

MULTIFAMILY FINANCE PRODUCTION

BOARD ACTION REQUEST

November 13, 2008

Action Item

Presentation, Discussion, and Possible Approval for publication in the *Texas Register* of a final order adopting repeal of 10 TAC Chapter 49, concerning 2007 Housing Tax Credit Program Qualified Allocation Plan and Rules, and final order adopting new 10 TAC Chapter 49, concerning 2009 Housing Tax Credit Program Qualified Allocation Plan and Rules.

Requested Action

1. Adoption of Repeal of Title 10 Texas Administrative Code, Part 1, Chapter 49 – 2007 Housing Tax Credit Program Qualified Allocation Plan and Rules
2. Adoption of New Title 10 Texas Administrative Code, Part 1, Chapter 49 – 2009 Housing Tax Credit Program Qualified Allocation Plan and Rules

Background and Recommendations

On September 4, 2008, the Board approved the Draft 2009 Housing Tax Credit Program Qualified Allocation Plan and Rules (“Draft 2009 QAP”) to be published in the *Texas Register* and on the Department’s website for public comment. Public comment was accepted regarding the Draft 2009 QAP from September 5 to October 20, 2008. In addition to accepting written public comment, the Department held six public hearings throughout the state to solicit additional public comment. All written comment received during the public comment period and during public hearings has been summarized and responded to in the attached document.

Recommendation

1. Adoption of Repeal of Title 10 Texas Administrative Code, Part 1, Chapter 49 – 2007 Housing Tax Credit Program Qualified Allocation Plan and Rules
2. Adoption of Staff’s Recommendations for the New Title 10 Texas Administrative Code, Part 1, Chapter 49 – 2009 Final Housing Tax Credit Program Qualified Allocation Plan and Rules

Reasoned Response to Public Comment on the 2009 Draft Qualified Allocation Plan and Rules

The Texas Department of Housing and Community Affairs (the “Department”) received the majority of comments to the 2009 Draft Qualified Allocation Plan and Rules (QAP) in writing by email, fax and mail. This document provides the Department’s response to all comments received. The comments and responses include both administrative clarifications and corrections made to the QAP by staff, as well as substantive comments on the QAP and the corresponding Departmental response. Comments and responses are presented in the order they appear in the QAP. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected in the Addendum. If comment resulted in recommended language changes to the Draft QAP as presented to the Board in September, those new language changes are highlighted. Copies of the exact comment letters provided are available on the Department’s website.

§49 – General (no specific section of the QAP provided in comment) (19, 21, 23, 26, 27, 28, 29, 32, 33, 35, 40, 41, 46, 50, 52, 53, 54, 56, 58, 66, 67)

Administrative Changes:

Staff has made administrative revisions throughout the QAP to correct spelling, punctuation, numbering and spacing errors; to consistently capitalize defined terms; minor clarification; and to consistently utilize defined terms. In cases where administrative changes propose revisions other than those outlined here, the proposed changes are highlighted in the applicable QAP section.

Comment:

Comment states that the QAP fails to recognize the unique existence of the three Federally Recognized Indian Tribes. Commenter goes on to briefly summarize the history of the self governing Indian Tribes, and also mentions that although the tribes are self governing they do have the right to receive federal assistance. According to the comment Tribes across the country have begun to seek low Income Housing Tax Credits, and the subsequent comments will pertain to their request to include Federally Recognized Indian Tribes in the QAP. (19, 21)

Staff Response:

According to Section 42, Indian Tribes have historically had the ability to apply for tax credits and Section 42(i) specifically references considerations for tax credit buildings receiving Native American Housing Assistance. With the passage of the Housing and Economic Recovery Act of 2008, H.R 3221 (the “Act”), the General Use Provision in IRC §42 was further clarified. The legislation states “A project does not fail to meet the general public use requirement solely because of occupancy restrictions or preferences that favor tenants (A) with special needs (B) who are members of a specified group under a Federal program or State program or policy that supports housing for such a specified group and (C) who are involved in artistic or literary activities.” The Department does not explicitly reference Indian Tribes in the QAP because they are not restricted from the program and are eligible to apply under the same requirements of any other applicant. Staff recommends all applications be reviewed individually and on their on merit. Any issues of eligibility, selection or threshold will be considered by the Board individually. No change is recommended.

