pay all or a portion of the costs of issuance related to the 2022B Bonds, and to finance a portion of the down payment assistance, lender compensation, and second loan servicing fees related to the underlying mortgage loans. The 2022B Bonds are expected to be offered as traditional SFMRBs, with par and premium serial bonds, par and premium term bonds, and premium Planned Amortization Class (PAC) bonds. Depending on market conditions, proceeds of the 2022B Bonds may be invested in a Guaranteed Investment Contract (GIC) until expended; otherwise, proceeds will be invested in overnight obligations that meet indenture requirements.

2022B Mortgage Loans

Mortgage loans will be 30-year, fixed rate loans guaranteed by FHA, VA, or USDA and pooled into Ginnie Mae MBS. Initially, borrowers will have the choice of three or four points of down payment assistance (DPA). DPA will be offered as either or both of the following: (1) repayable with three or four points of assistance, where the DPA is provided as 0% interest, non-amortizing, 30-year second mortgage loan that is due on sale or refinance of the first loan, or (2) forgivable with three or four points of assistance, where the DPA is provided as a 0% interest, non-amortizing, second mortgage loan that is fully repayable for the first three years, and forgiven three years after loan closing. The repayable option typically offers a mortgage rate on the first mortgage loan that is .25% to .375% lower than the forgivable option. DPA options will be subject to modification in response to borrower demand or market conditions. The issuance of \$190 million of par amount of 2022B Bonds will provide for \$190 million in par amount of mortgage loans to be originated. The associated down payment assistance, lender compensation, and servicing fees for the second loans are expected to total approximately \$11.9 million.

Underwriting Team

Barclays will serve as Book Running Senior Manager, Jefferies and RBC Capital Markets as co-senior manager, with Morgan Stanley, Piper Sandler, and Ramirez & Co. servicing as co-managers for this transaction.

Timing

Preliminarily, the key events are as follows, and subject to change:

| | |
|------------|---|
| 11/22/2022 | Preliminary Official Statement is Released |
| 12/01/2022 | Bonds Priced, Bond Purchase Agreement is Executed |
| 12/05/2022 | Program Funds Available for Reservation |
| 12/07/2022 | Official Statement is Released |
| 12/21/2022 | Bond Closing |

Department Contribution

The contribution by the Department will not exceed \$10 million, which will to be used to fund a portion of the down payment and closing cost assistance and costs related to the acquisition of qualifying mortgage loans (including the payment of lender compensation and servicing fees for second mortgage loans) and to pay all or a portion of the costs of issuance of the 2022B Bonds. The contribution will be funded from amounts on deposit in the SFMRB indenture. Capitalized interest of up to \$6 million may be paid from the SFMRB indenture as necessary. As with prior transactions, these amounts are maximums; the actual contribution and capitalized interest expense are expected to be less than that approved by the Board.

Summary

Staff will continue to work with the Department's financing team to ensure the economic viability of the 2022B Bonds. Depending on market conditions and other factors, the amount of 2022B Bonds issued may be less than approved by the Board.

Exhibits

The Exhibits for Resolution 23-008 can be found online at the Department's Board Meeting Information Center website: <http://www.tdhca.state.tx.us/board/meetings.htm>.

RESOLUTION NO. 23-008

RESOLUTION AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS SINGLE FAMILY MORTGAGE REVENUE BONDS, 2022 SERIES B; APPROVING THE FORM AND SUBSTANCE OF RELATED DOCUMENTS; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS NECESSARY OR CONVENIENT TO CARRY OUT THE PURPOSES OF THIS RESOLUTION; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code (the "Act"), as amended from time to time, for the purpose of providing for the housing needs of individuals and families of low, very low, and extremely low income and families of moderate income (as described in the Act as determined by the Governing Board of the Department (the "Board") from time to time) at prices they can afford; and

WHEREAS, the Act authorizes the Department: (a) to issue revenue bonds, to provide money to (i) make and acquire mortgage loans or participations therein, (ii) fund or increase the Department's reserves or funds (iii) pay the costs and expenses of issuing the bonds and (iv) pay interest on the bonds; and (b) to pledge all or part of the revenues, income or resources of the Department, including the revenues to be received by the Department from the mortgage loans or participations therein, to secure the payment of the principal, interest or redemption premium on the bonds; and

WHEREAS, the Department and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), have executed and delivered that certain Amended and Restated Single Family Mortgage Revenue Bond Trust Indenture dated as of June 1, 2017 (as amended and supplemented from time to time, the "Single Family Indenture"), providing for the issuance from time to time by the Department of one or more series of its Single Family Mortgage Revenue Bonds; and

WHEREAS, the Department has a single family mortgage purchase program (the "Program") to fund all or a portion of the Department's single family loan production; and

WHEREAS, pursuant to Resolution No. 17-003, the Board approved Program Guidelines setting forth the general terms of the mortgage loans to be originated under the Program (the "Mortgage Loans") and authorized execution and delivery of (i) a Mortgage Acquisition, Pooling and Servicing Agreement setting forth the terms under which Idaho Housing and Finance Association (the "Servicer"), will review, acquire, package and service the Mortgage Loans, and (ii) a Master Mortgage Origination Agreement in connection with the acceptance of new lenders in the Program (collectively, the "Program Documents"); and

WHEREAS, pursuant to Resolution No. 22-002, the Board approved certain modifications to the Program and the execution of revised Program Documents in connection therewith to

authorize the making of forgivable Mortgage Loans for down payment and closing costs assistance; and

WHEREAS, Section 302 of the Single Family Indenture authorizes the issuance of additional Bonds for the purposes of acquiring Mortgage Loans or participations therein, payment of costs of issuance, funding of reserves, payments of certain Department expenses and refunding bonds; and

WHEREAS, the Board has determined to authorize the issuance of the Department's Single Family Mortgage Revenue Bonds, to be known as its Single Family Mortgage Revenue Bonds, 2022 Series B (the "Bonds") pursuant to the Single Family Indenture for the purpose of providing funds to make and acquire qualifying Mortgage Loans through the purchase of mortgage backed securities ("Mortgage Certificates"), to provide down payment and closing cost assistance and to pay a portion of the costs of issuance related thereto; and

WHEREAS, the Board desires to authorize the execution and delivery of the Seventy-Third Supplemental Single Family Mortgage Revenue Bond Trust Indenture (the "Supplemental Indenture") in substantially the form attached hereto relating to the Bonds; and

WHEREAS, the Board has further determined that the Department should enter into a Bond Purchase Agreement relating to the sale of the Bonds (the "Bond Purchase Agreement") with Barclays Capital Inc., as representative of the group of underwriters listed in the Bond Purchase Agreement (the "Underwriters"), in substantially the form attached hereto setting forth certain terms and conditions upon which the Underwriters will purchase the Bonds from the Department and the Department will sell the Bonds to the Underwriters; and

WHEREAS, the Board has determined to authorize the execution and delivery of a 2022B Supplement to Depository Agreement relating to the Bonds (the "Depository Agreement"), by and among the Department, the Trustee and the Texas Treasury Safekeeping Trust Company (the "Trust Company"), in substantially the form attached hereto to provide for the holding, administering and investing of certain moneys and securities relating to the Bonds; and

WHEREAS, the Board has been presented with a draft of a preliminary official statement to be used in the public offering of the Bonds (the "Official Statement") and the Board desires to approve such Official Statement in substantially the form attached hereto; and

WHEREAS, the Board desires to authorize the execution and delivery of a Continuing Disclosure Agreement (the "Continuing Disclosure Agreement") relating to the Bonds in substantially the form attached hereto between the Department and the Trustee; and

WHEREAS, the Board has determined to authorize the investment of a portion of the proceeds of the Bonds and any other amounts held under the Single Family Indenture with respect to the Bonds in one or more guaranteed investment contracts (the "GICs") on or after the closing date or in such other investments as the authorized representatives named herein may approve; and

WHEREAS, the Board desires to approve the use of an amount not to exceed \$10,000,000 of Department funds for any purpose authorized under the Act and the Single Family Indenture, including to provide down payment and closing cost assistance, to make and acquire qualifying Mortgage Loans, including payment of lender compensation, through the purchase of Mortgage Certificates and to pay a portion of the costs of issuance; and

WHEREAS, the Board desires to authorize the use of an amount not to exceed \$6,000,000 of funds on deposit under the Single Family Indenture to fund capitalized interest on the Bonds; and

WHEREAS, Chapter 1371, Texas Government Code, as amended (“Chapter 1371”) authorizes the Department to take certain actions described in this Resolution related to the issuance of the Bonds; and

WHEREAS, the Board desires to approve the form of the Supplemental Indenture, the Bond Purchase Agreement, the Depository Agreement, the Official Statement and the Continuing Disclosure Agreement and find the form and substance of such documents to be satisfactory and proper and the recitals contained therein to be true, correct and complete; and has determined to further its programs in accordance with such documents by authorizing the issuance of the Bonds, the execution and delivery of such documents and the taking of such other actions as may be necessary or convenient to carry out the purposes of this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS:

ARTICLE 1
ISSUANCE OF BONDS; APPROVAL OF DOCUMENTS

Section 1.1 Issuance, Execution and Delivery of the Bonds. That the issuance of any or all of the Bonds is hereby authorized, all under and in accordance with the Single Family Indenture, and that, upon execution and delivery of the Supplemental Indenture, the Authorized Representatives of the Department named in this Resolution are each hereby authorized to execute, attest and affix the Department’s seal to the Bonds and to deliver the Bonds to the Attorney General of Texas (the “Attorney General”) for approval, the Comptroller of Public Accounts of the State of Texas (the “Comptroller”) for registration and the Trustee for authentication, and thereafter to deliver the Bonds to or upon the order of the Underwriters.

Section 1.2 Authority to Determine Interest Rates, Principal Amounts, Maturities and Prices. That the Authorized Representatives of the Department are hereby authorized and empowered, in accordance with Chapter 1371, to fix and determine the interest rates, principal amounts and maturities of the Bonds, and the prices at which the Department will sell the Bonds to the Underwriters, all of which determinations shall be conclusively evidenced by the execution and delivery by an Authorized Representative of the Bond Purchase Agreement; provided, however, that: (a) the interest rate on the Bonds shall not exceed 7.00% per annum; (b) the aggregate principal amount of the Bonds shall not exceed \$190,000,000; (c) the final

maturity of the Bonds shall occur not later than March 1, 2053; (d) the price at which the Bonds are sold to the Underwriters shall not exceed 108% of the aggregate principal amount thereof; and (e) the Bonds shall be rated by a nationally recognized rating agency for municipal securities in one of the four highest rating categories for a long-term debt instrument. In no event shall the interest rate on the Bonds (including any default interest rate) exceed the maximum interest rate permitted by applicable law.

Section 1.3 Approval, Execution and Delivery of the Supplemental Indenture. That the form and substance of the Supplemental Indenture are hereby approved and that the Authorized Representatives are hereby authorized to execute, and if requested, attest and affix the Department's seal to the Supplemental Indenture and to deliver the Supplemental Indenture to the Trustee.

Section 1.4 Approval, Execution and Delivery of the Bond Purchase Agreement. That the sale of the Bonds to the Underwriters pursuant to the Bond Purchase Agreement is hereby approved and that the Authorized Representatives are hereby authorized to execute, and if requested, attest and affix the Department's seal to the Bond Purchase Agreement and to deliver the Bond Purchase Agreement to the Underwriters.

Section 1.5 Official Statement. That the Official Statement, in substantially the form presented to the Board, is hereby approved; that prior to the execution of the Bond Purchase Agreement, the Authorized Representatives, acting for and on behalf of the Board, are hereby authorized and directed to finalize the Official Statement for distribution by the Underwriters to prospective purchasers of the Bonds, with such changes therein as an Authorized Representative may approve in order to permit such Authorized Representative, for and on behalf of the Board, to deem the Official Statement final as of its date, except for such omissions as are permitted by Rule 15c2-12 of the Securities and Exchange Commission ("Rule 15c2-12"), such approval to be conclusively evidenced by the distribution of such Official Statement; and that within seven business days after the execution of the Bond Purchase Agreement, the Authorized Representatives, acting for and on behalf of the Board, shall cause the final Official Statement, in substantially the form of the Official Statement attached hereto, with such changes as an Authorized Representative may approve, such approval to be conclusively evidenced by such Authorized Representative's execution thereof, to be provided to the Underwriters in compliance with Rule 15c2-12.

Section 1.6 Approval of Depository Agreement. That the form and substance of the Depository Agreement are hereby authorized and approved and that the Authorized Representatives are hereby authorized to execute, and if requested, attest and affix the Department's seal to the Depository Agreement and to deliver the Depository Agreement to the Trustee and to the Trust Company.

Section 1.7 Approval of Continuing Disclosure Agreement. That the form and substance of the Continuing Disclosure Agreement are hereby authorized and approved and that the Authorized Representatives are hereby authorized to execute, and if requested, attest

and affix the Department’s seal to the Continuing Disclosure Agreement and to deliver the Continuing Disclosure Agreement to the Trustee.

Section 1.8 Approval of GIC Broker; Approval of Investment in GICs. That the Authorized Representatives are each hereby authorized to select a GIC broker, if any, and that the investment of funds held under the Single Family Indenture in connection with the Bonds in GICs is hereby approved and that the Authorized Representatives are hereby authorized to complete arrangements for such investment in GICs or such other investments as the Authorized Representatives may approve.

Section 1.9 Reserved.

Section 1.10 Execution and Delivery of Other Documents. That the Authorized Representatives are each hereby authorized to execute, attest, affix the Department’s seal to and deliver such other agreements, advance commitment agreements, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests and other papers, and to take such other acts, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, the Single Family Indenture, the Bonds, the Supplemental Indenture, the Bond Purchase Agreement, the Depository Agreement and the Continuing Disclosure Agreement.

Section 1.11 Power to Revise Form of Documents. That, notwithstanding any other provision of this Resolution, the Authorized Representatives are each hereby authorized to make or approve such revisions in the form of the documents attached hereto as exhibits as, in the judgment of such Authorized Representative, or in the opinion of Bracewell LLP, Bond Counsel to the Department (“Bond Counsel”), may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of such documents by the Authorized Representatives.

Section 1.12 Exhibits Incorporated Herein. That all of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

- Exhibit A – Supplemental Indenture
- Exhibit B – Bond Purchase Agreement
- Exhibit C – Official Statement
- Exhibit D – Depository Agreement
- Exhibit E – Continuing Disclosure Agreement

Section 1.13 Authorized Representatives. The following persons are each hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department’s seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director of the Department, the Director of Financial Administration of the Department, the

Director of Bond Finance of the Department, the Manager of Single Family Finance of the Department, and the Secretary or any Assistant Secretary to the Board. Such persons are referred to herein collectively as the “Authorized Representatives.” Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

Section 1.14 Department Contribution. That the contribution of Department funds in an amount not to exceed \$10,000,000 to be used for any purpose authorized under the Act and the Single Family Indenture, including to provide down payment and closing cost assistance, to make and acquire qualifying Mortgage Loans, including payment of lender compensation, through the purchase of Mortgage Certificates and to pay all or a portion of the costs of issuance of the Bonds is hereby authorized.

Section 1.15 Use of Single Family Indenture Funds. That the use of an amount not to exceed \$6,000,000 of funds on deposit under the Single Family Indenture to fund capitalized interest on the Bonds is hereby authorized.

ARTICLE 2 APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

Section 2.1 Submission to the Attorney General of Texas. That the Board hereby approves the submission by Bond Counsel to the Attorney General of Texas, for approval, of a transcript of the legal proceedings relating to the issuance, sale and delivery of the Bonds.

Section 2.2 Engagement of Other Professionals. That the Authorized Representatives are each authorized to engage an accounting firm or firms to perform such functions, audits, yield calculations, verifications and subsequent investigations as necessary or appropriate to comply with the Bond Purchase Agreement and the requirements of the purchasers of the Bonds and Bond Counsel to the Department, provided such engagement is done in accordance with applicable State law.

Section 2.3 Certification of the Minutes and Records. That the Secretary and any Assistant Secretary to the Board are hereby authorized to certify and authenticate minutes and other records on behalf of the Department for its single family mortgage revenue bond program, the issuance of the Bonds and all other Department activities.

Section 2.4 Approval of Requests for Rating from Rating Agencies. That the Authorized Representatives and the Department’s consultants are authorized to seek ratings from Moody’s Investors Service, Inc. and S&P Global Ratings, a division of S&P Global Inc.

Section 2.5 Ratifying Other Actions. That all other actions taken or to be taken by the Authorized Representatives and the Department’s staff in connection with the issuance of the Bonds are hereby ratified and confirmed.

Section 2.6 Authorized to Invest Funds. That pursuant to Section 1371.102, Texas Government Code, and the Act, the Authorized Representatives are each hereby authorized to

undertake all appropriate actions required under the Single Family Indenture and the Depository Agreement and to provide for investment and reinvestment of all funds held under the Single Family Indenture in accordance with the Single Family Indenture.

**ARTICLE 3
CERTAIN FINDINGS AND DETERMINATIONS**

Section 3.1 Purpose of Bonds. That the Board hereby determines that the purpose for which the Department may issue the Bonds constitutes “public works” as contemplated by Chapter 1371.

**ARTICLE 4
GENERAL PROVISIONS**

Section 4.1 Limited Obligations. That the Bonds and the interest thereon shall be limited obligations of the Department payable solely from the trust estate pledged under the Single Family Indenture to secure payment of the bonds issued under the Single Family Indenture and payment of the Department’s costs and expenses for its single family mortgage revenue bond program thereunder and under the Single Family Indenture, and under no circumstances shall the Bonds be payable from any other revenues, funds, assets or income of the Department.

Section 4.2 Non-Governmental Obligations. That the Bonds shall not be and do not create or constitute in any way an obligation, a debt or a liability of the State or create or constitute a pledge, giving or lending of the faith or credit or taxing power of the State.

Section 4.3 Purposes of Resolution. That the Board has expressly determined and hereby confirms that the issuance of the Bonds and the furtherance of the purposes contemplated by this Resolution accomplish a valid public purpose of the Department by providing for the housing needs of individuals and families of low, very low and extremely low income and families of moderate income in the State.

Section 4.4 Notice of Meeting. That this Resolution was considered and adopted at a meeting of the Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with Section 2306.032 of the Texas Government Code, regarding meetings of the Board.

Section 4.5 Effective Date. That this Resolution shall be in full force and effect from and upon its adoption.

PASSED AND APPROVED this 10th day of November, 2022.

EXHIBITS

ALL DOCUMENTS REFERRED TO IN THE FOREGOING RESOLUTION ARE ATTACHED TO THE ORIGINAL COPY OF SAID RESOLUTION, WHICH IS ON FILE IN THE OFFICIAL RECORDS OF THE DEPARTMENT, AND EXECUTED COUNTERPARTS OF SUCH EXHIBITS ARE INCLUDED IN THE OFFICIAL TRANSCRIPT OF PROCEEDINGS RELATING TO THE BONDS.