Comment:

Comment was made asking the Department to include a more detailed Table of Contents and that all sections, subsection numbers and headings be in bold, italics, and/or underlined. Commenter also would like to add spaces between subsections. In regards to the application, comment suggested streamlining the application, including auto-fill capabilities for duplicate information, allowing additional page capability for redundant forms and one certification. (26)(66)

Staff Response:

Staff will make every effort to accommodate the request to make the QAP and Uniform Application Materials more user-friendly.

Comment:

Comment indicated that the current and proposed QAPs fail to remedy the over-concentration and segregation of TDHCA supported projects in the low income and minority concentrated census tracts of the Dallas area. The commenter also noted that the QAP still has not addressed the problem of disproportionately allocating federal low income housing tax credits and tax-exempt bond funds to developments in impacted areas (above average minority concentration and below average income levels). (28)

Staff Response:

The Department has instituted rules that address the issues of concentration and has provided incentives for applicants to consider in site selection. QAP §49.6(f), (g), and (h) provide limitations on the location of developments, and §49.9 (i) (12), (13), (15), (16), (19), and (22) provide incentives for applicants to consider the location of the site when selecting a site for development. The current DRAFT QAP provides the thirty percent increase in eligible basis as incentive to locate Developments in higher income and educational quality. State statutes block building within close distances. Given that the program allows third party developers to choose locations, it would not be feasible to further restrict the Development selection process under state and federal laws.

Comment:

Comment was made, that the Department fails to create standards for its projects that protect against developing in neighborhoods of blight. Commenter continues by stating that the Department does not make projects adjacent to or near environmental factors more costly in threshold criteria, and suggests losing more points for noxious environmental issues. Comment also suggested that tax credit units be subject to site and neighborhood standards. (28)

Staff Response:

The QAP does provide incentive points for locating in locations that would generally not have blight. The Department requires an environmental site assessment (ESA) for all application requesting issuance of housing tax credits or tax-exempt bond financing that addresses environmental concerns on or near the proposed site. The Department requires mitigation for issues addressed in the ESA. No change is recommended.

Comment:

Commenter states that the Department has released a good QAP that Global Green USA supports. Commenter stated that point allocations and language clarity are the two areas they are looking to refine and improve. (53)

Staff Response:

Staff appreciates the assistance provided by Global Green USA. Comment is regarding changes already proposed elsewhere in the QAP. No additional change is recommended.

Comment:

Comment was made supporting the following changes in the 2009 QAP: definitions for single room occupancy and supportive housing; language in proposing at least 50% of Units in supportive housing; and developments provide 10% of the low income units at 30% AMGI as eligible for the 30% increase in eligible basis. Also the commenters applauded the language that encourages additional available units at or below 50%AMGI if an applicant qualifies for points under 49.9(i)(3). (32, 54) Comment was made congratulating TDHCA staff for a draft QAP draft that included some “monumental improvements.” Commenter praised the high-opportunity areas that allow low income housing in better parts of town with better access to good schools and public transportation and also praised the Department for including

“Green Building”. Commenter also complimented the supportive housing definitions that were changed. (54)

Staff Response:

Staff appreciates the support of the changes. No further change recommended.

Comment:

Comment was made asking for a definition of Infill Housing. (67)

Staff Response:

Staff agrees with the commenter that there needs to be a clear definition that is accepted by the general public. The proposed reference to infill housing in §49.9(i)(16)(F) has been removed from the Draft QAP at this time and will be researched more thoroughly for future inclusion.

§49.3(1) – Definitions – Adaptive Reuse (25, 66)

Comment:

Comment was made that the Department should clarify that “a clubhouse or nonresidential building can be outside the original footprint and still be considered eligible.” It was also requested to clarify that if it was considered New Construction, then it would not be consider Adaptive Reuse. (25, 66)

Staff Response:

Staff agrees and proposes the following additional language:

“(1) ...If any Units are built outside the original building footprint or foundation, the Development will be considered New Construction (and not Adaptive Reuse). A clubhouse or non-residential building may be outside the original footprint or foundation and still be considered Adaptive Reuse...”

§49.3(2) – Definitions – Administrative Deficiencies (25)

Comment:

Commenter suggested the following language change:

“(2) **Administrative Deficiencies**--The absence of information or inconsistent information in the Application as is required under §49.5, §49.6, §49.8 and §49.9 of this chapter that can be corrected by an additional submission to the Department, unless determined by the Department as unable to be corrected.

Staff Response:

Staff disagrees with the language change because it appears to allow any and all information to be changed. The Deficiency process is to clarify information received not to allow the Applicant to make any changes throughout the Application. No change is recommended.

§49.3(9) – Definitions – Application Acceptance Period (25)

Comment:

(9) **Application Acceptance Period**--That period of time during which Applications for a Housing Credit Allocation from the State Housing Credit Ceiling may be submitted to the Department, December 3, 2008 through February 27, 2009, as more fully described in §§49.8 - 49.12 of this chapter. For Tax-Exempt Bond Developments this period is the date the Volumes 1 and 2 are submitted or the date the reservation is issued by the Texas Bond Review Board, whichever is earlier, until

Staff Response:

Staff is unclear what the comment is suggesting. The dates for Tax-Exempt Bond Developments are different throughout the year dependent on when an Application is submitted to the Texas Bond Review Board. No change is recommended at this time.

§49.3(14) – Definitions – At-Risk Development (15, 68)

Comment:

Comment was made asking to remove barriers in the state that impede the coupling of funding of Sections 514 and 516 with LIHTC funding. H.R. 3221, the Housing and Economic Recovery Act, clarified that Section 514 and 516 can be used together with tax credits. (15)

Staff Response:

No specific barriers were noted, however the QAP already allows 514 and/or 516 to be utilized with tax credits. The QAP also currently includes reference to 514 and 516 in its definition of an At-Risk Development to help ensure that properties at risk of losing their affordability can compete in a separate set-aside.

Comment:

Comment was made to add a subsection (F) to the definition of At-Risk Development that includes properties deemed by HUD to be obsolete or economically non-viable. (68)

Staff Response:

The definition for an At-Risk Development is statutorily defined in §2306.6702 of the Texas Government Code. The Department does not have the ability to change the definition. No change is recommended.

§49.3(15) – Definitions – Bedroom (32, 49, 52, 54)

Comment:

Comment noted opposition to the language requiring a door on a bedroom as it hinders loft style developments. Specific language, as noted below, was proposed. (32, 49, 52, 54)

Staff Response:

Staff proposes the following definition to address these comments:

“...is self contained with a door (or the unit is a “loft” design with an open sleeping area of 100 square feet or more)...”

§49.3(23) – Definitions – Community Revitalization Plan (66)

Comment:

Comment noted that not all adoptions of documents are done by ordinance or resolution and suggested this definition: A published document under any name, approved and adopted by the local Governing Body by ordinance, resolution, or vote, that targets specific geographic areas for revitalization and development of residential developments. (66)

Staff Response:

Staff recommends using the proposed definition of Community Revitalization Plan noted above. Staff further suggests the following addition to the requirements of evidence submitted in requests for points under §49.9(i)(13) and (24):

“Such evidence must include an ordinance, resolution, or otherwise recorded documentation of a vote taken by the local elected Governing Body specifically adopting the Community Revitalization Plan; or...”

§49.3(26) – Definitions – Control (52)

Comment:

Commenter takes issue with reference in the definition of Control that indicates “managing general partners of a limited liability company.” Commenter states that Limited liability companies do not have managing General Partners, and suggests replacing with member. (52)

Staff Response:

Staff agrees with the Commenter’s assertion that Limited Liability Companies do not have managing General Partners and suggests adoption of the Commenter’s definition of Control as follows:

“Control--(including the terms "Controlling," "Controlled by", and/or "under common Control with") the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Person, whether through the ownership of voting securities, by contract or otherwise, including specifically ownership of more than 50% of the General Partner interest in a limited partnership, or designation as a managing member of a limited liability company.”

§49.3(27) – Definitions – Controlling or Managing General Partner (25, 52)

Comment:

Comment was made that the definition now requires ownership of 10 percent or more of the voting stock, and liability for all debts and other obligations of the venture. Commenter suggests that in order to avoid conflict with the definition of “control” in the QAP that the definition be changed as noted below. (52)

Staff Response:

Staff included this proposed definition for clarification however staff believes it needs additional research before it is included in the QAP. Staff recommends striking the proposed definition at this time.