7a

BOARD ACTION REQUEST
MULTIFAMILY BOND DIVISION
NOVEMBER 10, 2022

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*

RECOMMENDED ACTION

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

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

WHEREAS, the proposed repeal and new 10 TAC Chapter 12 were published in the September 16, 2022, issue of the *Texas Register* for public comment; and

WHEREAS, the public comment period ended October 14, 2022, and three comments were received relating to this rule;

NOW, therefore, it is hereby

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

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

BACKGROUND

The Board approved the proposed changes to Chapter 12 regarding the 2023 Multifamily Housing Revenue Bond Rules (the Bond Rules) at the Board meeting of September 1, 2022, to be published in the *Texas Register* for public comment. The Department received comment from three commenters relating to the Bond Rules. Staff is recommending the Bond Rules be adopted with clarifying changes

as reflected herein based on those comments. Staff notes that should there be changes made to the 2023 QAP by the Board that would affect the Bond Rules, staff will make those changes required for consistency.

Attachment 1: Preamble, including required analysis, for repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules (the Bond Rules). 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 proposed 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, the issuance of Private Activity Bonds (PAB).

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 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, the issuance of PABs.

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 or 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 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 issuance of PAB. 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 also 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 COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between September 16, 2022, and October 14, 2022 with three comments received.

The Board adopted the final order adopting the repeal on November 10, 2022.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed sections affect no other code, article, or statute.

10 TAC Chapter 12, Multifamily Housing Revenue Bond Rule

§12.1. General.

§12.2. Definitions.

§12.3. Bond Rating and Investment Letter.

§12.4. Pre-Application Process and Evaluation.

§12.5. Pre-Application Threshold Requirements.

§12.6. Pre-Application Scoring Criteria.

§12.7. Full Application Process.

§12.8. Refunding Application Process

§12.9. Occupancy Requirements.

§12.10. Fees.

Attachment 2: Preamble, including required analysis, for adopting new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules

The Texas Department of Housing and Community Affairs (the Department) adopts, with changes from the published draft, new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules (Bond Rules). The purpose of the new section is to provide compliance with Tex. Gov't Code §2306.359 and to update the rule to make changes to the scoring criteria to reflect the competitive nature of the Private Activity Bond program. Moreover, the changes reflect minor administrative revisions, and to ensure that it is reflective of changes made in the Department's Qualified Allocation Plan where applicable.

Tex. Gov't Code §2001.0045(b) does not apply to the action on this rule pursuant to item (9), which excepts rule changes necessary to implement legislation. The rule provides compliance with Tex. Gov't Code §2306.359, which requires the Department to provide for specific scoring criteria and underwriting considerations for multifamily private activity bond activities.

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 will 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, the issuance of Private Activity Bonds ("PAB").
2. The 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 does not require additional future legislative appropriations.
4. The rule changes will not result in an increase in fees paid to the Department, but may, under certain circumstances, result in a decrease in fees paid to the Department regarding Tax-Exempt Bond Developments.
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, expand or repeal an existing regulation but merely revises a rule.
7. The rule does not increase or decrease the number of individuals subject to the rule's applicability.
8. The rule will not negatively or positively affect the 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, 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, §2306.359. Although these rules mostly pertain to the filing of a bond pre-application, some stakeholders have reported that their average cost of filing a full 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 proposed 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 affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. This rule relates to the procedures in place for entities applying for multifamily PAB. Only those small or micro-businesses that participate in this program are subject to this rule. There are approximately

100 to 150 businesses, which could possibly be considered small or micro-businesses, subject to the rule for which the economic impact of the rule would be a flat fee of \$11,000 which includes the filing fees associated with submitting a bond pre-application.

The Department bases this estimate on the potential number of Applicants and their related parties who may submit applications to TDHCA for PAB (and accompanying housing tax credits). There could be additional costs associated with pre-applications depending on whether the small or micro-businesses outsource how the application materials are compiled. The fee for submitting an Application for PAB layered with LIHTC is based on \$30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units.

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 approximately 1,300 rural communities potentially subject to the new rule for which the economic impact of the rule is projected to be \$0. 10 TAC Chapter 12 places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. In an average year the volume of applications for PAB that are located in rural areas is not more than 20% of all PAB applications received. In those cases, a rural community securing a PAB 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 PAB 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 PAB 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 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 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 PAB Developments, layered with housing tax credits, 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 and local employment. However, because the exact location of where program funds or developments are directed is not determined in rule, and is driven by real estate demand, 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 PABs and LIHTCs are actually

awarded to a proposed Development, given the unique characteristics of each proposed multifamily Development.

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 PAB Development layered with LIHTC and each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive PAB 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 section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule for administering the issuance of PABs and corresponding allocation of housing tax credits. 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 a pre-application and application remain unchanged based on these rule changes. 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 section is in effect, enforcing or administering the new section 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.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comments between September 16, 2022 and October 14, 2022. Three comments were received.

The Board adopted the final order adopting the new rule on November 10, 2022.

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. The new rule has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

Public comments were accepted between September 16, 2022 and October 14, 2022, with comments received from: (1) National Church Residences, (2) Structure Development, and (3) Lincoln Avenue Capital (3).

§12.4(d) – Pre-Application Process and Evaluation (1)

COMMENT SUMMARY:

Commenter (1) would like the rule to retain the 2022 language regarding scoring and ranking pre-applications because it prioritizes those developments that target serving lower income households rather than giving preference to those that have been on the Department’s waiting list the longest.

STAFF RESPONSE:

Staff proposed the deletion of §12.4(d), related to scoring and ranking pre-applications, based upon the score within each priority defined by Tex. Gov’t Code, §1372.0321. Staff believes that the prioritization of lower-income targeting developments already exists within the scoring process under §12.6(1), Income and Rent Levels of the Tenants. Under the Income and Rent Levels of the Tenants scoring item, pre-applications with a Priority 1 designation may qualify for up to ten points, Priority 2 designations may receive up to seven points, and Priority 3 designations may receive up to five points. The Priority 1 designation requires a higher percentage of Units with rents capped at 30% AMGI than the Priority 2 and 3 designations. Staff recommends no change based on this comment.

§12.6(2) – Pre-Application Scoring Criteria - Cost of Development per Square Foot (3)

COMMENT SUMMARY:

Commenter (3) appreciates that the threshold to achieve the point has been increased from \$95 per square foot to \$125 per square foot, however, recommends that the threshold be increased to \$145 per square foot to reflect the approximately 50% year-over-year increases experienced nationwide in projected development costs for affordable housing construction.

STAFF RESPONSE:

Staff appreciates the challenges presented by rising construction costs and interest rates. The proposed increase in the threshold to \$125 cost per square foot was to better align the scoring item with comments received relative to the Competitive Housing Tax Credit Program. Staff believes that costs will continue to vary across the board until there is some normalcy and that it hard to identify what exactly this number should be. Staff recommends no change based on this comment.

§12.6(12) – Pre-Application Scoring Criteria - Waiting List (3)

COMMENT SUMMARY:

Commenter (3) expressed support for the tiered scoring approach to this item that prioritizes applications that have been on the waiting list longer than other applications.

STAFF RESPONSE:

Staff appreciates the support.

§12.6(14) – Pre-Application Scoring Criteria; Assisting Households with Children (1)

COMMENT SUMMARY:

Commenter (1) suggested allowing any Rehabilitation Development and Elderly Development to automatically receive one point for the new scoring item.

STAFF RESPONSE:

Staff agrees that consideration should be given to Rehabilitation developments and those that propose to serve the Elderly population as the point item may be disproportionately awarded to New Construction projects serving the General population. It is worth noting that new criteria relating to eligibility of applications has been proposed under 10 TAC §11.101(b)(1)(vii) of the 2023 Draft QAP. Under this eligibility item, any New Construction, Reconstruction, or Adaptive Reuse Development that proposes more than 30% efficiency and/or one-Bedroom Units would be considered ineligible. The requirement will not apply to Elderly or Supportive Housing Developments. Staff suggests the following modification to address the comment.

(14) Assisting Households with Children. (42(m)(1)(C)(vii)) A pre-application may receive one point under this item if at least 15% of the Units in the Development contain three or more bedrooms. The specific number of three or more bedrooms may change from pre-application to full Application, but the minimum percentage must still be met. Applications proposing Rehabilitation (excluding Reconstruction) and Elderly developments will automatically receive this point.

§12.10(c) – Fees (2)

COMMENT SUMMARY:

Commenter (2) requested clarification regarding the basis points stated for the Closing Fees. The closing fee for Bonds is stated as being equal to 50 basis points of the issued principal amount of the Bonds and the administration fee is stated as being 20 basis points of the issued principal amount of the Bonds. The basis points are also expressed as decimals within parentheses that the commenter believed to be incorrect.

STAFF RESPONSE:

Staff agrees and has removed the parentheses where noted throughout §12.10 to avoid confusion.

§12.1. General.

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

(b) General. The purpose of this chapter is to state the Department's requirements for issuing Bonds, the procedures for applying for Bonds and the regulatory and land use restrictions imposed upon Bond financed Developments. The provisions contained in this chapter are separate from the rules relating to the Department's administration of the Housing Tax Credit program. Applicants seeking a Housing Tax Credit Allocation should consult Chapter 11 of this part (relating to the Housing Tax Credit Program Qualified Allocation Plan) for the current program year. In general, the Applicant will be required to satisfy the eligibility and threshold requirements of the Qualified Allocation Plan (QAP) in effect at the time the Certificate of Reservation is issued by the Texas Bond Review Board (TBRB). If the applicable QAP contradicts rules set forth in this chapter, the applicable QAP will take precedence over the rules in this chapter except in an instance of a conflicting statutory requirement, which shall always take precedence. To the extent applicable to each specific Bond issuance, the Department's conduit multifamily Bond transactions will be processed in accordance with 34 TAC Part 9, Chapter 181, Subchapter A (relating to Bond Review Board Rules) and Tex. Gov't Code, Chapter 1372.

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

(d) Taxable Bonds. The Department may issue taxable Bonds and the requirements associated with such Bonds, including occupancy requirements, shall be determined by the Department on a case by case basis. Taxable bonds will not be eligible for an allocation of tax credits.

(e) Waivers and Appeals. Requests for any permitted waivers of program rules must be made in accordance with §11.207 of this part (relating to Waiver of Rules). The process for appeals and grounds for appeals may be found under §1.7 of this part (relating to Appeals Process).

§12.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Tex. Gov't Code, Chapter 2306, §§141, 142, and 145 of the Internal Revenue Code, and Chapter 11 of this part (relating to Housing Tax Credit Program Qualified Allocation Plan).

(1) Institutional Buyer--Shall have the meaning prescribed under 17 CFR §230.501(a), but excluding any natural person or any director or executive officer of the Department (17 CFR §230.501(a)(4) - (6)), or as defined by 17 CFR §230.144(a), promulgated under the Securities Act of 1933, as amended.

(2) Persons with Special Needs--Shall have the meaning prescribed under Tex. Gov't Code, §2306.511.

(3) Bond Trustee--A financial institution, usually a trust company or the trust department in a commercial bank, that holds collateral for the benefit of the holders of municipal securities. The Bond Trustee's obligations and responsibilities are set forth in the Indenture.

§12.3. Bond Rating and Investment Letter.

(a) Bond Ratings. All publicly offered Bonds issued by the Department to finance Developments shall have a debt rating the equivalent of at least an "A" rating assigned to long-term obligations by Standard & Poor's Ratings Services, or Moody's Investors Service, Inc. If such rating is based upon credit enhancement provided by an institution other than the Applicant or Development Owner, the form and substance of such credit enhancement shall be subject to approval by the Board, evidenced by a resolution authorizing the issuance of the credit enhanced Bonds.

(b) Investment Letters. Bonds rated less than "A" or Bonds which are unrated must be placed with one or more Institutional Buyers and must be accompanied by an investor letter acceptable to the Department. Subsequent purchasers of such Bonds must also be qualified as Institutional Buyers and must execute and deliver to the Department an investor letter in a form satisfactory to the Department. Bonds rated less than "A" and Bonds which are unrated shall be issued in physical form, in minimum denominations of one hundred thousand dollars (\$100,000), and must carry a legend requiring any purchasers of the Bonds to be Institutional Buyers and sign and deliver to the Department an investor letter in a form acceptable to the Department.

§12.4. Pre-Application Process and Evaluation.

(a) Pre-Inducement Questionnaire. Prior to the filing of a pre-application, the Applicant shall submit the Pre-Inducement Questionnaire, in the form prescribed by the Department, so the Department can have a preliminary understanding of the proposed Development plan before a pre-application and corresponding fees are submitted. After reviewing the pre-inducement questionnaire, Department staff will follow-up with the Applicant to discuss the next steps in the process and may schedule a pre-inducement conference call or meeting. Prior to the submission of a pre-application, it is essential that the Department and Applicant communicate regarding the Department's objectives and policies in the development of affordable housing throughout the

State using Bond financing. The acceptance of the questionnaire by the Department does not constitute a pre-application or Application and does not bind the Department to any formal action regarding an inducement resolution.

(b) Neighborhood Risk Factors. If the Development Site has any of the characteristics described in §11.101(a)(3)(B) of this part (relating to Neighborhood Risk Factors), the Applicant must disclose the presence of such characteristics to the Department. Disclosure may be done at time of pre-application and handled in connection with the inducement or it can be addressed at the time of Application submission. The Applicant understands that any determination made by staff or the Board at the time of bond inducement 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 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 and presented to the Board. The Application may be subject to termination should staff conclude that the Development Site has any characteristics found in §11.101(a)(3)(B) of this part (relating to Neighborhood Risk Factors) and the Applicant failed to disclose.

(c) Pre-Application Process. An Applicant who intends to pursue Bond financing from the Department shall submit a pre-application by the corresponding pre-application submission deadline, as set forth by the Department. The required pre-application fee as described in §12.10 of this chapter (relating to Fees) must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Department review at the time of the pre-application is limited and not all issues of eligibility, fulfillment of threshold requirements in connection with the full Application, and documentation submission requirements pursuant to Chapter 11 of this part (relating to Housing Tax Credit Program Qualified Allocation Plan) are reviewed. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or other deficiencies at the time of pre-application. If the Development meets the criteria as described in §12.5 of this chapter (relating to Pre-Application Threshold Requirements), the pre-application will be scored and ranked according to the selection criteria as described in §12.6 of this chapter (relating to Pre-Application Scoring Criteria). The selection criteria, as further described in §12.6 of this chapter, reflects a structure that gives priority consideration to specific criteria as outlined in Tex. Gov't Code, §2306.359, as well as other important criteria.

(1) Tie Breakers. Should two or more pre-applications receive the same score, the Department will utilize the factors in this section, which will be considered in the order they are presented herein, to determine which pre-application will receive preference in consideration of a Certificate of Reservation:

(i) To the pre-application that was on the waiting list with the TBRB but did not have an active Certificate of Reservation at the time of the TBRB lottery and achieved the maximum number of points under §12.6(12) of this chapter (relating to Waiting List); and

(ii) To the pre-application with the highest number of points achieved under §12.6(13) of this chapter (relating to Tax-Exempt Bond 50% Test).

(d) Inducement Resolution. After the pre-applications have been scored and ranked, the pre-application will be presented to the Department's Board for consideration of an inducement resolution declaring the Department's initial intent to issue Bonds with respect to the Development. Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff may recommend that the Board not approve an inducement resolution for a pre-application. Notwithstanding the foregoing, Department staff may, but is not required to, recommend that an inducement resolution be approved despite the presence of neighborhood risk factors, undesirable site features, or requirements that may necessitate a waiver, that have not fully been evaluated by staff at pre-application. The Applicant recognizes the risk involved in moving forward should this be the case and the Department assumes no responsibility or liability in that regard. Each Development is unique, and therefore, making the final determination to issue Bonds is often dependent on the issues presented at the time the full Application is considered by the Board.

§12.5. Pre-Application Threshold Requirements.

The threshold requirements of a pre-application include the criteria listed in paragraphs (1) - (8) of this section. As the Department reviews the pre-application the assumptions as reflected in Chapter 11, Subchapter D of this part (relating to Underwriting and Loan Policy) will be utilized even if not reflected by the Applicant in the pre-application. The threshold requirements of a pre-application include:

- (1) Submission of the required tabs of the Uniform Application as prescribed by the Department in the Multifamily Bond Pre-Application Procedures Manual;
- (2) Submission of the completed Bond Pre-Application Supplement in the form prescribed by the Department;
- (3) Completed Bond Review Board Residential Rental Attachment for the current program year;
- (4) Site Control, evidenced by the documentation required under §11.204(10) of this part (relating to Required Documentation for Application Submission). The Site Control must be valid through the date of both the Board meeting at which the inducement resolution is considered and subsequent submission of the application to the TBRB. For Lottery applications, Site Control must meet the requirements of 34 TAC §190.3(b)(13).
- (5) Boundary survey or plat clearly identifying the location and boundaries of the subject Property;
- (6) Organizational Chart showing the structure of the Development Owner and of any Developer and Guarantor, providing the names and ownership percentages of all Persons having an

ownership interest in the Development Owner, Developer and Guarantor, as applicable, and completed List of Organizations form, as provided in the pre-application. The List of Organizations form must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development;

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

(8) A certification, as provided in the pre-application, that the Applicant met the requirements and deadlines for public notifications as identified in §11.203 of this part (relating to Public Notifications (§2306.6705(9))). In general, notifications should not be older than three months prior to the date of Application submission. Re-notification will be required by 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 §11.203 of this part 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.

§12.6. Pre-Application Scoring Criteria.

This section identifies the scoring criteria used in evaluating and ranking pre-applications. Any scoring items that require supplemental information to substantiate points must be submitted in the pre-application, as further outlined in the Multifamily Bond Pre-Application Procedures Manual. Applicants proposing multiple sites will be required to submit a separate pre-application for each Development Site, unless staff determines that one pre-application is more appropriate based on the specifics of the transaction. Each individual pre-application will be scored on its own merits and the final score will be determined based on an average of all of the individual scores. Ongoing requirements, as selected in the pre-application, will be reflected in the Bond Regulatory and Land Use Restriction Agreement and must be maintained throughout the State Restrictive Period, unless otherwise stated or required in such Agreement.

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

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

(i) set aside 50% of Units rent capped at 50% AMGI and the remaining 50% of Units rent capped at 60% AMGI; or

(ii) set aside 15% of Units rent capped at 30% AMGI and the remaining 85% of Units rent capped at 60% AMGI; or

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

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

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

(2) Cost of Development per Square Foot. (1 point) For this item, costs shall be defined as the Building Cost as represented in the Development Cost Schedule, as originally provided in the pre-application. This calculation does not include indirect construction costs or site work. Pre-applications that do not exceed \$125 per square foot of Net Rentable Area will receive one (1) point. Rehabilitation Developments will automatically receive one (1) point.

(3) 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).