~~“(27) **Controlling or Managing General Partner**—a co-owner of a business who owns, controls, or holds with power to vote, 10% or more of the voting stock; can take actions that are binding on the other partners and, who is liable for all debts and other obligations of the venture as well as for the management and operation of the partnership.”~~

§49.3(37) – Definitions – Development Site (25)

Comment:

Commenter suggested the following clarifying language:

“(37) **Development Site**--The area, or if scattered site areas, for which the Development is proposed to be located and which is to be under the Applicant's control pursuant to §49.9(h)(7)(A) of this chapter.”

Staff Response:

Staff agrees with the clarification and recommends the requested change.

§49.3(46) – Definitions – Governing Body (19, 21, 25, 52)

Comment:

Comment was made asking the Department to consider adding this language: “An elected city, county, or tribal entity that is responsible for the creation implementation and/or enforcement of local rules and laws. As recognized by Congress, Federally Recognized Indian Tribes have the authority and are responsible for the creation, implementation and/or enforcement of rules and laws on their lands. As such they should be recognized in TDHCA’s definition of Governing Body (19, 21) Comment was made that current definition suggests that the “entity” is elected. Suggests modifying definition as follows; a city or county entity with elected members that is responsible...” (52) Comments also requested the following language change: **Governing Body**—~~An elected city or county entity that is~~The body of elected public officials, responsible for the creation, implementation and/or enforcement of local rules and laws for a city or county, as applicable.

Staff Response:

Staff agrees with the Commenter’s assertion and suggests changing the definition of Governing Body to include tribal entities as follows. Staff believes that in this case, “entity” refers to the elected body, i.e. commission or council, and is appropriate language. Staff recommends the following change to include tribal entities.

“Governing Body - An elected city, county, or tribal entity that is responsible for the creation implementation and/or enforcement of local rules and laws.”

§49.3(47) – Definitions – Governmental Entity (19, 21)

Comment:

Comment was made that Tribal Governments could fall under ‘other similar entities’ and asked that the QAP provide clarification recognizing that Tribal Governments are elected entities with the power to govern all activities of the Tribe. Commenter would like the word ‘tribal’ to be added to definition as well. (19, 21)

Staff Response:

Staff suggests the following change “includes federal or state agencies, departments, boards, bureaus, commissions, authorities and political subdivisions, special districts, tribal governments and other similar entities.

§49.3(48) – Definitions – Governmental Instrumentality (19, 21)

Comment:

Commenter would like the word ‘tribe’ added to the definition. Commenter also states that in order for Tribes to receive funding from the Native American Housing Assistance and Self-Determination Act (NAHASDA) they must establish a Tribally Designated Housing Entity (TDHE). The TDHE is a Governmental Instrumentality of the Tribe, and is authorized to act on behalf of the tribe. Those tribes that do not have a TDHE simply let the Tribe itself take those responsibilities. (19, 21)

Staff Response:

Staff suggests the following change “a legal entity such as a housing authority of a city or county, a housing finance corporation, a municipal utility, or a tribally designated housing entity, which is created...”.

§49.3(51) – Definitions – High Opportunity Area (40, 52)

Comment: The commenter suggests that the definition of High Opportunity be moved to §49.3. (40, 52)

Staff Response:

The QAP currently provides for an explanation elsewhere in the QAP. Staff concurs and recommends creating this as a definition for High Opportunity Area.

“High Opportunity Area – an area that includes:

- (i). existing ~~public transportation or major bus transfer centers and/or regional or local commuter rail transportation stations that are accessible to all residents including Persons with Disabilities;~~ or
- (ii). a census tract which has an AMGI that is higher than the AMGI of the county or place in which the census tract is located; or
- (iii). a school attendance zone that has an academic rating of “Exemplary” or “Recognized” rating (as determined by the Texas Education Agency) as of the first day of the Application Submission Acceptance Period; or
- (iv) a census tract that has no greater than 10% poverty population according to the most recent census data (these census tracts are designated in the 2009 Housing Tax Credit Site Demographic Characteristics Report).