- (A) Five-hundred (500) square feet for an Efficiency Unit;
- (B) Six-hundred (600) square feet for a one Bedroom Unit;
- (C) Eight-hundred-fifty (850) square feet for a two Bedroom Unit;
- (D) One-thousand-fifty (1,050) square feet for a three Bedroom Unit; and
- (E) One-thousand, two-hundred-fifty (1,250) square feet for a four Bedroom Unit.

(4) Extended Affordability. A pre-application may qualify for up to three (3) points under this item.

(A) Development Owners that agree to extend the State Restrictive Period for a Development to a total of 40 years (3 points).

(B) Development Owners that agree to extend the State Restrictive Period for a Development to a total of 35 years (2 points).

(5) Unit and Development Construction Features. A pre-application may qualify for nine (9) points, as certified in the pre-application, for providing specific amenity and quality features in every Unit at no extra charge to the tenant. The amenities and corresponding point structure is provided in §11.101(b)(6)(B) of this part (relating to Unit, Development Construction, and Energy and Water Efficiency Features), which includes a minimum number of points that must come from Energy and Water Efficiency Features. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of (5 points).

(6) Common Amenities. All Developments must provide at least the minimum threshold of points for common amenities based on the total number of Units in the Development as provided in subparagraphs (A) - (F) of this paragraph. An Applicant may choose to exceed the minimum

number of points necessary based on Development size; however, the maximum number of points under this item which a Development may be awarded under this section shall not exceed 22 points. The common amenities include those listed in §11.101(b)(5) of this part and must meet the requirements as stated therein. The Owner may change, from time to time, the amenities offered; however, the overall points as selected at Application must remain the same.

- (A) Developments with 16 to 40 Units must qualify for (2 points);
- (B) Developments with 41 to 76 Units must qualify for (4 points);
- (C) Developments with 77 to 99 Units must qualify for (7 points);
- (D) Developments with 100 to 149 Units must qualify for (10 points);
- (E) Developments with 150 to 199 Units must qualify for (14 points); or
- (F) Developments with 200 or more Units must qualify for (18 points).

(7) Resident Supportive Services. A pre-application may qualify for up to ten (10) points for this item. By electing points, the Applicant certifies that the Development will provide supportive services, which are listed in §11.101(b)(7) of this part, appropriate for the residents and that there will be adequate space for the intended services. The Owner may change, from time to time, the services offered; however, the overall points as selected at pre-application must remain the same. Should the QAP in subsequent years provide different services than those listed in §11.101(b)(7)(A) – (E), the Development Owner may be allowed to select services as listed therein upon written consent from the Department and any services selected must be of similar value to the service it is intending to replace. The Development Owner will be required to substantiate such service(s) at the time of compliance monitoring, if requested by staff. The services provided should be those that will directly benefit the Target Population of the Development and be accessible to all. No fees may be charged to the residents for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. 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.

(A) The Development Owner shall provide resident services sufficient to substantiate ten (10) points; or

(B) The Development Owner shall provide resident services sufficient to substantiate eight (8) points.

(8) Underserved Area. An Application may qualify to receive up to two (2) points if the Development Site meets the criteria described in §11.9(c)(8)(A) - (H) of this title. The pre-application must include evidence that the Development Site meets this requirement. Regardless of the varying point options listed under §11.9(c)(8), the number of points attributed to this scoring item shall be two (2) points.

(9) Development Support/Opposition. (Maximum +24 to -24 points) Each letter will receive a maximum of +3 to -3 points and must be received 10 business days prior to the Board's consideration of the pre-application. Letters must clearly state support or opposition to the specific Development. State Representatives or Senators as well as local elected officials must be in office when the pre-application is submitted and represent the district containing the proposed Development Site. Letters of support from State or local elected officials that do not represent the district containing the proposed Development Site will not qualify for points. Neutral letters that do not specifically refer to the Development or do not explicitly state support will receive (zero points). A letter that does not directly express support but expresses it indirectly by inference (i.e., "the local jurisdiction supports the Development and I support the local jurisdiction") counts as a neutral letter except in the case of State elected officials. A letter from a State elected official that does not directly indicate support by the official, but expresses support on behalf of the official's constituents or community (i.e., "My constituents support the Development and I am relaying their support") counts as a support letter.

- (A) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;
- (B) Mayor of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);
- (C) All elected members of the Governing Body of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);
- (D) Presiding officer of the Governing Body of the county in which the Development Site is located;
- (E) All elected members of the Governing Body of the county in which the Development Site is located;
- (F) Superintendent of the school district in which the Development Site is located; and
- (G) Presiding officer of the board of trustees of the school district in which the Development Site is located.

(10) Preservation Initiative. (3 points) Preservation Developments, including Rehabilitation proposals on Properties which are nearing expiration of an existing affordability requirement within the next two years or for which there has been a rent restriction requirement in the past 10 years may qualify for points under this item. Evidence must be submitted in the pre-application.

(11) Declared Disaster Areas. (7 points) A pre-application may receive points if the Development Site is located in an area declared a disaster area under Tex. Gov't Code §418.014 at the time of submission, or at any time within the two-year period preceding the date of submission.

(12) Waiting List. (5 points) A pre-application that is on the Department's waiting list with the TBRB and does not have an active Certificate of Reservation at the time of the Private Activity Bond Lottery may receive points under this item if participating in the Lottery for the upcoming program year. These points will be added by staff once all of the scores for Lottery applications have been finalized.

(A) For pre-applications that participated in the prior year Private Activity Bond Lottery (5 points); or

(B) For pre-applications that had an Inducement Resolution adoption date of November of the prior calendar year through March of the current calendar year (3 points); or

(C) For pre-applications that had an Inducement Resolution adoption date of April through July of the current calendar year (1 point).

(13) Tax-Exempt Bond 50% Test. (5 points) A pre-application may receive points under this item based on the amount of the Development financed with Tax-Exempt Bond proceeds relative to the amount necessary to meet the 50% Test. The 50% Test is calculated by dividing the Tax-Exempt Bond proceeds by the aggregate basis of the Development and shall be based on such amounts as reflected in the pre-application once staff's review is complete and all Administrative Deficiencies have been resolved. Normal rounding shall apply. Should there be changes to this federal requirement, the percentage ranges noted below shall be modified accordingly by the same range.

(A) The pre-application reflects a 50% Test amount that is greater than or equal to 55.0% and less than 60% (5 points); or

(B) The pre-application reflects a 50% Test amount that is greater than or equal to 60% and less than or equal to 64% (3 points).

(14) Assisting Households with Children. (42(m)(1)(C)(vii)) A pre-application may receive one point under this item if at least 15% of the Units in the Development contain three or more bedrooms. The specific number of three or more bedrooms may change from pre-application to full Application, but the minimum percentage must still be met. [Applications proposing Rehabilitation \(excluding Reconstruction\) and Elderly Developments will automatically receive this point.](#)

§12.7. Full Application Process.

(a) Application Submission. Once the inducement resolution has been approved by the Board, an Applicant who elects to proceed with submitting a full Application to the Department must submit the complete tax credit Application pursuant to §11.201 of this part (relating to Procedural Requirements for Application Submission). While a Certificate of Reservation is required under §11.201 of this part (relating to Procedural Requirements for Application Submission) prior to submission of the complete tax credit Application, staff may allow the Application to be submitted prior to the issuance of a Certificate of Reservation depending on circumstances associated with the Development Site, structure of the transaction, volume cap environment, or other factors in the Department's sole discretion.

(b) Eligibility Criteria. The Department will evaluate the Application for eligibility and threshold at

the time of full Application pursuant to Chapter 11 of this part (relating to Housing Tax Credit Program Qualified Allocation Plan). If there are changes to the Application at any point prior to closing that have an adverse effect on the score and ranking order and that would have resulted in the pre-application being placed below another pre-application in the ranking, the Department may terminate the Application and withdraw the Certificate of Reservation from the Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). The Development and the Applicant must satisfy the requirements set forth in Chapter 11 of this part in addition to Tex. Gov't Code, Chapter 1372, the applicable requirements of Tex. Gov't Code Chapter 2306, and the Code. The Applicant will also be required to select a Bond Trustee from the Department's approved list as published on its website.

(c) Bond Documents. Once the Application has been submitted and the Applicant has deposited funds to pay initial costs, the Department's bond counsel shall draft Bond documents.

(d) Public Hearings. The Department will hold a public hearing to receive comments pertaining to the Development and the issuance of the Bonds. A representative of the Applicant or member of the Development Team must be present at the public hearing and will be responsible for conducting a brief presentation on the proposed Development and providing handouts at the hearing that should include at minimum, a description of the Development, maximum rents and income restrictions. If the proposed Development is Rehabilitation, the presentation should include the proposed scope of work that is planned for the Development. The handouts must be submitted to the Department for review at least two days prior to the public hearing. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant, as well as any facility rental fees or required deposits, if applicable.

(e) Approval of the Bonds. Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, financial feasibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board will consider the approval of the final Bond resolution relating to the issuance, substantially final Bond documents and in the instance of privately placed Bonds, the pricing, terms and interest rate of the Bonds. For Applications that include local funding, Department staff may choose to delay Board consideration of the Bond issuance until such time it has been confirmed that the amount or terms associated with such local funding will not change and remain consistent with what was represented in the Department's underwriting analysis.

(f) Local Permits. Prior to closing on the Bond financing, all necessary approvals, including building permits from local municipalities, counties, or other jurisdictions with authority over the Development Site must have been obtained or evidence that the permits are obtainable subject only to payment of certain fees. In instances where such permits will be not received prior to bond closing, the Department may, on a limited and case-by-case basis allow for the closing to occur, subject to receipt of confirmation, acceptable to the Department, by the lender and/or equity investor that they are comfortable proceeding with closing.

§12.8. Refunding Application Process.

(a) Application Submission. Owners who wish to refund or modify tax-exempt bonds that were previously issued by the Department must submit to the Department a summary of the proposed refunding plan or modifications. To the extent such modifications constitute a re-issuance under state law the Applicant shall then be required to submit a refunding Application in the form prescribed by the Department pursuant to the Bond Refunding Application Procedures Manual.

(b) Bond Documents. Once the Department has received the refunding Application and the Applicant has deposited funds to pay initial costs, the Department's bond counsel will draft the necessary Bond documents.

(c) Public Hearings. Depending on the proposed modifications to existing Bond covenants a public hearing may be required. Such hearing must take place prior to obtaining Board approval and must meet the requirements pursuant to §12.7(d) of this chapter (relating to Full Application Process) regarding the presence of a member of the Development Team and providing a summary of proposed Development changes.

(d) Rule Applicability. Refunding Applications must meet the applicable requirements pursuant to Chapter 11 of this part (relating to Housing Tax Credit Program Qualified Allocation Plan). At the time of the original award the Application would have been subject to eligibility and threshold requirements under the QAP in effect the year the Application was awarded. Therefore, it is anticipated the Refunding Application would not be subject to the site and development requirements and restrictions pursuant to §11.101 of this part (relating to Site and Development Requirements and Restrictions). The circumstances surrounding a refunding Application are unique to each Development; therefore, upon evaluation of the refunding Application, the Department is authorized to utilize its discretion in the applicability of the Department's rules as it deems appropriate.

§12.9. Occupancy Requirements.

(a) Filing and Term of Regulatory Agreement. A Bond Regulatory and Land Use Restriction Agreement will be filed in the property records of the county in which the Development is located for each Development financed from the proceeds of Bonds issued by the Department. Such Regulatory and Land Use Restriction Agreement shall include provisions relating to the Qualified Project Period, the State Restrictive Period, along with points claimed for other provisions that will be required to be monitored throughout the State Restrictive Period, and shall also include provisions relating to Persons with Special Needs. The minimum term of the Regulatory Agreement will be based on the criteria as described in paragraphs (1) - (3) of this subsection, as applicable:

(1) 30 years, or such longer period as elected under §12.6(4) of this chapter (relating to Extended Affordability), from the date the Development Owner takes legal possession of the Development;

(2) The end of the remaining term of the existing federal government assistance pursuant

to Tex. Gov't Code, §2306.185; or

(3) The period required by the Code.

(b) Federal Set Aside Requirements.

(1) Developments which are financed from the proceeds of Private Activity Bonds must be restricted under one of the two minimum set-asides as described in subparagraphs (A) and (B) of this paragraph. Regardless of an election that may be made under Section 42 of the Code relating to income averaging, a Development will be required under the Bond Regulatory and Land Use Restriction Agreement to meet one of the two minimum set-asides described in subparagraphs (A) and (B) of this paragraph. Any proposed market rate Units shall be limited to 140% of the area median income and be considered restricted units under the Bond Regulatory and Land Use Restriction Agreement for purposes of using Bond proceeds to construct such Units.

(A) At least 20% of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 50% of the area median income; or

(B) At least 40% of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 60% of the area median income.

(2) The Development Owner must, at the time of Application, indicate which of the two federal set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with Tex. Gov't Code, §1372.0321. Units intended to satisfy set-aside requirements must be distributed equally throughout the Development, and must include a reasonably proportionate amount of each type of Unit available in the Development.

(3) No tenant qualifying under either of the minimum federal set-asides shall be denied continued occupancy of a Unit in the Development because, after commencement of such occupancy, such tenant's income increases to exceed the qualifying limit. However, should a tenant's income, as of the most recent determination thereof, exceed 140% of the applicable federal set-aside income limit and such tenant constitutes a portion of the set-aside requirement of this section, then such tenant shall only continue to qualify for so long as no Unit of comparable or smaller size is rented to a tenant that does not qualify as a Low-Income Tenant.

§12.10. Fees.

(a) Pre-Application Fees. The Applicant is required to submit, at the time of pre-application, a pre-application fee of \$1,000, along with the fees noted on the Schedule of Fees posted on the Department's website specific to the Department's bond counsel and the Texas Bond Review Board (TBRB) pursuant to Tex. Gov't Code, §1372.006(a)). These fees cover the costs of pre-application review by the Department and its bond counsel and filing fees associated with

application submission for the Certificate of Reservation to the TBRB.

(b) Application Fees. At the time of Application the Applicant is required to submit a tax credit application fee of \$30 per Unit based on the total number of Units and a bond application fee of \$20 per Unit based on the total number of Units, unless otherwise modified by a specific program NOFA. Such fees cover the costs associated with Application review and the Department's expenses in connection with providing financing for a Development. For Developments proposed to be structured as a portfolio the bond application fees may be reduced on a case by case basis at the discretion of Department staff.

(c) Closing Fees. The closing fee for Bonds, other than refunding Bonds, is equal to 50 basis points ~~(0.005%)~~ of the issued principal amount of the Bonds, unless otherwise modified by a program NOFA. The Applicant will also be required to pay at closing of the Bonds the first two years of the administration fee equal to 20 basis points ~~(0.002%)~~ of the issued principal amount of the Bonds, with the first year prorated based on the actual closing date, and a Bond compliance fee equal to \$25/Unit (excludes market rate Units). Such compliance fee shall be applied to the third year following closing.

(d) Application and Issuance Fees for Refunding Applications. For refunding an Application the application fee will be \$10,000 unless the refunding is not required to have a public hearing, in which case the fee will be \$5,000. The closing fee for refunding Bonds is equal to 25 basis points ~~(0.0025%)~~ of the issued principal amount of the refunding Bonds. If applicable, administration and compliance fees due at closing may be prorated based on the current billing period of such fees. If additional volume cap is being requested other fees may be required as further described in the Bond Refunding Applications Procedures Manual. Transactions previously issued that involved a financing structure that would constitute a re-issuance under state law, but do not fit under §12.8, will be required to pay a closing fee that shall not exceed 25 basis points ~~(0.0025%)~~ of the re-issued principal amount of the bonds which may be reduced in the sole determination of the Department as commensurate with the review by staff in obtaining Board approval at the time of conversion.

(e) Administration Fee. The annual administration fee is equal to 10 basis points ~~(0.001%)~~ of the outstanding bond amount at the inception of each payment period and is paid as long as the Bonds are outstanding, unless otherwise modified by a specific program NOFA.

(f) Bond Compliance Fee. The Bond compliance monitoring fee is equal to \$25/Unit (excludes market rate Units), and is paid for the duration of the State Restrictive Period under the Regulatory Agreement, regardless of whether the Bonds have been paid off and are no longer outstanding. For Developments for which (1) the Department's Bonds are no longer outstanding and (2) new bonds or notes have been issued and delivered, the bond compliance monitoring fee may be reduced on a case by case basis upon a written request to, and at the discretion, of Department staff.

7b

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
NOVEMBER 10, 2022

Presentation, discussion, and possible action on the adoption of the repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, adoption of new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and directing their publication for adoption 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, the Department, as required by Internal Revenue Code §42(m)(1) and Tex. Gov't Code §2306.67022, developed this proposed 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 1, 2022, the rule was made available for public comment in the *Texas Register* and on the Department's website through October 14, 2022;

WHEREAS, public comment was received from 27 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; 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 adoption of the repeal of 10 TAC Chapter 11, and adoption of 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, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the 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, 2022, 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 1, 2022. The draft QAP was made available on the Department's website on September 27, 2022, and was published in the *Texas Register* edition dated September 23, 2022. Staff hosted three in-person round table discussions on March 30, 2022; April 26, 2022; and May 24, 2022, in Austin to discuss a variety of QAP topics, including the continuation of Supplemental Credit Allocation. The round tables were not considered hearings for accepting comment, but rather served as a forum at which staff could engage with potential commenters and stakeholders to answer questions and brainstorm ideas, with the intent that each attendee could then make informed comment prior to the comment deadline. Staff also hosted four virtual work group discussions that focused primarily on a specific topic on March 31, 2022; April 28, 2022; May 26, 2022; and August 2, 2022, in order for staff to gather information from stakeholders regarding various QAP topics. The virtual work groups were not considered hearings for accepting comment.

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 is presented as only a black-line that reflects changes made to the draft.

Staff received written comments from 27 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 no later than November 15, 2022, for him to approve, approve with changes, or reject. Upon the Governor's approval, approval with modifications, or rejection, which occur no later than December 1, 2022, the 2023 QAP will be published in the *Texas Register* and posted to the Department's website.

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.

10 TAC Chapter 11, Subchapter A

§11.1(b) – Due Diligence and Applicant Responsibility. (2) Procedures clarified for Applicants proposing to submit an Application requesting an award of Housing Tax Credits or a Direct Loan for a Development that already has a LURA in place.

§11.1(d) – Definitions. (2) The definition of Administrative Deficiency has been modified to clarify the Administrative Deficiency process. (38) The definition of Development has been revised to clarify requirements for 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. (43) The definition of Direct Loan has been revised to include HOME American Rescue Plan (HOME-ARP).

§11.1(e) – Data. This section was updated to require the use of 2020 Census boundaries and clarify the potential need for older data.

§11.1(i) – Scattered Site. This section was added to clarify procedure regarding the calculation of distances and scoring for scattered site applications

§11.2 – Program Calendar. This section is modified to reflect dates for the 2023 Application round.

§11.4 – Tax Credit Request, Award Limits and Increase in Eligible Basis. (c)(2) Non-metro Difficult Development Areas (DDA) are eligible for Increase in Eligible Basis (4) Language changed to include non-metro DDA. Updated to include an elevated value for Supplemental Credits that will be announced no later than December 1, 2022.

§11.6 – Competitive HTC Allocation Process. Staff has made several changes to this section as noted below.

§11.6(c) — Initial Application Selection in Each Subregion. Language modified to account for changes below.

§11.6(c)(iii) — Rehabilitation and Reconstruction limits. With some exceptions, no more than 50% of all credits in a region will be awarded to Applications proposing Rehabilitation or Reconstruction In Urban Subregions

§11.6(c)(v) — HUD Choice Neighborhood Planning or Implementation Grant. In certain Subregions the board shall allocate competitive tax credits to the highest scoring development, if any, which is located in a neighborhood which is a recipient of a HUD Choice Neighborhood Planning or Implementation grant in the preceding five years provided certain conditions are met.

§11.7 – Tie Breaker Factors. (1) The poverty rate threshold for the first tie-breaker is updated from a three-year average to a fixed threshold. (2) Section is updated to clarify counting methodology when determining the nearest Housing Tax Credit Development that was awarded Page 4 of 15 15 or fewer years ago.

§11.8 – Pre-Application Requirements. (b)(1)(I) Section included to require the name and address of nearest Housing Tax Credit assisted Development that serves the same Target Population and was awarded 15 or fewer years ago. (b)(1)(J) Requirement to disclose neighborhood risk factors has been removed.

§11.9 – Competitive HTC Selection Criteria. Staff has made several changes to this section noted below.

§11.9(a) — General Information. This section has been updated to clarify Administrative Deficiency procedures when an applicant elects points where supporting documentation is required but fails to provide it.

§11.9(b)(1)(A) — Unit Sizes. Threshold for Efficiencies and one Bedrooms are reduced by 50 square feet.

§11.9(b)(2)(c)(i) — Nonprofit Control. Language added which allows nonprofits to assign Control of the Development to a parent organization.

§11.9(c)(5) — Opportunity Index. Language modified for clarity, methodology updated to allow for poverty rate comparison within region.

§11.9(c)(6) — Underserved Area. Section is updated to clarify counting methodology when determining if The Development Site is located entirely within a census tract that does not have another Development that was awarded 30 or fewer years ago.

§11.9(c)(6)(A) — Underserved Area: Colonias. Points awarded for a development site located wholly or partially within the boundaries of a Colonia increased from 2 to 5.

§11.9(c)(6)(F) — Underserved Area: Municipalities. Language is updated to include census tracts located within a municipality's boundaries, and to clarify technicalities of the scoring item

§11.9(c)(6)(G) — Underserved Area: Poverty Decrease. Language added to clarify methodology due to the availability of new Census data and tracts.

§11.9(c)(7)(A) — Proximity to Jobs. (A)(B) Eligibility language has been modified for clarity and point thresholds are lowered to expand the number of qualifying sites. (C) Section added which allows a development to earn 1-2 points for access to public transportation that provides regular service to employment and basic services.

§11.9(f)(1) — Financial Feasibility. Language added to clarify allowable exceptions to minimum debt coverage ratio.

§11.9(f)(2) — Cost of Development per Square Foot. Eligible building costs increased for all point thresholds and language added to introduce new procedures for yearly changes to these figures. The high cost development requirement in this subparagraph has been removed.

§11.9(f)(3)(G) — Neighborhood Risk Factors. Language added to exempt Rehabilitation and Reconstruction from subparagraph (i).

§11.9(f)(9) — Readiness to Proceed. Section from prior years has returned. Will continue to apply to all Texas counties. Points will once again be awarded to applicants that certify that financing will be closed by November 30th. All zoning is required to be in place at award. A penalty may apply if applicants elect these points and then fail to meet the deadlines.

10 TAC Chapter 11, Subchapter B

§11.101. – Site and Development Requirements and Restrictions. Staff has made several changes to this section noted below.

§11.101(a)(2) — Undesirable Site Features. Language added to designate Developments currently encumbered by a TDHCA LURA as eligible for an exemption. Additional language added to clarify procedure for an undisclosed undesirable site feature.

§11.101(a)(2)(D) — High Voltage Power Lines. The Undesirable Site Features outlined in this subparagraph have been removed.

§11.101(a)(3)(A) — Neighborhood Risk Factors. Language added to clarify the Administrative Deficiency process and procedures for an undisclosed Neighborhood Risk Factors.

§11.101(a)(3)(B)(i) — Poverty Rate. Rehabilitation Developments are exempt from this Neighborhood Risk Factor.

§11.101(a)(3)(B)(ii) — Violent Crime Rate. Rehabilitation Developments are exempt from this Neighborhood Risk Factor.

§11.101(a)(3)(B)(iii) — Blight. The Neighborhood Risk Factor outlined in this subparagraph has been removed.

§11.101(a)(3)(B)(iii) — School Ratings. Mitigation exemption for Developments encumbered by a TDHCA LURA has been removed. Language has been updated to reflect current TEA rating system. Any Development within the attendance zone of a school that is not rated due to Senate Bill 1365 (i.e., those not rated due to low scores) will be required to provide mitigation.

§11.101(b)(1)(B) — Ineligibility of Certain Developments. Developments proposing more than 30% efficiency and/or one-bedroom units are ineligible. Rehabs, Elderly, and Supportive Housing developments are exempt from this requirement.

§11.101(b)(1)(C) — Ineligibility of Developments within Certain School Attendance Zones. This item is suspended due to the pandemic. School ratings are addressed through the Neighborhood Risk Factors section for this year.

§11.101(b)(1)(D) — Ineligibility of Developments within Areas of High Crime. Section added to clarify eligibility of New Construction and Adaptive Reuse developments for which mitigation submitted under (D)(ii) still yields a Part I violent crime rate greater than 18 per 1,000 persons.

§11.101(b)(4) — Mandatory Development Amenities. (E) Rehabilitation Developments no longer exempt from disposal requirements (F) Energy Star or Equivalent rated dishwasher required, Rehabilitation exempt if one was not originally in the Unit. (M) Language added to clarify parking waivers and variances.

§11.101(b)(5) — Common Amenities. (A) Points for each unit count have been lowered.

§11.101(b)(5)(D)(iii) — Health/Fitness/Play amenities. (IX) Pickleball has been added as an eligible Sport Court.

§11.101(b)(5)(D)(v) — Community Resources. (I) Gazebos have been removed from list of community resources. (XV) Access to onsite bike sharing services has been added.

§11.101(b)(6)(A) — Unit Sizes. Language added to allow developments in certain Subregions to reduce required square footage by 50 feet. (i) Efficiency minimum reduced to four hundred fifty (450) (ii) one Bedroom minimum reduced to five hundred fifty (550).

§11.101(b)(6)(B) — Unit, Development Construction, and Energy and Water Efficiency Features. (iii) Wi-Fi enabled, Energy-Star or equivalently rated “smart” thermostats and solar panels have been added to list of Energy and Water Efficiency Features.

§11.101(b)(8) — Development Accessibility Requirements. When determining the appropriate distribution of accessible Units for Direct Loan Developments a single story Unit may be substituted for a townhome Unit, if certain conditions are met.

10 TAC Chapter 11, Subchapter C

11.201. – Procedural Requirements for Application Submission.

§11.201(1)(C) — Online Submissions. Language added to clarify confirmation of uploads.

§11.201(1)(D)(2) — Filing of Application for Tax-Exempt Bond Developments. Language added to clarify application requirements and termination procedure.

§11.201(1)(D)(2)(A) — Lottery Applications. (i) Upon notification from TBRB that a potential Applicant is next in line to receive a Reservation an Applicant may choose to only submit the complete Application.

§11.201(1)(D)(2)(B) — Non-Lottery Applications. Language added to clarify that section also applies to applications not successful in lottery. (i) If Third Party Reports are submitted on a date other than the fifth of the month, Board meeting or target date of Determination notice will be up to staff discretion (iii) section addressing applicants unable to obtain a Certificate of Reservation has been struck.

§11.201(1)(D)(2)(C) — Application Timeline. Procedures clarified for applications suspended due to the inability to resolve Administrative Deficiencies by the original deadline, or given an extension to respond to an Administrative Deficiency

§11.201(6) — Deficiency Process. Language indicating that any application with insufficient information will be cured through the deficiency process has been removed. Final determinations are reserved for Department staff and Board (A) Suspension is a possible consequence of submitting materials that do not fully resolve the matter at hand. (C) Language describing process for resubmitting a terminated application is removed.

§11.204. Required Documentation for Application Submission

§11.204(1)(G) – Marketing. The Development Owner will specifically market to public housing authority (PHA) waitlists in addition to veteran’s organizations.

§11.204(7)(G) – Financing. Term sheets for interim and permanent loans must be current or nonexpired.

§11.204(8)(A) – Fifteen-year Pro forma. For Tax-Exempt Bond Developments, the pro forma must be signed by the lender and syndicator.

§11.204(8)(D) – Rent Schedule. Income and corresponding rent restrictions will be reflected in the LURA for the duration of the Affordability Period and for Tax-Exempt Bond Developments, in accordance with the Applicant’s election under Tex. Gov’t Code §1372.0321.

§11.204(8)(D)(v) – If Applying for Direct Loan funds. (I) A NOFA may specifically change “floating” unit designation (VI) Section added regarding income restrictions of HOME-ARP funding.

§11.204(8)(E) – Development Costs. Applications that include a combination of New Construction and Rehabilitation must include a separate development cost schedule exhibit for only the costs attributed to the Rehabilitation portion (i) Site work costs permissible without a certified public accountant letter increased to \$20,000 per unit.

§11.204(11)(A) – No Zoning Ordinance in Effect. Requirement no longer applies to sites entirely located in the unincorporated area of a county and not within the ETJ of a municipality.

§11.205.Required Third Party Reports.

§11.205(2) – Market Analysis. Deadline clarified for Direct Loan Applications. (A) Section added to outline requirements for Acquisition/Rehabilitation or Reconstruction projects.

§11.205(4) – Appraisal. Language requiring appraisal for all Rehabilitation and Adaptive Reuse Developments. Deadline clarified for Direct Loan Applications.

10 TAC Chapter 11, Subchapter D

§11.302.Underwriting Rules and Guidelines.

§11.302(d)(1)(A)(i) – Market Rents. Language eliminated which allowed for the consideration of an investor commissioned market study under certain conditions.

§11.302(d)(1)(C) – Vacancy and Collection Loss. The Underwriter shall always use a normalized vacancy rate of 7.5% or 5% if 100% project based vouchers. Language allowing for other assumptions based on market area has been eliminated.

§11.302(d)(2)(K) – Resident Services. (i) Term sheet requirements updated and DCR calculation language eliminated (ii) DCR calculation language eliminated.

§11.302(e)(1) – Acquisition Costs. (A) Acquisition and Rehabilitation added. (i) Section applies when no building acquisition cost in basis or when the acquisition is not part of the Direct Loan eligible costs. (ii) Section can apply when required by the Uniform Relocation Assistance and Acquisition Act of 1970. Language applying section exclusively to of land, or a Reconstruction or Adaptive Reuse Development has been removed. (ii)(I) current owner as of the first date of the Application Acceptance Period or the Application Acceptance Date for Direct Loans. (iv) Change in value calculation. (B) Section has been removed. (C) Language added referencing appraisal guidelines and clarifying procedure if the acquisition cost in the Site Control documents is less than Page 8 of 15 the appraised value.

§11.302(e)(6) – General Contractor Fees. General Contractor fees above stated limit will be excluded from Total Housing Development Costs.

§11.302(e)(12) – Special Reserve Account. Amount Underwriter may deposit in special reserve account reduced to \$1,000 per unit.

§11.302(i)(1) – Gross Capture Rate. Underwriters will no longer verify all components of capture rates and may not verify conclusions independently.

§11.302(i)(5) – Exceptions to Infeasibility Conclusions. (B)(iv)Exemption no longer requires an irrevocable commitment, executed guaranty agreement as evidenced by resolution from the sponsor's governing board. Exemption requires executed guaranty agreement

§11.303.Market Analysis Rules and Guidelines.

§11.303(d)(9)(E) – Demand. Language discussing the need for a market study regardless of occupancy has been omitted. (i) For HOME-ARP, demand for Qualifying Populations must be identified in accordance with Section VI B.10.a.ii of CPD Notice 21-10.

§11.303(d)(10)(B) – Rents. With some exception, Units for Qualified Populations will be underwritten at \$0 income For HOME-ARP.

§11.303(d)(10)(E) – Relevant Supply. Specifies how Comparable Units are to be determined for the Market Analysis.

§11.304.Appraisal Rules and Guidelines

§11.304(a) – General Provision. (2) If an appraisal is required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the appraisal must also meet the requirements of 49 CFR Part 24 and HUD Handbook 1378.

§11.304(C) – Appraiser Qualifications. Reviewing appraiser removed from section

§11.305.Environmental Site Assessment Rules and Guidelines

§11.305(b) – Additional Report Requirements. (7) Hazardous explosive activities do not include residential propane tanks. Range clarified as within 0.25 miles of site. (8) Vapor encroachment screening must be in accordance with E2600-10 or any subsequent standards as published.

§11.306.Scope and Cost Review Guidelines

§11.306(b) – For Rehabilitation Developments. Scope and Cost Review Report must include analysis in conformity with ASTM Standard Designation: E 2018, or any subsequent standards as published.

10 TAC Chapter 11, Subchapter E

§11.901.Fee Schedule

§11.901(14) – Ownership Transfer Fee. Ownership Transfer fees are not required for the Direct Loan programs during the Federal Affordability Period

§11.901(16) – Compliance Monitoring Fee. For Direct Loan Only Applications fee is will be collected beginning with the first year after Project completion.

§11.901 (19) - Appraisal Review Fee. The Appraisal Review Fee has been eliminated. This section is now omitted in its entirety.

10 TAC Chapter 11, Subchapter F- Supplemental credits remain in the QAP. The limit on requests will be an as-of-yet undetermined amount up to 15%, with the final limit to be announced by the Department no later than December 1, 2022. Similarly, for every dollar of supplemental credit claimed by a 2023 Applicant, an elevated value of up to \$2.00 per credit taken will be used in the 2023 round for purposes of determining the cap, with the final amount of the elevated value to be announced on the same date.

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, Definitions, Threshold Requirements and Competitive Scoring; Subchapter B, Site and Development Requirements and Restrictions; Subchapter C, Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules; Subchapter D, Underwriting and Loan Policy; Subchapter E, Fee Schedule, Appeals, and Other Provisions, and Subchapter F Supplemental Housing Tax Credits. 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 application 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 are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The repeal does not require additional future legislative appropriations.
4. The repeal changes will not result in any increases in fees. The rule removes a Determination Notice Reinstatement Fee.
5. The repeal is not creating a new regulation, except that it is replacing a rule being repealed 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; and
8. The repeal 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 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 this 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 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. 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 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.

SUMMARY OF PUBLIC COMMENT. The public comment period was held September 23, 2022, to October 14, 2022, to receive stakeholder comment on the repealed section. No comments on the repeal were received.

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

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

10 TAC Chapter 11, Qualified Allocation Plan

§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 written the state

agency's legal authority to adopt.

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

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

Except as described herein the 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 repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the 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

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

Except as described herein the 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 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 §11.901-904

STATUTORY AUTHORITY. The 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.

SUBCHAPTER F. SUPPLEMENTAL HOUSING TAX CREDITS

STATUTORY AUTHORITY. The repealed sections affect no other code, article, or statute.

§11.1001 General

§11.1002 Program Calendar for Supplemental Housing Tax Credits

§11.1003 Maximum Supplemental Tax Credits, Requests and Award Limits

§11.1004 Competitive HTC Set-Asides (§2306.111(d))

§11.1005 Supplemental Credit Allocation Process

§11.1006 Procedural Requirements for Supplemental Credit Application Submission

§11.1007 Required Documentation for Supplemental Credit Application Submission

§11.1008 Supplemental Credit Applications Underwriting and Loan Policy

§11.1009 Supplemental Credit Fee Schedule

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 and the Administrative Deficiency process; update the Program Calendar; reduce thresholds for Proximity to Jobs so that more potential Development sites will be competitive; increase Eligible building costs to response to growing expenses; eliminate subject and difficult to Review Neighborhood Risk Factors and Undesirable Site Features; create alternative criteria for obtaining an Experience Certificate; add automatic Supportive Housing and HUD Neighborhood Choice awards for specified regions of the State; and provide for the use of 2023 Competitive Housing Tax Credits to assist 2021 Competitive Housing Tax Applicants negatively impacted by the COVID-19 pandemic.

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 the 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 2022 QAP. Notably, the Department has sought to remove superfluous language wherever possible and to consolidate rules to reflect current process. 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. 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 sections are in effect, the public benefit anticipated as a result of the new section 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. Other than the fees mentioned in section a4 above, 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 sections are in effect, enforcing or administering the new section 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.

(SUMMARY OF PUBLIC COMMENT ATTACHMENT)

2023 QAP DRAFT PUBLIC COMMENT SUMMARY

SUMMARY OF PUBLIC COMMENT. The public comment period was held September 23, 2022, to October 14, 2022, to receive stakeholders comment on the new proposed sections. Comment was received from 27 commenters as listed below:

(1) Lakewood Property Management, (2) Purple Martin Real Estate, (3) Mark-Dana Corporation, (4) Jeremy Mears, (5) The Brownstone Group, (6) National Church Residences, (7) Dakota Courville, (8) Evolie Housing Partners, (9) Jennifer Hicks, (10) Nathan Kelly, (11) TAAHP, (12) Grace Ford, (13) Joan Hill, (14) Rural Rental Housing Association of Texas, (15) Denise Day, (16) Miranda Sprague, (17) Lincoln Avenue Capital, (18) BETCO, (19) Tropicana Properties, (20) Alyssa Carpenter, (21) Foundation Communities, (22) Disability Rights Texas, (23) Texas Housers, (24) ARX Advantage, (25) Sierra Club, (26) Katpody LLC, and (27) Dominionium.

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 have the commenter's number denoted, are all available on the Department Website.

§11.1(d)(38)(B) Requirement for Agreement with Local Jurisdiction for Sites Divided by Public Road

COMMENT SUMMARY: Commenter 2 suggests removing the requirement for developments divided by a public road to seek a LURA with a public entity ensuring a continuous accessible route. They suggest instead conditioning the award on providing the route and monitoring this during the compliance period.

STAFF RESPONSE: Staff believes more internal research is needed to determine the impact of this removal and the feasibility of Commenter 2's suggested alternative, as well as the potential statutory ramifications of this suggestion as it relates to accessibility. Additionally, Staff believes Commenter 2's proposed change would require additional public comment as this concept was not contemplated in the draft QAP. The timing of the QAP process does not allow for additional rounds of public comment. Staff has recommended no change at this time.

§11.1(c)(124) Definitions – Supplemental Credits

COMMENT SUMMARY: Commenter 18 recommends clarifying the language for the definition of Supplemental Credits to only apply to 2021 Competitive Housing Tax Credit Developments.