§49.3(58) – Definitions – Ineligible Building Types (15, 25 46, 49, 52, 58)

Comment:

Comment was made asking the Department to boost flexibility for using tax credits for farm labor housing. Commenter suggests allowing bonus points in the 2009 QAP for farm worker housing development and preservation. (15) Comment requested that the bedroom mix requirement not apply to Adaptive Reuse and suggests the removal of language regarding new construction of nonresidential buildings. (49) Comment was made that the word “either” in the first line of subsection (I) should be deleted. (52) Comment was made asking the Department to allow Single Room Occupancy developments

to utilize otherwise ineligible building types. (58) Comment was made asking the Department to waive the maximum number of efficiency units for Single Room Occupancy developments. (58)

Staff Response:

The QAP currently contains scoring items that would benefit the new development and rehabilitation of farm worker housing. The current definition included in the Draft QAP removes developments proposing Adaptive Reuse from the mentioned requirement and removes the language regarding new construction of nonresidential buildings. The definition of Ineligible Building Types allows the use of such buildings if federally permissible and the Application proposes to convert the building to a non-transient multifamily residential development. The current definition included in the Draft QAP excludes developments proposing Single Room Occupancy from the mentioned requirement.

Staff recommends the following wording for subsection (I):

“Any Development that contains residential Units ~~either designated for a single occupational group, or through a preference for a single occupational group,~~ that violates the general public use requirement under Treasury Regulation §1.42-9.”

Comment:

Comment was made asking the Department to include manufactured homes installed in a single family or duplex zoned subdivision as an Eligible Building Type. They should be manufactured in accordance with 24 CFR Chapter XX, Part 3280 *Manufactured Home Construction and Safety standards* (MHCSS), and sited on a permanent foundation, which meets HUD standards. (46)

Staff Response:

The QAP does not have a definition for Eligible Building Types, but rather only notes those building types that are ineligible. In that section, the QAP does not list manufactured homes installed in a single family or duplex zoned subdivision as an ineligible building type. Each submitted development is determined eligible or ineligible based upon the merits of the plan for the development. No change is needed.

Comment:

Comment received requested the following language change (25):

(D) Any Development, other than a Qualified Elderly Development or age restricted buildings in Intergenerational Housing Developments, with building(s) with four or more stories that does not include an elevator.

(E) Any Qualified Elderly Development or age restricted buildings in Intergenerational Housing Developments proposing more than 70% of the total number of Units in the Development as two-bedroom Units.

(F) Any Development that violates the Integrated Housing Rule of the Department, §1.15 of this title.

(G) Any Development located in an Urban Area involving any New Construction of additional Units (other than a Qualified Elderly Development, a Development composed entirely of single family dwellings, and certain specific types of transitional housing for the homeless and Single Room Occupancy units, as provided in the Code, §42(i)(3)(B)(iii) and (iv)) in which any of the designs in clauses (i) - (iv) of this subparagraph are proposed. For Applications involving a combination of single family detached dwellings and multifamily dwellings, the percentages in this subparagraph do not apply to the single family detached dwellings, but they do apply to the multifamily dwellings. For Intergenerational Housing Applications, the percentages in this subparagraph do not apply to buildings that are restricted by the age requirements of a Qualified Elderly Development, but they do apply to the other multifamily buildings. An Application may reflect a total of Units for a given bedroom size greater than the percentages in clauses (i) - (iv) of this subparagraph to the extent that the increase is only to reach the next highest number divisible by four.

(i) More than 30% of the total Units are one bedroom Units; or

- (ii) More than 55% of the total Units are two bedroom Units; or
 - (iii) More than 40% of the total Units are three bedroom Units; or
 - (iv) More than 5% of the total Units in the Development with four or more bedrooms.
- (H) Any Development that includes age restricted units that are not consistent with the Intergenerational Housing definition and policy or the definition of a Qualified Elderly Development.
- (I) Any Development that either contains residential Units ~~either~~ designated for a single occupational group or violates the general public use requirement under Treasury Regulation §1.42-9.

Staff Response:

Staff agrees with the clarifying language and recommends the changes as requested.