STAFF RESPONSE: Staff concurs with Commenter 18, a responsive revision has been made to the definition.

11.1(d)(125) Supportive Housing

COMMENT SUMMARY: Commenter 1 believes the requirement for certain supportive housing developments to be located within a half mile of public transportation limits eligibility to larger

urban areas as many smaller cities and rural towns do not have services that qualify. Commenter 1 suggests amending this section to include on-demand transit services which would expand eligible areas. Commenter 9 supports the removal of §11.1(d)(125)(B)(v)(I) and (II) related to criminal history criteria. Commenter 9 suggests this is an easy and no impact way to help get more Supportive Housing on the ground in Texas. Commenter 9 points out the population intended to be served by Supportive Housing is in direct conflict with the criminal history criteria.

STAFF RESPONSE: In regards to Commenter 1's suggested revision of the public transportation requirement, Staff believes more internal discussion is needed. Staff believes this change cannot be made without additional research regarding what would constitute "on-demand transit" and its usability for this target population. On-demand transit services vary in scheduling procedures and availability. Staff requires more analysis and additional public input to determine if these services provide an equivalent service to the current requirement. Staff has recommended no change at this time.

Staff appreciates Commenter 9's suggestion to remove §11.1(d)(125)(B)(v)(I) in order to produce more supportive housing throughout the state; however, staff would like to emphasize that mitigation related to criminal screening criteria in accordance with §11.1(d)(125)(B)(v)(II) is available and required. Accordingly, staff does not believe that the criteria is a significant barrier to housing and recommends no change.

§11.1(d)(138) Unit Type

COMMENT SUMMARY: Commenter 2 suggests removing the word "features" from this section. They believe the term is too vague and will introduce ambiguity. Commenter 2 also suggests full bathrooms alone is a sufficient differentiator.

STAFF RESPONSE: Features are already a required part of Unit Type for the purposes of 10 TAC §11.101(b)(8)(E) and the term is referenced in the federal requirements for Direct Loan Developments pursuant to 24 CFR §92.205(d) and 93.200(c)(1). No change is recommended.

§11.1(e) Data

COMMENT SUMMARY: Commenter 20 recommends removing language relating to "American Community Survey" within the section, as some data required is census data but not necessarily "ACS" data. Commenter 20 also proposes that the deadline for the final Site Demographics Report be published within the QAP, stating developers need time to use reports and determine potential development sites.

STAFF RESPONSE: While Commenter 20 is correct that some items do not rely on the American Community Survey, staff does not believe the use of this term impacts the interpretation of any

key items. Staff also is concerned that a responsive change may cause additional inconsistencies. Staff recommends no changes.

Regarding a Site Demographics Report deadline, staff understands the desire for clarity on this matter but believes the suggested timeline may not always be feasible. Substantial revisions by the Governor's office, as provided for by the statutory method for adopting the QAP, can impact the site demographics report and may push back the publication date. Staff recommends no change based on this comment.

§11.2 Program Calendar

COMMENT SUMMARY: Commenter 2 requests the deadline for Multifamily Direct Loan Request for Preliminary Determination be added to the Program Calendar. Commenter 2 also requests the February 11th deadline be revised as it falls on a Saturday.

STAFF RESPONSE: A responsive revision has been made regarding both the February 11th deadline and the presence of the Multifamily Direct Loan Request for Preliminary Determination deadline on the Program Calendar.

§11.4(a) Credit Amount, Value Assigned to Supplemental Credits

COMMENT SUMMARY: Commenter 2 requests the amount assigned to Supplemental Credits be defined in the final QAP rather than in a later determination.

STAFF RESPONSE: Staff continues to monitor market conditions and will announce the final limit for Supplemental Credits in accordance with the QAP.

§11.5(3)(D)(ii) At-Risk Demolition and Relocation of Redevelopment Units

COMMENT SUMMARY: Commenter 2 suggests inserting the term "at least" into this section to allow developments that demolish existing units to create more than the original number.

STAFF RESPONSE: Staff agrees that this addition would improve flexibility and may provide an opportunity to create more affordable units. This addition is reflected in the attached rule, with the caveat that other rules, limitations, approvals, and potential conflicting requirements based on fund source, number and unit type may be implicated by creating more units than the original number.

§11.6(3)(C)(iv) HUD Choice Neighborhood Awards

COMMENT SUMMARY: Commenter 2 is supportive of this addition.

STAFF RESPONSE: No change is necessary as a result of this comment.

§11.6(3)(C)(iv) Highest Scoring Supportive Housing

COMMENT SUMMARY: Commenters 21, and 23 support the proposal of automatically awarding the highest scoring Supportive Housing application with an Urban Region.

STAFF RESPONSE: No change is necessary as a result of this comment.

§11.7 Tie Breaker Factors

COMMENT SUMMARY: Commenters 2 and 14 support the poverty rate metric changes proposed in this section. However, they suggest language changes to create three distinct tie-breakers.

Commenter 20 recommends not changing the current tiebreakers this late before an upcoming cycle, as it could potentially impact future development sites. Commenter 20 recommends Tiebreakers need more discussion and official public comments.

Commenter 21 recommends adding a tie breaker for the lowest average income, stating it would fit well with the 1st tie breaker of poverty and keep distance as the last tie breaker. Commenter 22 recommends adding a tie breaker incentivizing developers to create more affordable units to address the large demand for affordable living.

Commenter 24 supports the change of fixed poverty percentage of 20% with the additional increase for Regions 11 and 13.

STAFF RESPONSE: Staff understands the desire for more precise language, but believes the current rule is sufficiently clear. Staff will consider revisions for upcoming QAP planning cycles.

Regarding Commenters 21 and 22, staff appreciates the new suggestions for tie breakers, however Staff believes it would be too late to include additional ideas before the upcoming 9% Cycle. In this regard, Staff concurs with Commenter 20.

No change is necessary regarding Commenter 24.

§11.8(b)(2)(C) Pre-Application Notification Contents

COMMENT SUMMARY: Commenter 20 recommends removing the re-renotification requirement, as at the time of pre-application, development sites do not have a survey of Applicants. Commenter 20 called the new language a “gotcha” situation where the county or assumed acreage was incorrect and could result in a density change, which ultimately terminates an application.

STAFF RESPONSE: In response to Commenter 20, staff has included a responsive revision regarding the renotification requirement.

§11.9(c)(1) Income Levels of Residents

COMMENT SUMMARY: Commenters 12, and 15 suggest awarding more points to applications that offer deeper levels of affordability. Both commenters are current tenants in tax credit properties. As retirees, they struggle to afford their 60% units but could not easily find a unit with deeper restrictions despite qualifying. Commenter 13 is also a tenant in a tax credit property struggling to keep up with rent increases on a fixed retirement income.

STAFF RESPONSE: Staff appreciates the feedback from Commenters 12, 13, and 15 on the need for deeper affordability for those on a fixed income. Staff welcomes the participation of tenants for the QAP planning, and encourages continued engagement; however, this matter was not considered during the 2023 QAP planning session, and will require more public comment for future roundtables. Staff will internally discuss this matter, and encourages participation from tenants next year.

§11.9(b)(2)(A) Sponsor Characteristics, HUB

COMMENT SUMMARY: Commenters 2, 10, 14, and 24 oppose changes to this section. Commenter 2 believes the additions of the terms “officer” and “regardless of Control.” could be problematic for existing HUBS. Commenters 10 and 14 note that “officer” is not a defined term within the QAP or Section 2306 of the Local Government Code. Commenters 10 and 14 are concerned the addition of this term could result in existing HUBs being deemed ineligible to participate. Commenter 10 also suggests the current language is sufficient to meet TDHCA’s Section 42 obligations and further narrowing does not provide material benefit.

STAFF RESPONSE: In regards to Commenters 2, 10, 14, and 24 on the proposed HUB language, Staff will be maintaining the current language for the 2023 QAP. Staff recommends to bring up terms such as “officer” and “regardless of Control” in a future QAP roundtable discussion should the expressed concern materialize in the upcoming round.

In response to Commenters 2, 10, and 14, Staff understands the concerns regarding of existing HUBs and the future of their participation.

§11.9(b)(6)(B)(iii) Energy and Water Efficiency Features

COMMENT SUMMARY: Commenter 21 recommends the Department to make EPA WaterSense or equivalent toilets, showerheads, and faucets mandatory as opposed to a scoring criteria. Commenter 21 states this would be a crucial strategy for energy efficiency and conservation.

STAFF RESPONSE: Staff appreciates the input of Commenter 21 regarding water conservation, and will consider further research.

§11.9(c)(4) Residents with Special Housing Needs

COMMENT SUMMARY: Commenter 2 suggests several language changes impacting grammar and syntax. Commenter 9 proposed new language that clarifies which subparagraphs can be combined. Regarding subparagraph B, Commenters 14 and 24 proposed a return to 2021 language as well as an exemption for USDA developments. USDA developments are often located in areas without the relevant services and thus units sit vacant for six months to stay in compliance.

STAFF RESPONSE: In response to Commenters 2 and 9, Staff has included a responsive revision regarding the grammar and syntax for this scoring item.

Staff acknowledges Commenters 14 and 24 on returning to previous QAP language and adding an exemption for USDA developments. Staff does not have current plans to make changes for this scoring item.

§11.9(c)(6) Underserved Area

COMMENT SUMMARY: Commenter 2 supports the clarifying language added regarding existing developments, but finds the meaning of subparagraph F confusing and requests further rewording.

Commenter 21 states current section is ok, but would like to propose conceptual changes in the 2024 QAP Planning Process. Commenter 21 states the Department should move towards a HTC density per census tract concept.

Commenter 14 proposes new language for a scoring item that awards points to At-Risk developments placed in service 20 or 25 years ago. They believe this change will allow older and aspiring properties to rise to the top of the scoring chart. Commenter 14 acknowledges this suggested change to be significant and believes it should be considered for the next QAP. Commenter 24 supports RRHA comments. Commenter 24 states the changes would be a significant departure and believe discussing this further in the 2024 QAP Planning Cycle is necessary.

STAFF RESPONSE: In response to Commenter 2, staff has determined that the language is sufficiently clear and recommends no change.

In response to Commenter 14 and 24, proposed changes would require additional public comment as it proposes a new concept not contemplated in the draft or proposed 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 encourages raising this matter again during the planning phase for the 2024 QAP.

11.9(c)(7) Opportunity Index

COMMENT SUMMARY: Commenters 9 and 18 suggest all references to physical barriers be removed from subparagraph (A)(ii)(III) for third quartile census tracts and identifies a sentence that is no longer applicable.

STAFF RESPONSE: Regarding all references to physical barriers, a responsive revision has been made and the relevant sentence has been removed from the item.

§11.9(c)(7)(C) Access to Jobs

COMMENT SUMMARY: Commenter 3 requests the Access to Jobs scoring criteria be removed in its entirety. Commenter 3 suggests public transportation offerings vary dramatically throughout the state, and the scoring criteria as written would be particularly unfavorable to urban areas that are not in metropolitan cities. Commenter 3 also supports public comments made by TAAHP during the Preliminary QAP Draft. Commenters 2, 10, 11, 18, 20, 21, 24, and 26 suggest the deletion of the requirement that the development site is located on an accessible route for pedestrians. They cite past cycles in which this requirement was in place and prone to frequent RFAD challenges. Commenters 2, 10, and 11 also suggested the language regarding employment and services is unnecessary.

Commenter 16 recommends removing the following language “on a route, with an accessible path for pedestrians that is” to better follow how the Opportunity Index points, which reads “... is located within one half-mile from the entrance...” in the current 2023 QAP Draft.

Commenter 23 recommends that once applications have been submitted, TDHCA should compile and analyze Proximity to Jobs to determine if frequency of services ensure meaningful mobility. The analysis should also be made public for review.

Commenter 22 supports the addition of pairing public transportation with Proximity to Jobs.

STAFF RESPONSE: While staff acknowledges public transportation offerings vary throughout the state, the department believes the access to jobs criteria has value and it will remain in the 2023 QAP.

In regards to comments suggesting the deletion of the accessible route requirement, the department acknowledges the difficulty in enforcing this element and the potential for extensive RFADs. A responsive revision has been made. Similarly, the department concurs that language regarding employment and services is unnecessary. A responsive revision has been made and the language is struck. Staff believes these revisions also address the recommendations of Commenter 16.

Staff may consider the suggestions of Commenter 23 regarding future analysis of this item. Staff may consider publishing the results if such analysis takes place.

The Department appreciates the input and support of Commenter 22, and thanks them for the insight regarding the importance of this item to people with disabilities.

§11.9(e)(2) Cost of Development per Square Foot

COMMENT SUMMARY: Commenters 2, 21, and 24 approves of the proposed cost per square foot scoring adjustments. Commenter 21 however, warns that smaller projects may be eligible for more tax credits. Commenter 21 recommends adding a tax credit per unit Tie Breaker.

STAFF RESPONSE: Staff believes it would be too late to include additional ideas before the upcoming 9% Cycle, but encourages raising this matter again during the planning phase for the 2024 QAP, especially in light of any data revealed by the 2023 round.

§11.9(e)(9) Readiness to Proceed

COMMENT SUMMARY: Commenters 2, 6, 9, 10, 18, 20, 21, 24, and 26 propose the suspension or deletion of this scoring item, suggesting it is in contrast with the challenges of developing in the current environment. Commenters 10, 11, and 18 highlight the number of Force Majeure requests as a clear indication that the development community is facing significant challenges. Commenter 6 highlights the impacts of the SB19 fallout in addition to economic conditions. Commenters 7, 11, and 18 suggest the permitting process in certain regions make this timeline nonviable.

If removal does not occur Commenter 6 suggests exempting At-Risk applicants from this scoring item, as for certain HUD and USDA developments the timeline is infeasible. Commenter 14 also requests USDA developments be exempt from this item. Commenter 11 highlights the challenges of qualifying while using the aforementioned resources and argues for a suspension of the item. Commenter 6 also suggests applications for which the majority GP is a nonprofit receive these points automatically given the financial constraints of nonprofit applicants. Commenter 2 suggests alternative language in the case which removal is not an option. This language includes a revision to the closing deadline.

Commenter 7 suggests giving tie-breaker priority to applicants who are able to meet the requirements rather than making the item punitive. Commenter 11 proposes an alternative scoring system which rewards developments when their developments place in service sooner. This is in line with equity providers, who provide upward adjusters when the Developer achieves a benchmark earlier. Commenter 18 suggests that RTP could be changed to reward points to developers depending on how quick the development gets constructed and placed in service.

STAFF RESPONSE: In response to Commenters 2, 6, 9, 10, 18, 20, 21, 24, and 26 regarding the suspension or deletion of Readiness to Proceed, Staff believes that current conditions necessitate the incentivizing of those developments that are able to move as quickly as possible. Staff understands the concerns from Commenters 6, 10, 11, and 18 on this scoring item given current market conditions, and would recommend to continue providing feedback for upcoming QAP roundtables.

In regards to Commenters 6, 7, 11, 14, and 18, Staff believes that the current scoring system will account for any regional differences and complications from different funding mechanisms. Staff recommends that stakeholders bring up this topic for upcoming QAP Roundtables.

In regards to Commenters 2, 7, 11, and 18 for additional tiebreakers and change in scoring procedures, Staff believes making these late additions could impact the upcoming 9% round, in particular, by putting new participants at a disadvantage in future funding rounds. Staff would recommend these Commenters bring up their tie breaker and change in scoring procedures suggestions for upcoming QAP roundtable discussions.

§11.9(f)(2) Construction Costs

COMMENT SUMMARY: Commenter 14 supports the changes to costs based on current economic conditions. They suggest staff continue to review data that supports this action and pledged to continue to provide input to support further increases.

STAFF RESPONSE: Staff appreciates the input and support of Commenter 14, and will continue to review data based on construction costs.

§11.101(a)(3) Neighborhood Risk Factors

COMMENT SUMMARY: Commenters 2 and 11 support the proposed elimination of blight as a Neighborhood Risk Factor. Commenter 2 supports the proposed exemption for rehabilitation developments regarding poverty and crime. Commenters 2 and 14 are opposed to the proposed change removing the schools exemption for developments encumbered by a TDHCA LURA. Commenter 21 recommends the Department limit this exemption to rehabilitations that have existing LURAs, in order to make sure that tax credits are being invested in areas below the crime requirements. Commenter 14 questions why poverty and crime are exempted for rehabilitation, but not schools. They suggest these tenants should have the opportunity to have their units improved despite their surroundings.

Commenter 23 recommends that TDHCA should still require rehabilitation applications to include violent crime and poverty disclosures, and exemptions should be limited to enforcement history, inspection scores, and complaints.

Commenter 16 recommends to revise this rule to allow developers to mitigate census tracts for a development site with a violent crime rate below 18 per 1000 persons, but are contiguous to census tracts which have violent crime rate above 18 per 1000 persons.

Commenters 2, 10, 11, 18, 20, and 24 proposed evaluation of school performance over two rating years as seen in previous QAPs. Proposed language requires mitigation for a school with “Not Rated: Senate Bill 1365” for 2022 and a TEA Accountability Rating of F for the most recent preceding year.

Commenters 2, 10, 11, and 18 propose the removal of language requiring developments that would have been found to be ineligible to provide Pre-K services to mitigate that ineligible status, arguing that it should not be a mitigation too especially when it is not a solution in all cases. Commenter 2 suggests providing an onsite after school learning center should not be a baseline requirement for mitigation. Commenter 9 suggests the on-site educational service mitigation option should also be provided to elementary students as there is there is usually a higher concentration of elementary aged children living in properties than older children.

Commenters 18, 20 suggest updating the language reflected in 11.8(b) regarding the disclosure of neighborhood risk factors. 11.101(a)(3)(A) still contains language requiring a disclosure for NRFs.

STAFF RESPONSE: Staff appreciates the positive feedback from Commenters 2 and 11 regarding the removal of blight structures for Neighborhood Risk Factors. Staff recommends no changes based on these comments. Commenter 2 also expressed support for exemptions for rehabilitation developments for crime and poverty. Staff recommends no change based on this comment.

In regards to Commenters 2 and 14 on school exemptions for developments encumbered by TDHCA LURAs, Staff believes the newly added language will ensure allocations will be more consistent with agency’s goals. Staff acknowledges the concerns regarding this change, and will open to discuss this item during the 2024 QAP Planning Process. In regards to Commenter 14’s concerns on exemptions for School Ratings, Staff emphasizes that mitigation options are still available and tenants do have the opportunity to receive renovations, because mitigation options is available.

Staff acknowledges the concern from Commenter 21 regarding violent crime exemptions for rehabilitation developments; however, Staff believes that the proposed exemptions will assist the Department in meeting its goals, including the statutory direction to preserve affordable rental housing.

Staff appreciates the feedback from Commenter 23 regarding additional exemption determinations for rehabilitation applications; however, the current rules do not contemplate gathering and compiling all of the data for neighborhood risk factor determinations.

In regards to Commenter 16 on violent crime rates for contiguous census tracts, the proposed draft states mitigation options are available if a development site is adjacent to any census tract with a violent crime rate more than 18 per 1000. .

Staff acknowledges the return to similar language found in previous QAPs regarding School Ratings from Commenters 2, 10, 11, 18, 20, and 24; however, the proposed suggestions from these Commenters would require the use of outdated and potentially unrepresentative data.

Staff understands the concerns from Commenters 2, 10, 11, and 18 requiring the operation of Pre-K on Development Sites that contain low School Ratings; however, Staff believes the current proposed language will be an effective option for improving the School Ratings and providing additional tenant services. Staff would be open to further discussion on this item during the 2024 QAP Planning Process.

Staff acknowledges the feedback from Commenters 2 and 9 regarding on-site learning centers, and Staff will be open to adding language to include elementary school students for after school on-site learning centers. Staff understands Commenter 2's request to no longer be a baseline item for mitigation; however, Staff requires more information regarding this specific request.

Staff appreciates Commenters 18 and 20 regarding the language inconsistencies, and has addressed this issue for the updated QAP draft.

§11.101(b)(1)(A)(vii) Ineligible Developments, Efficiencies and One-Bedroom Units

COMMENT SUMMARY: Commenters 9, 18, and 24 suggests this item be removed in its entirety, as the percentage of one-bedrooms or efficiencies should be set by the market. Commenter 18 states a 30% limit of efficiency/one bedrooms is restrictive on every application, and the developer should make the decision of unit mix. Commenters 2, 10, and 11 suggest this language be deleted, or the minimum percentage be increased to 60%. Commenter 10 suggests this requirement will negatively impact a development's feasibility and is out of line with what works in the market.

STAFF RESPONSE: In response to Commenters 2, 9, 10, 11 18, and 24 regarding the removal of this threshold item, Staff does not recommend making responsive changes. Staff believes this section, as proposed, aligns with the Department's goals of serving low income families, as well as the federal requirement to serve tenant populations of individuals with children.

§11.101(b)(6)(B)(XI) Site and Development Requirement and Restrictions – Unit, Development, and Energy and Water Efficiency Features

COMMENT SUMMARY: Commenter 18 asks Staff to provide clarification language regarding solar panels.

Commenter 25 supports the addition of solar panels for developers to receive points, specifically the new section 11.101(b)(6)(B).

STAFF RESPONSE: Staff understands the need to provide additional clarification language regarding solar panels, and a responsive revision has been made for this item. Staff appreciates the positive feedback from Commenter 25.

§11.101(b)(5)(C)(v)(I) Common Amenities

COMMENT SUMMARY: Commenters 14 and 24 strongly recommend the return of Gazebos as a scoring item. They suggest this is an important amenity to the rural communities they serve.

Commenter 23 recommends that TDHCA conduct a well-prepared tenant survey to ask tenants about the current on-site amenities.

Commenter 25 recommends adding onsite bike sharing services as a Common Amenity.

STAFF RESPONSE: Regarding gazebos, staff notes that this deletion does not prevent the construction of gazebos, it only removes the point incentive for doing so. Accordingly, staff recommends no change. Staff appreciates the input of Commenter 23 regarding a tenant survey and will consider planning one for use in a future cycle. Regarding Commenter 25's request, currently in the attached QAP draft, onsite bike sharing services are included in the list of Common Amenities.

§11.101(b)(7)(C) Resident Supportive Services – Adult Supportive Services

COMMENT SUMMARY: Commenter 19 recommends to add one-on-one homebuyer counseling as a point option for this scoring item, this would be worth 3.5 points. Commenter 19 recommends that language within this section be amended to allow career training and placement partnerships to be provided by property management companies.

STAFF RESPONSE: Staff appreciates the recommendation from Commenter 19 regarding homebuyer counseling, and Staff will be open to discussing this item during the 2024 QAP Planning Process.

§11.204(11)(A) Required Documentation for Application Submission - Zoning

COMMENT SUMMARY: Commenter 18 states the added language within the section does not provide clarity regarding county zoning authority, and provided suggested language revision within their public comment.

STAFF RESPONSE: As some municipalities do have regulatory power over essential services in the ETJ, staff is recommending no change.

§11.204(13) Organizational Charts

COMMENT SUMMARY: Commenters 6 and 9 propose new language requiring Non-Profits to only list board members with Control. Commenter 6 and 9 suggest listing the entire board of a Non-Profit is unnecessary and arduous as they are often extensive and coordination can be difficult. Commenter 9 highlighted problems in securing the subsequent paperwork and signatures.

STAFF RESPONSE: Staff acknowledges the suggested language from Commenters 6 and 9, and understands the workload Non-Profits face in complying with this requirement on Organizational Charts. However, any nonprofit Board member could have control when voting with other Board Members. Furthermore, typically the Board of Directors meets the definition of management entity under the definition of Principal under 2 CFR Part 180; thus, staff suggests no change.

§11.205(2) Market Analysis

COMMENT SUMMARY: Commenter 27 states that the current QAP implementation of market study procedures place greater emphasis on retrospective considerations, rather than forward-looking analyses. Commenter 27 states that the current QAP implemented rules push developments towards major urban areas where land is more expensive. Commenter 27 also requests additional clarification from the Department on the justification of the rural 120-unit threshold.

STAFF RESPONSE: Details surrounding existing renters, existing rental inventory and how they relate to capture rates calculations should be discussed with the market analyst. Staff believes they can explain what existing rental inventory is included in capture rates and what is not. In 2022, §11.302 (i)(1)(c) was changed to allow greater than 120 units in rural markets if you can meet the urban capture rate of 10% instead of the rural capture rate of 30%. This rule change was to address the issues mentioned by the commenter and allow for greater flexibility in rural areas that can support more units. The size limitation for 4% deals in rural areas started at 80 units to mirror the limitation under the 9% program and was increased several years ago to something staff still believed was supportable in rural areas. Staff believes any change to this for 2023 would be too substantive, and is something that could be addressed in a subsequent year after research and discussion with the market analyst community.

§11.302(5)(B) Long Term Pro Forma:

COMMENT SUMMARY: Commenter 7 suggests allowing developers trend rents at the maximum of either 5 year average of the county income growth or 2%. Commenter 7 suggests this change should be made due to the current state of rising interest rates and construction costs. The change would allow lenders the flexibility to underwrite deals which the current rule does not allow.

STAFF RESPONSE: While the last few years have experienced fast AMI growth in many counties, it will not necessarily keep trending that way. The long-term pro forma assumptions stress test the long-term financial feasibility of the project. In a time of uncertainty in interest rate, cost, construction timing, and operating expenses, loosening feasibility measures does not further the Department's goal of awarding credits to long-term financially feasible projects. Staff recommends no change.

§11.302(e)(1)(C) Eligible Basis on Acquisition of Build

COMMENT SUMMARY: Commenters 6 and 9 suggest the underwriter use the percentage, not the value, attributed to land in an appraisal. This change would be more in line with equity partners. Commenter 2 suggests revising the eligible basis calculation for buildings where the contract acquisition cost is less than the appraised value and introducing a pro-rating system.

STAFF RESPONSE: The appraisal values the land as if vacant and that is the cost that TDHCA will underwrite for the land, regardless of the value of the buildings on that land. The Department's responsibility is to award no more credits than necessary to any project and by underwriting the full land cost and not applying a percentage of cost paid furthers that goal. While the syndicators may use a percentage allocation, they do not have the responsibility of awarding no more credits than necessary. The Department encourages more rehabilitation work on the properties, rather than getting more basis for purchasing the buildings. Staff recommends no change.

§11.302(e)(7) Developer Fee

COMMENT SUMMARY: Commenter 17 suggests TDHCA allow developers to increase the developer fee by as much as five percent above the current posted amounts for bond financed projects with gaps due to inflation and increased costs. Commenter 17 references state of Arizona Department of Housing used for their 4% LIHTC program.

STAFF RESPONSE: Staff recommends no change. While the percentage of the developer fee is limited, the amount of developer fee for 4% HTC developments (not layered with Direct Loans) can increase if other eligible costs increase. The 4% tax credits are only limited by actual basis spent at cost certification; this is not the case with 9% tax credits, where the tax credit

allocation is limited to the amount awarded at application regardless if increased eligible costs have occurred.

§11.302(e)(12) Special Reserve Accounts

COMMENT SUMMARY: Commenters 11, 18, and 24 recommend returning the deposit amount up to \$2,500 per unit for Special Reserve Accounts, to ensure developers are able to provide financial relief to tenants in the situation of another market downturn.

STAFF RESPONSE: Staff recommends no change. The Department's responsibility is to award no more credits than necessary to any project and limiting the amount of these reserves furthers that goal. Furthermore, Staff notes that few properties are currently using the Special Reserve Accounts to provide financial relief to tenants, and many of these accounts remain unused.

11.302(i)(4)(B) Long Term Feasibility

COMMENT SUMMARY: Commenter 21 requests that the Department allow supportive housing developments to be feasible if they have a positive cash flow during the affordability period, rather than the term of the Direct Loan.

STAFF RESPONSE: Positive cash flow throughout the term of the TDHCA Direct Loan is a Department requirement to show reasonable expectation of re-payment and long-term feasibility of the project. Applying this rule to all TDHCA Direct Loans furthers the Department's goal of streamlining loan documents and increasing the speed at which Direct Loans are awarded, processed and closed. Staff recommends no change based on this comment.

Subchapter F Supplemental Credits

COMMENT SUMMARY: Commenter 2, 5, 11, and 14 stated their support for the inclusion of supplemental credits in the 2023 QAP. Commenter 5 emphasized recent changes in the construction industry and the widespread impact of inflationary pressures. Commenter 2 suggests an expedited timeline culminating in February board approval. Commenters 9, 11, and 18 also highlighted the need for an expedited timeline and suggest adopting the same calendar that was utilized for the Supplemental Credits in the 2022 QAP. Commenter 18 also states developers not knowing until December 1st regarding the supplemental credit limit could be problematic, and recommend using the previous calendar for Supplemental Credits in the 2022 QAP.

Commenters 2, 11, 14, 18, and 24 emphasizes the need for certainty related to the availability of supplemental credits and recommends allocating these as an 'across the board' increase of 15% of the original credit allocation. Commenter 14 also voices their support for the maximum percentage. Commenter 4, 5, 8, 20, and 21 suggest supplemental credits should be available to any application who received force majeure treatment in 2022, regardless of the original year of the application. Commenter 4, 5 and 8 suggest allowing the Board latitude to act in support

of 2022 deals should economic conditions render this necessary. Commenters 20, 21 request language to be added that would allow 2021 Applications that were awarded 2022 forward commitments to be eligible to apply for the next round of Supplemental Credits.

STAFF RESPONSE: Staff appreciates Commenters 2, 5, 11, and 14 support for the inclusion of supplemental credits for the 2023 QAP, and acknowledges the challenges that developers are encountering in the current environment.

In regards to Commenters 2, 9, 11, and 18 on the Program Calendar for Supplemental Credits, Staff understands the desire for being thoroughly informed on the next round of Supplemental Credits, but believes the suggested timelines may not be feasible. The Program Calendar cannot be finalized until final approval is received from the Office of the Governor.

Staff acknowledges Commenters 2, 11, 14, 18, and 24's request for certainty for supplemental credit amounts. Staff continues to monitor market conditions and will announce Supplemental Credit amounts in accordance with the QAP.

In regards to Commenters 4, 5, 8, 20, and 21, staff believes that limits need to be in place to ensure enough credits are allocated to new applications in 2023. Staff believes that limiting supplemental credits to 2021 deals is necessary.

SUBCHAPTER A. PRE-APPLICATION, DEFINITIONS, THRESHOLD REQUIREMENTS AND COMPETITIVE SCORING

10 TAC §§11.1 - 11.10

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.

§11.1.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 this section and §§11.2 - §11.4 of this title also apply to non-Competitive Housing Tax Credits and Multifamily Direct Loans. 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.

(1) 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.

(2) Developments with Existing LURAs. Applicants proposing to submit an Application requesting an award of Housing Tax Credits or a Direct Loan for a Development that already has a LURA in place should review the existing LURA(s) on the property to ensure there are no conflicts with the proposed Application. Where an Applicant has identified a potential conflict, it is incumbent upon the Applicant to consult with staff regarding the steps that may be necessary to resolve the conflicts. This may include,

but is not limited to, an Application amendment or LURA amendment, a waiver, or other action that may necessitate additional staff time for review or a Board determination. Depending on the timing constraints associated with the proposed Application, Applicants should be mindful that resolving issues relating to the existing LURA and for Direct Loans the existing Contract may not coincide with the timing needed for a new award if such requests are not submitted early in the process. A copy of the existing LURA must be included in the 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 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 to clarify, explain, confirm, or restrict the Development proposal to a logical and definitive plan or to provide 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 Applicants must intend that the pre-Application or Application is the final version to be reviewed by staff, and should not rely on the Administrative Deficiency process when applying for funding.

(A) The following issues will be treated by Department staff as Administrative Deficiencies that are curable through the Deficiency process only if the issues, when taken as a whole, do not constitute a Material Deficiency as defined in §11.1(d)(79) of this chapter:

(i) For Applications that are substantially complete, a minor quantity of missing signatures, documents, or similar clerical matters, the curing of which will not create change within the Application, unless the missing documentation is required to have existed as of the appropriate deadline and did not, or is otherwise not susceptible to resolution. For Competitive HTC or Direct Loan Applications, this may include documents submitted to substantiate points claimed in the Application only if:

(I) The documents can be readily identified to have existed prior to the Full Application Delivery Date (Competitive HTC) or the Application Acceptance Date (Direct Loan), and the submission of the documents does not necessitate additional changes in the Application to qualify for the points; or

(II) For scoring items that are predicated solely on third-party data, characteristics inherent to the proposed Development Site, or are otherwise not influenced by the actions of the Applicant, the Application's eligibility for these points can be clearly established to have existed prior to the Full Application Delivery Date (Competitive HTC) or the Application Acceptance Date (Direct Loan), and the submission of the documents does not necessitate additional changes in the Application to qualify for the points.

(ii) Inconsistencies that exist between facts presented in the Application and/or its supporting documentation. A discrepancy between the requested points and the points supported by the Application will not be treated as an inconsistency if the facts presented within the Application are otherwise consistent.

(iii) At the Department's sole discretion, additional information that is necessary to assist in the review of the Application.

(B) The following issues will not be treated by Department staff as Administrative Deficiencies that are curable through the Deficiency process:

(i) Any matter that will materially change the Application, except for matters that must be addressed in accordance with 10 TAC §11.1(d)(2), in which case staff will direct the Applicant to resolve the inconsistency in the manner that creates the least change within the Application. Under no circumstance can the resolution of an Administrative Deficiency increase the Application's score from what was initially requested.

(ii) Changes to the Application that are submitted only to qualify for points claimed in the Application.

(C) In all cases, 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 Department Staff and Board.

(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--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 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.

(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 a 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, the Determination Notice date for a Tax-Exempt Bond Development issued by the Department, Cost Certification for Tax-Exempt Bond Developments where the Determination Notice is issued administratively, 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), HOME American Rescue Plan (HOME-ARP), Tax Credit Assistance Program Repayment Funds (TCAP RF), Texas Housing Trust Fund (THTF), or other programs 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), the NOFA under which they are awarded, the Contract, and 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.

(55) 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 leasor 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 leasors, such parties will be deemed prime subcontractors.

(56) 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.

(57) 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.

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

(59) 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).

(60) 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).

(61) 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.

(62) 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.

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

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

(65) Housing Contract System (HCS)--The electronic information system established by the Department for tracking, funding, and reporting Department Contracts and Developments. The HCS is primarily used for Direct Loan Programs administered by the Department.

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

(67) 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.

(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.

(70) 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.

(71) 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.

(72) 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)

(73) 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.

(74) 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.

(75) 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.

(76) 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.

(77) 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.

(78) Market Study--See Market Analysis.

(79) 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 may be considered 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.

(80) *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.

(81) 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).

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

(83) 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.

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

(85) 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.

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

(87) 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.

(88) 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.

(89) Owner--See Development Owner.

(90) 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.

(91) 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.

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

(93) 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.

(94) *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.

(95) 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.

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

(97) 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.

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

(99) 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.

(100) 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.

(101) 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.

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

(103) 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.

(104) 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).

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

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

(107) 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.

(108) 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.

(109) 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.

(110) 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 §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.

(111) Relevant Supply--The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:

(A) The proposed subject Units;

(B) Comparable Units in another proposed Development within the PMA in an Application submitted prior to the subject, based on the Department's evaluation process described in §11.201(5) 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.

(112) Report--See Underwriting Report.

(113) Request--See Qualified Contract Request.

(114) 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.

(115) 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.

(116) 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.

(117) 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.

(118) 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.

(119) Single Room Occupancy (SRO)--An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.

(120) Site Control--Ownership or a current contract or series of contracts that meets the requirements of §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.

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

(122) 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.

(123) Sub-Market--An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(124) Supplemental Credits--202~~32~~ Housing Tax Credits awarded through Subchapter F of this chapter to assist ~~2021 2019 and 2020~~ Competitive Housing Tax Credit Developments.

(125) 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 Acceptance 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:

(l) 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 §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. 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) - (VI) 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) the Development will have a comprehensive written eviction prevention policy that includes an appeal process; and

(VI) 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.

(126) 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.

(127) 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).

(128) *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.

(129) 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 website (www.tdhca.state.tx.us).

(130) 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.

(131) 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.

(132) 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.

(133) Underwriter--The author(s) of the Underwriting Report.

(134) 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.

(135) 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.

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

(137) 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.

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

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

(140) 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.

(141) 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.

(142) 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 in paragraph (116)(A) of this subsection, definition of Rural Area. 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.

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

(144) 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 2020 Census boundaries will ~~generally continue to be used, unless otherwise noted.~~ All references to census tracts throughout this chapter will mean the 2020 Census tracts, unless otherwise noted. Applicants may need to provide Census tract information based on the 2020 boundaries as well as the ones defined by ~~pre-2020-2010 boundaries~~ACS data, if ~~such information is needed for scoring~~data based on 2020 tract boundaries are not available as of

October 1, 2022 for the specific item in question. 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 2023 QCTs designated by HUD ~~in September 2022~~, to be effective in 2023.

(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) Scattered Site Applications. As it relates to calculating any distances (tie determinations, proximity to features, etc.) or determining satisfaction of scoring, the site which scores or ranks the lowest will be the site used for that analysis. There is no opportunity for higher scoring or performing sites to elevate the score or performance of other sites in the scattered site Application.

(j) 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.

(k) 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.