§49.3(62) – Definitions – Local Political Subdivision (19, 21)

Comment:

Comment was made asking the Department to include ‘tribal reservation’ in the definition, for the same reasons as previously mentioned by this commenter. (19, 21)

Staff Response:

Staff agrees with the Commenter’s assertion and suggests changing the definition of Local Political Subdivision to include tribal reservation as follows:

“A county or municipality (city or tribal reservation) in Texas. For purposes of §49.9(i)(5) of this chapter, a local political subdivision may act through a Government Instrumentality such as a housing authority, housing finance corporation, or municipal utility even if the Government Instrumentality's creating statute states that the entity is not itself a "political subdivision.””

§49.3(73) – Definitions – Pre-Application (25)

Comment:

Commenter suggested the following clarification:

“(73) **Pre-Application**--A preliminary application, in a form prescribed by the Department, filed with the Department by an Applicant prior to submission of the Application for the State Housing Credit Ceiling, including any required exhibits or other supporting material, as more fully described in this chapter. (§2306.6704)”

Staff Response:

Staff believes this is a restriction that is not in statute. No change is recommended.

§49.3(75) – Definitions – Principal (25)

Comment:

Commenter suggests that “special limited partners” be eliminated from the definition of “Principal” as follows:

(75) **Principal**--The term Principal is defined as Persons that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) Partnerships, Principals include all General Partners, ~~Special Limited Partners~~ and Principals with ownership interest in the General Partner;

Staff Response:

Staff does not believe Special Limited Partners should be eliminated from the definition of Principal. No change is recommended.

§49.3(85) – Definitions – Rehabilitation (27)

Comment:

Comment was made that the current definition of Reconstruction does not take into account the demolition and reconstruction of developments that have subsequent phasing. In order to make an impact

in a neighborhood, according to the commenter, they would need to complete the full development, and the language to do so should be included in the Reconstruction definition. Comment was also made in regards to demolishing units, and how there has to be the same amount of units to replace those demolished. They acknowledged that there should not be a negative impact in a neighborhood, but suggested the ability to replace the demolished units with more total units to make such a project financially feasible. Furthermore, they would be willing to provide a market study that will determine if the number of units does not negatively impact the area or region, while still being considered for reconstruction. (27)

Staff Response:

The current Draft QAP does not include a separate definition for reconstruction, as reconstruction is included in the statutory definition of Rehabilitation. Applicants currently have the ability to rehabilitate existing developments in phases. Applicants have the ability to demolish a development and replace the development with a development containing more units. In this instance, the development would be considered New Construction and not Rehabilitation. No change is recommended.

§49.3(93) – Definitions – Single Room Occupancy (52, 58)

Comment:

Comment was made asking to replace “need not” with “may not” (52)

Staff Response:

The current draft QAP includes the definition of Single Room Occupancy. Staff does suggest the following change “A single efficiency unit that contains sanitary facilities but may or may not include food preparation facilities and is intended for occupancy by one person”.

Comment:

Comment was made asking the Department to add a clear definition of single room occupancy. (58)

Staff Response:

The current Draft QAP includes a definition of Single Room Occupancy. No further change is recommended.

§49.3(97) – Definitions – Supportive Housing (32, 54, 58)

Comment:

Comment was made suggesting that the QAP use the same definition as that in the Real Estate Analysis Guidelines. (32, 54) Comment was made recommending that the definition of supportive housing be clarified so that the definition, in the QAP and REA Rules, allows supportive housing to be integrated into different types of developments. (58)

Staff Response:

This request relating to integration into different types of developments warrants further research and additional public comment. Staff will consider this in the draft 2010 QAP. Staff recommends the following change to clarify the definition:

“Supportive Housing: Residential Rental Developments intended for occupancy by individuals or households transitioning from homelessness, at risk of homelessness, or in need of specialized and specific social services.”, to more stable productive lives by offering residents an array of supportive services.

§49.3(103) – Definitions – Unit (25, 49, 52)

Comment:

Comment was made asking the Department to include the definition for “Unit” once again and that it include the language for loft-type developments that provided square footage requirements to be considered a one, two, or three bedroom. (49) Comment also requested that the Unit definition also address the concept of a Single Room Occupancy (SRO) development. (52)

Staff Response:

The definition for Unit is statutorily defined in §2306.6702 and is already included in the QAP. Minimum square footage requirements are included in §49.9(h) of the draft QAP and the QAP now includes a definition for Single Room Occupancy. No further change is recommended.