(l) Request for Staff Determinations. Where the requirements of this 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 (relating to Appeals Process), 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.

| <u>Deadline</u> | <u>Documentation Required</u> |
|-------------------|--|
| <u>01/02/2023</u> | <u>Application Acceptance Period Begins. Public Comment period starts.</u> |

| | |
|------------------------|--|
| <u>01/06/2023</u> | <p><u>Pre-Application Final Delivery Date (including waiver requests).</u></p> <p><u>Supplemental Housing Tax Credits Intent to Request deadline.</u></p> |
| <u>02/13/2023</u> | <p><u>Deadline for submission of Request for Preliminary Determination</u> in accordance with §11.8(d) of this chapter.</p> |
| <u>02/15/2023</u> | <p><u>Deadline for submission of Application for .ftp access if pre-application not submitted.</u></p> |
| <u>03/01/2023</u> | <p><u>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).</u></p> <p><u>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).</u></p> |
| <u>04/03/2023</u> | <p><u>Market Analysis Delivery Date pursuant to §11.205 of this chapter.</u></p> |
| <u>05/05/2023</u> | <p><u>Deadline for Third Party Request for Administrative Deficiency.</u></p> |
| <u>Early June 2023</u> | <p><u>Scoring Notices Issued for Majority of Applications Considered “Competitive.”</u></p> |

| | |
|--|--|
| <u>06/01/2023</u> | <u>Public comment deadline for the comment to be included in the Board materials relating to the July presentation of awards are due in accordance with §1.10.</u> |
| <u>June 2023</u> | <u>On or before June 30, publication of the list of Eligible Applications for Consideration for Award in July.</u> |
| <u>July 2023</u> | <u>On or before July 31, Board issuance of Final Awards.</u> |
| <u>August 2023</u> | <u>Commitments are Issued.</u> |
| <u>11/01/2023</u> | <u>Carryover Documentation Delivery Date.</u> |
| <u>11/30/2023</u> | <u>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)).</u> |
| <u>07/01/2024</u> | <u>10% Test Documentation Delivery Date.</u> |
| <u>12/31/2025</u> | <u>Placement in Service.</u> |
| <u>Five business days after the date on the Deficiency Notice (without incurring point loss)</u> | <u>Administrative Deficiency Response Deadline (unless an extension has been granted).</u> |

Figure: 10 TAC §11.2(a) (.pdf)

(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 including the Application Acceptance Date 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 §11.201(6) of this chapter (relating to 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 title (relating to Required Third Party Reports) 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 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 2023 credits will be the one considered eligible, and the other Applications will not be reviewed; if there is no Supplemental Allocation of 2023 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 Competitive HTC Deadlines), 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 Competitive HTC Deadlines) 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 that serves the same Target Population as the proposed Development, regardless of whether the Development serves general, Elderly, or Supportive Housing; and

(B) A Development that has received an allocation of Housing Tax Credits or private activity bonds, or a Supplemental Allocation of 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) of this paragraph 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 paragraphs (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 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 or Resolutions Delivery Date in §11.2(b) of this chapter, 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, regardless of the Applicant(s), are proposing Developments serving the same Target Population on sites separated by 1,000 feet or less, 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 are proposing Developments in the same census tract in an urban subregion, 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 §11.5(2) of this chapter (relating to USDA Set-Aside) or §11.5(3) (relating to At-Risk Set-Aside).

§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 designated, elevated value not to exceed \$2.00 for every \$1.00 Supplemental Allocation awarded when calculating the \$3 million maximum for all 2023 Applications, with this elevated value to be determined by the Department no later than December 1, 2022. 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 \$2,000,000 whichever is less. 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 2023 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 2023 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 (relating to Competitive HTC Deadlines), 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. 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.

(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) or for Rural areas located in a Difficult Development Area (DDA) that has high construction, land and utility costs relative to the AMGI. The Application must include the SADDA or DDA map that clearly shows the proposed Development is located within the boundaries of a SADDA or DDA as applicable.

(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 §11.1(d)(126)(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, non-metro DDA 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, non-metro DDA 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, non-metro DDA or SADDA designation is not effective may be underwritten to include the 30% boost, provided a complete application was submitted to the bond issuer in the year the QCT, non-metro DDA or SADDA designation was 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 2023 ceiling will be attributed to the 2023 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)). 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 2023 ceiling will be attributed to the 2023 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 §§514, 515, or 516 of the Housing Act of 1949 (42 U.S.C. §§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 2023 ceiling will be attributed to the 2023 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) 5% of the State Housing Credit Ceiling associated with this Set-aside 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. §1715I);

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

(III) Section 202, Housing Act of 1959 (12 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.~~CFR 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.~~CFR Part 886, Subpart C; (VII) §§514, 515, and 516, Housing Act of 1949 (42 U.S.C. §§1484, 1485, and 1486);

(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), (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. §1437g); or

(ii) Units to be Rehabilitated or Reconstructed must have been proposed to be disposed of or demolished, or already disposed of 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); 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 at least the same number of restricted Units (the Applicant may, however, add market rate Units, and other rules, limitations, approvals, and potential conflicting requirements based on fund source, number and unit type may be implicated by creating more units than the original number); 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

(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) of this chapter. 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.

(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 (relating to Tax Credit Request, Award Limits and Increase in Eligible Basis). The Department will publish on its website on or before December 1 of 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.

(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 with the priorities in this subparagraph first prioritized. 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. In Urban subregions in which credits available do not allow for all of the priorities in clauses (iii) to (v) of this subparagraph to be achieved, the priorities will be followed in the order reflected in this subparagraph.

(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 2023 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.

(iii) In Urban subregions, not including the calculation of At-Risk Applications awarded, no more than 50% of all credits in a subregion will be awarded to Applications proposing Rehabilitation or Reconstruction, unless only Rehabilitation or Reconstruction Applicants are eligible in the subregion.

(iv) In Urban subregions containing a county with a population that exceeds 950,000, the Board shall allocate competitive tax credits to the highest scoring Development, if any, that is located in a neighborhood which is a recipient of a HUD Choice Neighborhood Planning or Implementation grant in the preceding five years from the date of Application submission and funds from the HUD Choice Neighborhood awardee are reflected in the Application's Sources and Uses.

(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, 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 2023 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 2023 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 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 a 20% poverty rate threshold in all regions except for Regions 11 and 13 (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 as of October 1, 2022 and as reflected in the Department's current Site Demographic Characteristics Report. As a consequence of disparities that exist between the two datasets, for the purposes of this subparagraph, the poverty rate for each census tract will be determined based on 2020 census tract boundaries, and the rent burden will be determined based on 2010 census tract boundaries. Each Application will need to specify both the current census tract, as well as the Development Site's pre-2020 census tract in order to qualify for this tiebreaker.

(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 15 or fewer years ago. Years are measured in whole years, and are calculated by deducting the year of the award from the "Board Approval" column of the property inventory from the Site Demographics Characteristics report from the current year. The specific month and date of the award are disregarded for this analysis. 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). 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 §11.2(a) of this chapter.

(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 or contains 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;

(I) The name and address of the nearest Housing Tax Credit assisted Development that serves the same Target Population and was awarded 15 or fewer years ago following the calculation established in 10 TAC §11.7(2) according to the Department's property inventory tab of the Site Demographic Characteristics Report; and

(J) If points are to be claimed related to Underserved Area and/or Proximity to Jobs, documentation supporting those point elections.

(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. 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 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. 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.

(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 13, 2020. 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 §11.9(e)(1)(E) of this chapter. 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. Applications will only be reviewed for point items specifically elected in the Application. Except for scoring items that are awarded based on tiered categories, if an Application is determined to not qualify for the points elected, Department staff will not evaluate the Application to determine whether it might qualify for alternative points.

(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 (500) square feet for an Efficiency Unit;
- (ii) six-hundred (600) 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 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 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 or officer of the HUB cannot be a Related Party to or Affiliate, including the spouse, of any other Principal or officer of the Applicant, Developer or Guarantor (excluding another Principal of said HUB), regardless of Control. (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. Nonprofit organizations that formally operate under a parent organization may assign Control of the Development to that parent organization, so long as it meets the requirements of IRC §42(h)(5)(C).

(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) of this chapter (related to Resident Supportive Services), in addition to points selected under subsection (c)(3) of this section.

(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 paragraph (1)(A) or paragraph (1)(B) of this subsection, these levels are in addition to those committed under paragraph (1) of this subsection. If selecting points from paragraph (1)(C) or paragraph (1)(D) of this subsection, 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) Residents with Special Housing Needs. (§2306.6710(b)(4); §42(m)(1)(C)(v)) An Application may qualify to receive up to three (3) points by serving Residents with Special Housing Needs by selecting points under any combination of subparagraphs (A), (B), ~~and/or~~ (C) of this paragraph. The Units identified for this scoring item may not be the same Units identified previously for the Section 811 PRA Program.

(A) The Development must commit at least 5% of the total Units to Persons with Special Housing Needs. 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 subparagraph (A) of this paragraph, 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. A Development is not

eligible under this paragraph unless points have also been selected under subparagraph (A) of this paragraph. (1 point)

(C) If at Application, 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)

(5) 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. Based on the American Community Survey (ACS) data, 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 less than 20% or the median poverty rate among tracts for the region, whichever is greater, and meets the requirements in clause (i) or (ii) of this subparagraph:

(i) The Development Site is located entirely within a census tract that has

(I) a poverty rate less than 20% or the median poverty rate among Census tracts for the region whichever is greater; and

(II) a median household income in the two highest quartiles among Census tracts within the uniform service region (2 points); or

(ii) The Development Site is located entirely within a census tract that has:

(I) a poverty rate less than 20% or the median poverty rate among Census tracts for the region, whichever is greater,

(II) a median household income in the third quartile among Census tracts within the region, and

(III) is contiguous to a census tract that is in the first or second quartile among tracts for median household income in the region, and has a poverty rate less than 20% or the median poverty rate among tracts for the region, whichever is greater, 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;~~ (1 point). and

(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 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. (2 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. (2 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 27% or more of adults age 25 and older has an Associate's Degree or higher as tabulated by the 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. (2 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. (2 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 27% or more of adults age 25 and older has an Associate's Degree or higher as tabulated by the American Community Survey 5-year Estimate. (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).

(6) Underserved Area. (§§2306.6725(a)(4) and (b)(2); 2306.127(3), 42(m)(1)(C)(i) and (ii)). Points are not cumulative and an Applicant is therefore limited to selecting one subparagraph. If an Application qualifies for points under paragraph (5) of this subsection, then the Application is not eligible for points under subparagraphs (A) and (B) of this paragraph. Years are measured in whole years, and are calculated by deducting the year of the award from the "Board Approval" column of the property inventory of the Site Demographic Characteristics Report from the current year. The specific month and date of the award are disregarded for this analysis. 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) (§2306.127(3)). 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 (5 points);

(B) (§2306.127(3)). 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) (§2306.6725(b)(2)). The Development Site is located entirely within a census tract that does not have another Development that was awarded 30 or fewer 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 15 or fewer 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 10 or fewer 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 that is located wholly within the perimeter formed by the outermost boundaries of an incorporated area and the census tract itself and all of its contiguous census tracts do not have another Development that was awarded 10 or fewer years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report. This item will apply to Development Sites located entirely in in Places with a population of 100,000 or more, and will not apply in the At-Risk Set-Aside; (5 points)

(i) The presence of unincorporated enclaves within the census tract will not make an Application ineligible for these points so long as the tract is wholly within the outer boundaries of an incorporated area.

(ii) The perimeter of incorporated area may be composed of boundaries from multiple municipalities so long as the boundaries, when taken as a whole, form a complete perimeter.

(iii) The Development Site may intersect the boundaries of multiple Places so long as each has a population of 100,000 or more.

(iii) To accommodate for mapping inaccuracies, for purposes of this scoring item only, any overlap of boundaries that is 300 or fewer feet, measured outward from the incorporated area boundary, will be disregarded when determining that a census tract is located within an incorporated area so long as the determination is in the Application's favor.

(iv) Contiguous census tracts include those that touch at a point.

(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 2012 and 2019. This measure is referred to as the Affordable Housing Needs Indicator in the Site Demographic Characteristics Report. The Census Tracts for this scoring item will be those defined by the ACS 2012 and 2019 5-year data sets. Due to changing census tracts resulting from the 2020 decennial census, Development sites which would have qualified for this point item

under the 2022 QAP using the 2022 Site Demographics Report will continue to be eligible. The Department will not publish an updated Affordable Housing Needs Indicator analysis until sufficient data is available to do so. It is incumbent upon the Applicant to demonstrate within the Application that the Development Site would have qualified for these points. (4 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).

(7) Proximity to Job Areas. (§42(m)(1)(C)(i)) An Application may qualify to receive up to four (4) points if the Development Site is located in one of the areas described in subparagraphs (A), (B), or (C) 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. This determination will be based on the latest data set posted to the US Census website on or before October 1, 2022. 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 in Urban subregions 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 10,000 jobs. (4 points)

(ii) The Development is located within 2 miles of 8,000 jobs. (3 points)

(iii) The Development is located within 2 miles of 6,500 jobs. (2 points)

(iv) The Development is located within 2 miles of 4,500 jobs. (1 points)

(B) Proximity to Jobs. For Development Sites in Rural subregions 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 8,000 jobs. (4 points)

(ii) The Development is located within 4 miles of 6,000 jobs. (3 points)

(iii) The Development is located within 4 miles of 4,000 jobs. (2 points)

(iv) The Development is located within 4 miles of 2,000 jobs. (1 points)

(C) Access to Jobs. A Development site which qualifies for at least 2 points under subparagraph (A) or (B) may qualify for up to 2 additional points under this subparagraph if the Development Site is ~~located on a route, with an accessible path for pedestrians, that is~~ within one half-mile from the entrance of a public transportation stop or station with a route schedule that provides regularly scheduled service to employment and basic services. (2 points)

(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.

(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.

(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.

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

(ii) Eight (8) points for explicitly stated support from a Neighborhood Organization.

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

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

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

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

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such statement is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date May 1, 2023. 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 paragraph (1) of this subsection (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.

(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.

(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.

(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.

(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.

(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 subparagraph B(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 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 within a Qualified Census Tract and does not have a letter described in subclause (II) of this clause (5 points).

(B) 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 from 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, unless allowable exceptions provided for in §11.302(i)(5) are applicable. 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 §11.1(d)(126)(E)(i) of this chapter, it will receive twenty-six (26) points; or

(D) If the Development is part of the USDA set-aside and meets the requirements of §11.5(2) of this chapter 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 §11.8(d) of this chapter, 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. The Department will annually compare the proportional cost increases from October of the prior year to October of the year being calculated based on the Construction Price Index for Multifamily Housing Units

Under Construction (US Census Bureau) and increase the square foot cost targets in this item by that annual proportional amount of increase.

(A) 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 or equal to \$134 per square foot; or

(ii) the voluntary Eligible Hard Cost per square foot is less than or equal to \$179 per square foot.

(B) 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 or equal to \$143 per square foot; or

(ii) the voluntary Eligible Hard Cost per square foot is less than or equal to \$188 per square foot.

(C) 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 or equal to \$179 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 or equal to \$232 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 or equal to \$232 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 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) or (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 and commits to offer a right of first refusal to tenants of the property to purchase the dwelling at a selected term but no earlier than the end of the Compliance Period and no later than the Extended Use 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 selected term. If a Development is layered with National Housing Trust Funds, HOME-ARP, or another MFDL source where homeownership is not an eligible activity, the right of first refusal may not be earlier than the end of the Federal Affordability Period. §42(m)(1)(C)(viii). (1 point)

(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, 2022. (1 point)

(9) Readiness to proceed Applications that include a certification that all financing will be closed and the construction contract will be fully executed on or before the last business day of November or as otherwise permitted under subparagraph (C) of this paragraph. (1 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(g), as determined solely by the Board.

(C) Applications that remain on the waiting list after awards are made in late July that ultimately receive an award will receive an extension of the November deadline equivalent to the period of time between the late July meeting and the date that the Commitment Notice for the Application is issued.

(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) of this subsection. (§2306.6710(b)(2)) Any deductions assessed by the Board for paragraph (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 subsection (c)(8) of this section (related to Readiness to Proceed).

(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 §11.6(3) of this chapter (related to Competitive HTC Allocation Process), 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.~~

~~Filed with the Office of the Secretary of State on September 12, 2022.~~

~~TRD-202203644~~

~~Bobby Wilkinsin~~

~~Executive Director~~

~~Texas Department of Housing and Community Affairs~~

~~Earliest possible date of adoption: October 23, 2022~~

~~For further information, please call: (512) 475-3959~~

SUBCHAPTER B. SITE AND DEVELOPMENT REQUIREMENTS AND RESTRICTIONS

10 TAC §11.101

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.

§11.101.Site and Development Requirements and Restrictions.

(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, HOME-ARP, or NSP 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. 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) and Developments encumbered by a TDHCA LURA the earlier of the first day of the Application Acceptance Period for HTC, Application Acceptance Date for Direct Loan, or date the pre-application is submitted (if applicable) 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 (K) of this paragraph, staff may issue a Deficiency. If staff identifies an undesirable

site feature reflected in subparagraphs (A) - (J) of this paragraph and it was not disclosed the Application will be terminated. An Applicant's failure to disclose an Undesirable Site Feature is not curable by Administrative 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 an Administrative Deficiency or re-evaluation. 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 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;

(E) 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));

(F) Development Sites located within 10 miles of a nuclear plant;

(G) Development Sites in which the buildings are located within the accident potential zones or the runway clear zones of any airport;

(H) 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);

(I) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily;

(J) Development Sites that are located in a Clear Zone, any Accident Potential Zone, or within any Noise Contour of 65 decibels or greater, as reflected in a Joint Land Use Study for any military Installation, except that if the Development Site is located in a Noise Contour between 65 and 70 decibels, the Development Site will not be considered to have an Undesirable Site Feature if 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

(K) 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 (relating to Pre-Application Requirements (Competitive HTC Only)).~~ 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 staff may issue an Administrative 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, the Application will be terminated. Applicant's failure to disclose a Neighborhood Risk Factor is not curable by Administrative Deficiency. 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) - (iii) 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) 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). Rehabilitation Developments are exempt from this Neighborhood Risk Factor.

(ii) The Development Site is New Construction or Reconstruction and 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. Rehabilitation developments are exempt from this Neighborhood Risk Factor.

(iii) 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 "Not Rated: Senate Bill 1365" for 2022. 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 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 clauses (ii) and (iii) of subparagraph (B) of this paragraph exist, the Applicant ~~may~~**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. 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 "Not Rated: Senate Bill 1365" for 2022, 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)(iii) 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.

(i) 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) 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 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 may 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.

(iii) Evidence of mitigation for each of the schools in the attendance zone that has a TEA Accountability Rating of "Not Rated: Senate Bill 1365" for 2022 must meet the requirements of subclauses (I) and (II) of this clause which will be a requirement of the LURA for the duration of the Affordability Period and cannot be used to count for purposes of meeting the threshold requirements under subparagraph (7)(B)(ii) of this paragraph.

(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 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 to elementary, 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) 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.

(ii) 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.

(iii) 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 walk 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;

(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; or

(vii) any New Construction, Reconstruction, or Adaptive Reuse Development proposing more than 30% efficiency and/or one-Bedroom Units. This requirement will not apply to Elderly or Supportive Housing Developments.

(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 New Construction, Reconstruction, or Adaptive Reuse Elderly Development (including Elderly in a Rural Area) proposing more than 70% two-Bedroom Units.

(C) Ineligibility of Developments within Certain School Attendance Zones. Due to uncertainty linked to the COVID-19 pandemic, this item is suspended. 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. If the Board grants an Appeal of staff's determination of Site eligibility, the Board shall document the reasons for a determination of eligibility.

(D) Ineligibility of Developments within Areas of High Crime. Any Development involving New Construction or Adaptive Reuse located in an area described in (a)(3)(B)(ii) of this subsection and for which mitigation submitted under subparagraph (D)(ii) of this paragraph still yields a Part I violent crime rate greater than 18 per 1,000 persons (annually) is ineligible with no opportunity for mitigation. If the Board grants an Appeal of staff's determination of Site eligibility, the Board shall document the reasons for a determination of eligibility.

(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 or equal to 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.

(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) - (O) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (O) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), (H) or (N) 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 (not required for USDA);

(F) Energy-Star or equivalently rated dishwasher; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit;

(G) Energy-Star or equivalently rated refrigerator;

(H) Oven/Range;

(I) Blinds or window coverings for all windows;

(J) At least one Energy-Star or equivalently rated ceiling fan per Unit;

(K) Energy-Star or equivalently rated lighting in all Units;

(L) All areas of the Unit (excluding exterior storage space on an outdoor patio/balcony) must have heating and air-conditioning;

(M) Adequate parking spaces consistent with local code including a waiver or variance thereof, 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;

(N) 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

(O) 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 two (2) points;

(ii) Developments with 41 to 76 Units must qualify for four (4) points;

(iii) Developments with 77 to 99 Units must qualify for seven (7) points;

(iv) Developments with 100 to 149 Units must qualify for ten (10) points;

(v) Developments with 150 to 199 Units must qualify for fourteen (14) points; or

(vi) Developments with 200 or more Units must qualify for eighteen (18) 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:

(l) 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 §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. ~~Applications that would have been classified as ineligible based on their location within certain school attendance zones as provided for in subparagraph (1)(C) of this paragraph will not be considered ineligible if they offer the Pre-K services described in this item on the property, which~~

~~will be reflected in the LURA.~~ To receive the points ~~or to qualify for the mitigation,~~ 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-) of this item, 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-) of this subclause.

(-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 subclause (V) of this clause is not selected.

(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 subclause (IV) of this clause 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 (5 points).

(VIII) Splash pad/water feature play area (3 point).

(IX) Sport Court or field (including, but not limited to, Tennis, Basketball, Volleyball, Pickleball, 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) (2 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 (accessible seating must be provided) (1 points).~~

~~(II)~~ Community laundry room with at least one washer and dryer for every 40 Units (2 points).

~~(II)~~ 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).

~~(III/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).

~~(IV)~~ Furnished Community room (2 points).

~~(V)~~ Library with an accessible sitting area (separate from the community room) (1 point).

~~(VI)~~ Activity Room stocked with supplies (Arts and Crafts, board games, etc.) (2 points).

~~(VII)~~ Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points).

~~(VIII/XVII)~~ 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).

~~(IX)~~ 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).

~~(X)~~ High-speed Wi-Fi with advanced telecommunications capacity as determined under 47 U.S.C. 1302 with coverage throughout the Development (2 points).

(XI~~I~~) 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).

(XI~~I~~) 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).

(XI~~I~~~~II~~) Recycling Service (includes providing a storage location and service for pick-up) (1 point).

(~~XIV~~~~XIV~~) Community car vacuum station (1 point).

(XV~~I~~) Access to onsite bike sharing services, provided tenants have short-term, autonomous access to community-owned bicycles, with at least one bicycle per 25 Units (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) four hundred fifty (450) square feet for an Efficiency Unit;

(ii) five hundred fifty (550) 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 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.

(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);

(IX) A rainwater harvesting/collection system or locally approved greywater collection system (0.5 points);

(X) Wi-Fi enabled, Energy-Star or equivalently rated "smart" thermostats installed in all units (1 point); and

(XI) Solar panels installed, with ~~at least four~~ a sufficient number of panels ~~with to reach~~ a rated power output of at least 300 watts for each Low-Income Unit. (2 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 §10.405(a)(2) of this chapter (relating to Amendments and Extensions). 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 paragraph (5)(C)(i)(I) of this subsection. (Half of the points required under this paragraph); 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. However, a single story Unit may be substituted for a townhome Unit, if the single story Unit contains the same number of Bedrooms and bathrooms and has an equal or greater square footage.

(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.~~

~~Filed with the Office of the Secretary of State on September 12, 2022.~~

~~TRD 202203645~~

~~Bobby Wilkinson~~

~~Executive Director~~

~~Texas Department of Housing and Community Affairs~~

~~Earliest possible date of adoption: October 23, 2022~~

~~For further information, please call: (512) 475-3959~~

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) of this chapter (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. If an Applicant can view the files that were uploaded, then that shall serve as an indication that the Application was uploaded and received by the Department. Staff, may, as a courtesy, confirm that the Application files were uploaded, but shall not be obligated or required to confirm such submission. 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 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. Regardless of the timing associated with notification by the TBRB that an application is next in line to receive a Certificate of Reservation and the corresponding deadline to submit the Application pursuant to 10 TAC §190.3(b)(13), it is the Department's expectation that the requirements in this chapter are adhered

to, and that care and attention are given to the compilation of the Application, or the Application may be terminated.

(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. Upon notification from TBRB that an potential Applicant is next in line to receive a Reservation 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 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 or Applications Not Successful in Lottery.

(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. If the Third Party Reports are submitted on a date other than the fifth of the month, it will be at staff's discretion as to which Board meeting the Application will be presented, or what will be the target date for the administrative issuance of the Determination Notice, as applicable. Applicants may not 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.

(C) Generally, 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. In instances where an Application necessitates more staff time to review than normal, where an Application is suspended due to the inability to resolve Administrative Deficiencies by the original deadline, or an extension to respond to an Administrative Deficiency is requested, staff is not obligated to ensure the Application meets the original target date for a Board Meeting or administrative issuance of a Determination Notice, as applicable. 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) of this section.

(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, §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) of this title (relating to Post Award Requirements).

(4) Competitive 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. 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;

(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. The deficiency process does not require staff to request information from the Applicant in order to complete the Application. 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. 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 Department staff 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, suspension, 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.

(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 title (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 generally 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, s~~ 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; and

~~(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 and will specifically market to the public housing authority (PHA) waitlists for any PHA in the city and/or county the Development is located within and the PHA of any City within 5 miles of the Development. The Development Owner will be required to identify how they will specifically market to veterans and the PHA waiting lists and report to the Department in the annual housing report on the results of the marketing efforts to veterans and PHA waiting lists. 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.

(1) 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 2014-2022, 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 a minimum of 150 units or, or a Person, who was included on the original Owner or Developer organization chart for at least 10 awarded Competitive HTC Applications and/or Tax-Exempt Bond Developments in Texas, which all placed in service timely Applicants requesting Multifamily Direct Loan funds only may meet the alternative requirement at §13.5(h)(1) of this title (relating to Experience). 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) Financing is in place as evidenced by:

(I) a valid and binding loan agreement; and

(II) a valid recorded deed(s) of trust lien on the Development in the name of the Development Owner as grantor in favor of the party providing such financing.

(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company must:

(I) be current, non-expired, and have been signed or otherwise acknowledged by the lender;

(II) be addressed to the Development Owner or Affiliate;

(III) for 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) include either a committed and locked interest rate, or the estimated interest rate;

(V) include all required Guarantors, if known;

(VI) include the principal amount of the loan;

(VII) 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; and

(VIII) include 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 (or longer, if required by the NOFA), in the form provided by the Department. Any "other" debt service included in the pro forma must include a description. For Tax-Exempt Bond Developments, the pro forma must be signed by the lender and syndicator.

(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 for the duration of the Affordability Period and for Tax-Exempt Bond Developments, in accordance with the Applicant's election under Tex. Gov't Code §1372.0321. 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 or as specifically allowed in a NOFA;

(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;

(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;

(VI) in which HOME-ARP is the anticipated fund source, during the State Affordability Period have at least 20% of the Direct Loan-restricted Units for households and families whose incomes do not exceed 60% of the Area Median Income and 100% of the Direct Loan-restricted Units for households and families whose incomes do not exceed 80% 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. For Applications that include a scope of work that contains a combination of new construction and rehabilitation activities, the Application must include a separate development cost schedule exhibit for only the costs attributed to the portion of rehabilitation activities.

(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 \$20,000 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 URA 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.

(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. This requirement does not apply to a Development Site located entirely in the unincorporated area of a county, and not within the ETJ of a municipality.

(B) Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating the Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development.

(C) Requesting a Zoning Change. The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate 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.

(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 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 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) of this paragraph 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 may 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 Application Acceptance Date for Direct Loan Applications, or the first day of the Application Acceptance Period for Competitive HTC Applications and must be accompanied by the original Market Analysis.

(A) For Acquisition/Rehabilitation or Reconstruction projects that meet the following criteria, a comprehensive market study as outlined in IRS Section 42(m)(1)(A)(iii) shall mean a location map and a written statement by a disinterested Qualified Market Analyst certifying that the project meets these criteria:

(i) All of the Units in the project contain existing project based rental assistance that will continue for at least the Compliance Period, an existing Department LURA, or the subject rents are at or below 50% AMGI rents;

(ii) The Units are at least 80% occupied at time of Application; and

(iii) Existing tenants have a leasing preference or right to return to the Development as stated in a relocation plan.

(B) 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.

(C) 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))(D). 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 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. The Appraisal must not be dated more than six months prior to the date of Application submission, the Application Acceptance Date for Direct Loan Applications, 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 Forward Commitments, unless due to extenuating and unforeseen circumstances as determined by the Board. The Board may not 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.~~

~~Filed with the Office of the Secretary of State on September 12, 2022.~~

~~TRD 202203646~~

~~Bobby Wilkinson~~

~~Executive Director~~

~~Texas Department of Housing and Community Affairs~~

~~Earliest possible date of adoption: October 23, 2022~~

~~For further information, please call: (512) 475-3959~~

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.

(1) 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 Notices 15-11 and 21-10 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.

(2) Oversourcing of Funds. The total amount of Department-allocated funds combined with any additional soft funds provided by other units of government may not exceed the total cost of all non-market Units at the development, calculated on a per-unit basis. For purposes of this subsection, soft funds include any grants, below-market interest rate loans, or similar funds with a total cost to the Applicant that is below commercial-rate financing, but does not include payable loans provided at commercial rates with deferred payments. If the Department determines that a Development is oversourced in accordance with this subsection, the Applicant will be required to reduce the soft funds provided by other units of government so as to no longer be oversourced.

(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, 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) - (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 80% AMI.

(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 uses a normalized vacancy rate of 7.5% (5% vacancy plus 2.5% for collection loss). 100% project-based rental subsidy developments (not including employee-occupied units) may be underwritten at a combined 5% vacancy 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. If the term sheet has an expiration date, the term sheet must have been signed by the Applicant prior to the expiration date; 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; 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 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 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, Acquisition and Rehabilitation, Reconstruction, and Adaptive Reuse Acquisition.

(i) For a non-identity of interest acquisition with no building acquisition cost in basis or when the acquisition is not part of the Direct Loan eligible cost and not subject to the appraisal requirements in the Uniform Relocation Assistance and Act of 1970, 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 identity of interest acquisition or when required by the Uniform Relocation Assistance and Acquisition Act of 1970 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 as of the first date of the Application Acceptance Period or the Application Acceptance Date for Direct Loans; 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 value ascribed to the proposed Development Site will be prorated based on acreage from the total cost reflected in the Site Control document(s) or the appraisal, if an appraisal is required. An appraisal containing segregated values for the total acreage to be acquired, the acreage for the Development Site and the remainder acreage may be used by the Underwriter in making a proration determination based on relative value. The Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).

(B) USDA Rehabilitation Developments. The underwritten acquisition cost for developments financed by USDA will be the transfer value approved by USDA.

(C) 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 an appraisal that meets the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines). If the acquisition cost in the Site Control documents is less than the appraised value, Underwriter will utilize the land value from the appraisal and adjust the building acquisition cost accordingly.

(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. Any General Contractor fees above this limit will be excluded from Total Housing Development Costs. 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 \$1,000 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 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 §10.404(d) of this title. 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 §10.404(d) of this title. 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. 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)(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 verify the 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, including a Supportive Housing Development, will not be re-characterized as feasible with respect to paragraph (4)(B) of this subsection. The Development:

(i) 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) will receive rental assistance for at least 50% of the Units in association with USDA financing;

(iii) will be characterized as public housing as defined by HUD for at least 50% of the Units;

(iv) meets the requirements under §11.1(d)(125)(E)(i) of this chapter (relating to the Definition of Supportive Housing) and there is an executed guaranty agreement, to fund operating deficits over the entire Affordability Period; or

(v) 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:

(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 the overall demand conclusion for the proposed Development. 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.

(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. For HOME-ARP, demand for Qualifying Populations must be identified in accordance with Section VI B.10.a.ii of CPD Notice 21-10. 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, 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. For HOME-ARP, Units for Qualified Populations will be underwritten at \$0 income, unless the Unit has project-based rental assistance or subsidy, or is supported by a capitalized operating reserve agreement.

(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);

(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 previously approved Developments in the PMA that have no achieved 90% occupancy for a minimum of 90 days. Approved Developments should be determined by:

(I) the HTC Property Inventory that is published on the Department's website as of December 31, 2022, for competitive housing tax credit Applications;

(II) the most recent HTC Property Inventory that is published on the Department's website one month prior to the Application date of non-competitive housing tax credit and Direct Loan Applications.

(iii) 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 subsection (c)(1)(B) and (C) of this section (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) If an appraisal is required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the appraisal must also meet the requirements of 49 CFR Part 24 and HUD Handbook 1378. (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.

(b) Appraiser Qualifications. The appraiser must be appropriately certified or licensed by the Texas Appraiser Licensing and Certification Board.

(c) 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.

(d) 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 (does not include liquified petroleum gas containers with a capacity of less than 125 gallons on-site or within 0.25 miles 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 or any subsequent standards as published).

(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, or any subsequent standards as published)" 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 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.~~

~~Filed with the Office of the Secretary of State on September 12, 2022.~~

~~TRD-202203647~~

~~Bobby Wilkinson~~

~~Executive Director~~

~~Texas Department of Housing and Community Affairs~~

~~Earliest possible date of adoption: October 23, 2022~~

~~For further information, please call: (512) 475-3959~~

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 during the Federal Affordability Period.

(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. Ownership Transfer fees are not required for Direct Loan only Developments during the Federal Affordability Period.

(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 after Project completion. 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.

§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), 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) of this chapter.

(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) 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 title (relating to Reporting Requirements).

(5) An initial construction status report consisting of items from subsection (h)(1) - (5) of of this title (relating to Construction Status Reports).

§11.907. Carryover Agreement General Requirements and Required Documentation.

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.~~

~~Filed with the Office of the Secretary of State on September 12, 2022.~~

~~TRD-202203648~~

~~Bobby Wilkinson~~

~~Executive Director~~

~~Texas Department of Housing and Community Affairs~~

~~Earliest possible date of adoption: October 23, 2022~~

~~For further information, please call: (512) 475-3959~~

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 2023 Housing Tax Credits (HTC) requested to supplement Competitive HTC awards from the 2021 ceilings, hereinafter referred to as Supplemental Credits. The only Applications eligible for Supplemental Allocations are only those that received an award from the Competitive 9% HTC ceiling.

Applications receiving 2023 credits as part of the regular 2023 Housing Credit Cycle are not subject to the policies in this subchapter. Applicants with 2018, 2019, and 2020 allocations that received Force Majeure treatment in 2021 are prohibited from requesting Supplemental allocations, as are 2022 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 2023 HTC Competitive Cycle nor are they part of the 2023 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 2021 that have already closed their financing, Applications requesting or being awarded Multifamily Development Loans, and Applications originally funded in 2021 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.

| <u>Deadline</u> | <u>Documentation Required</u> |
|--|---|
| <u>11/14/2022</u> | <u>Department releases Materials for Notice of Intent for Supplemental Allocations.</u> |
| <u>11/22/2022</u> | <u>Department releases Materials for Supplemental Allocations.</u> |
| <u>1/6/2023</u> | <u>Deadline for Notice of Intent due for Supplemental Allocations.</u> |
| <u>1/27/2023</u> | <u>Deadline for all Requests for Supplemental Allocations.</u> |
| <u>March Board meeting</u> | <u>Board approval of Supplemental Allocations under this Subchapter</u> |
| <u>05/01/2023 (est.)</u> | <u>Commitments for Supplemental Allocations are Issued.</u> |
| <u>05/15/2023 (est.)</u> | <u>Commitment Fees for the Supplemental Allocation and any conditions of the credit Allocation are to be met.</u> |
| <u>11/01/2023</u> | <u>Carryover Documentation Delivery Date.</u> |
| <u>11/30/2023</u> | <u>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)).</u> |
| <u>07/21/2024</u> | <u>10% Test Documentation Delivery Date.</u> |
| <u>12/31/2025</u> | <u>Placement in Service.</u> |
| <u>Five business days after the date on the Deficiency Notice (without incurring point loss)</u> | <u>Administrative Deficiency Response Deadline (unless an extension has been granted).</u> |

~~Figure: 10 TAC §11.1002 (.pdf)~~

§11.1003. Maximum Supplemental Housing Tax Credits, Requests, and Award Limits.

(a) Applications for which a request for Supplemental Credits is submitted will not be eligible to receive an allocation from the 2023 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. The limit on Supplemental Credit requests will be announced by the Department no later than December 1, 2022, but will not exceed 15% of the original allocation for each Application that requests Supplemental Credits. The final limit on Supplemental requests may be lower than 15% of the 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 Cost Certification 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, at Cost Certification, the credit allocation will be adjusted so that the Development is not over sourced, as determined by the Department.

§11.1004. Competitive HTC Set-Asides. (§2306.111(d)).

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 2021 will be considered to meet the set-aside requirements for that same set-aside in 2023. Supplemental Credits issued by the Board will be attributed to each 2023 Set-aside for the 2023 Application round as appropriate (for instance, for a 2021 development awarded out of the 2021 Non-Profit Set-Aside, now receiving \$100,000 in Supplemental Credits, \$100,000 would be attributed to the 2023 Non-Profit Set-Aside).

§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) 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. If the Development also has Multifamily Direct Loan Funding from the Department that has not closed by the deadline to submit the Notice to Intent for Supplemental Allocations, the request 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 2022 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.

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.

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

~~Filed with the Office of the Secretary of State on September 12, 2022.~~

~~TRD-202203649~~

~~Bobby Wilkinson~~

~~Executive Director~~

~~Texas Department of Housing and Community Affairs~~

~~Earliest possible date of adoption: October 23, 2022~~

~~For further information, please call: (512) 475-3959~~