Comment:

Comment suggested the following language change for the “Unit” definition:

(103) **Unit--(A)** Any residential rental unit 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 (such as a microwave), and sanitation or **(B) and SR0.** (§2306.6702)

Staff Response:

Staff agrees with the clarification and recommends the change as requested.

§49.3(105) – Definitions – Urban Core (23, 27, 29 40, 49, 52, 67)

Comment:

Comment requested a change to the proposed definition of Urban Core that will allow local jurisdiction with mixed zoning classifications a new tool for redevelopment. (23) Comment was also made that as the definition is written, it appears that the final determination of whether a development is in an Urban Core will be made by the municipality in whose jurisdiction the development will be located; the current definition in the QAP is ambiguous and should be refined for clarity. (27) Comment was made that the urban core should be tied to high-opportunity areas with the population of more than 100,000 people. (29) Comment was made suggesting that the definition of Urban Core be simplified and leaves too many variables that will be difficult for developers to understand. It was suggested that the definition for Urban Core tie back to high opportunity areas. (40, 49, 52) Another comment was made asking for a revision of the definition that was not “too narrow” and would not use “commercial zoning” as part of its definition. (67)

Staff Response:

Staff believes that the suggested definition provides objective criteria for determining whether a development is located within an Urban Core. Because Developments located in an Urban Core may receive points under the proposed scoring criteria for the 2009 QAP, staff does not agree with the “designated redevelopment...” part of this definition. This could give these areas an advantage because they would be able to receive points for both “Urban Core” and “Revitalization”. Staff believes that an objective determination of whether a development is within an Urban Core will require use of locally determined zones and boundaries. The final determination, however, will be made by the Department. Staff does not agree that the description of a High Opportunity Area adequately captures the intention of the Urban Core definition and should be a separate definition. Staff suggests that the inclusion of commercial zoning is required in order to adequately capture the intention of the Urban Core definition. . Staff recommends the following revised definition:

Urban Core- A compact and contiguous geographic area that is composed of adjacent block groups in which at least 90 percent of the land not in public ownership is zoned to accommodate a mix of medium or high density residential and commercial uses within the same zoning district.

§49.5(a)(8) Ineligibility (46)

Comment:

Comment was made asking that the 1 mile 3 year rule not prevent subsequent phases of a phased development from starting even when phase 1 is still leasing up. (46)

Staff Response:

The one mile, three year rule is a statutory requirement. Therefore, the Department does not have the ability to eliminate this rule. The statute does provide an exception to the one mile, three-year rule if the

applicant submits evidence of a vote by the local Governing Body specifically allowing the development. No change is recommended.

Comment:

Commenter requested the following language change to §49.5(a)(8)(D)(iv) and (E):

(iv) The –Governing Body of the Local Political Subdivision 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 subparagraphs (A) - (C) of this paragraph. For purposes of this clause, evidence of the Governing Body vote or evidence required by this subparagraph must be received by the Department no later than April 1, 2009 (or for Tax-Exempt Bond Developments no later than 14 days before the Board meeting where the credits will be committed) and may not be more than one year old.

(E) In determining when an existing Development received an allocation as it relates to the application of the three-year period, the Development will be considered from the date the Board took action on approving the allocation of tax credits. In dealing with ties between two or more Developments as it relates to this rule, refer to §49.9(j) of this chapter.

Staff Response:

Staff agrees with the clarifications and recommends the changes as requested.

§49.5(b)(8) and (9) – Disqualification and Debarment

Comment:

Commenter requested the following language change:

(8) The Applicant, Development Owner, Developer, Guarantor, or any Affiliate of such entity whose previous funding contracts or commitments have been partially or fully deobligated during the 12 months prior to the submission of the Application due to a failure to meet contractual ~~during the 12 months prior to the submission of the Applications.~~

(9) The Applicant, Development Owner, Developer, Guarantor, or any Affiliate of such entity whose pre-development award of non-tax credit funds from the Department has not been repaid for the Development at the time of Carryover Allocation or Bond closing.

Staff Response:

Staff agrees with the requested clarification and recommends the changes as requested.

§40.5(f) – Appeals and Administrative Deficiencies for Ineligibility, Disqualification and Debarment

Comment:

Commenter requested the following changes:

(f) **Appeals and Administrative Deficiencies for Ineligibility, Disqualification and Debarment.** An Applicant or Person found ineligible, disqualified, debarred or otherwise terminated under subsections (a) - (e) of this section will be notified in accordance with the Administrative Deficiency process described in §49.9(d)(4) of this chapter (when applicable). They may also utilize the appeals process described in §49.17(b) of this chapter. (§2306.6721(d))

Staff Response:

Due to the limited comment received, staff believes the current language is sufficient. No change is recommended.

§49.6(c) Scattered Site Limitations (20, 30, 34, 37, 44, 45, 47, 48, 51, 55, 65)

Comment:

Comment was made that if reconstruction is a goal of the Department, which it appears to be with the additional points awarded for reconstruction, then efficient use of land should be promoted by allowing the reconstruction on land sufficient to meet local density requirements for scattered site proposals and not mandate that reconstruction has to occur on every lot. (20, 30, 34, 37, 44, 45, 47, 48, 51, 55, 65)

Staff Response:

The Legislature brought the definition of reconstruction in the definition of rehabilitation and therefore the goal is the replace existing housing units. Given the definition of reconstruction is intended to replace existing housing and not to build additional units that may cause density or zoning issues. A Development is not penalized for adding units; however they are not able to receive points for reconstruction if they add more units than were demolished.

§49.6(d) Credit Amount (20, 24, 25, 26, 28, 30, 34, 35, 37, 40, 44, 45, 47, 48, 49, 51, 52, 55, 65, 67)**Comment:**

Comment was made in regards to the \$2 million credit limit to any Applicant, Developer, Related Party, or Guarantor. Commenter argues that it is unfair not to prorate the credit amount allocated in all instances based on percentage of ownership or percentage of the developer fee received. This percentage option should not be limited to building capacity for inexperienced developers. Comment also suggests that because executive directors and board members of nonprofits and housing authorities have no ownership and do not receive any of the developer fees, a credit allocation should not be assessed against these individuals. A credit allocation should not apply to a consultant unless the consultant has an ownership interest in the proposed project or will be paid an actual share of the developer fees.” (20, 30, 34, 37, 44, 45, 47, 48, 51, 55, 65)

Staff Response:

The Department’s General Counsel has opined that the statutory \$2 million limitation does apply to nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors. Staff recommends no change. Regarding the comment that the limit should not apply to consultants, consultants are already excluded from the \$2 million limit, provided the consultant fee does not exceed 10% of the fee paid to the Developer or \$150,000. Staff recommends no change.

Comment:

Comment asks the Department to raise the amount of credits per development from \$1.2 to \$1.8 million (35), \$1.5 million (67) or \$2 million; and from \$2 to \$4 million per developer, citing higher construction costs. (24, 26) Comment was made that the \$1.4 million dollar cap significantly inhibits the use of the 130% basis in High Opportunity Areas that meet the 49.6(h)(4)(D)(ii)(iv) criteria. Commenter also states that the Department’s decisions to continue to impose a cap lower than statutorily required will limit the number of units that may be developed in higher opportunity areas. Commenter again cites a discrepancy in the amount of low income minority housing in predominately white areas. (28) Another comment suggests that given current market conditions in the tax credit investor market, the Department should impose only the statutory cap and remove the allocation cap on Developments. (40, 49, 52)

Staff Response:

The Draft QAP proposes raising the credit limit per development from \$1.2 to \$1.4 million. Staff believes this is an adequate increase. No additional change is recommended for the credit limit per Development. The Department does not have the ability to change the \$2 million credit limit per Developer because this limit is a statutory limit. No change is recommended to the \$2 million credit limit cap.

Comment:

Commenter states that the \$1.4 million cap does not appear to distinguish between the limited 9% credits and the 4% credits for which a competitive 9% tax credit property may qualify. Commenter suggests that in order to encourage Rehabilitations/Reconstruction projects that the QAP clearly state that the \$1.4 million cap only applies to 9% credits for which an application would be eligible and not the 4% portion of the competitive tax credits. (26)

Staff Response:

Staff agrees with this clarification and proposes the following revision:

“(d) **Credit Amount.** ... The Department will limit the allocation of tax credits to no more than \$1.21.4 million per Development. In order to encourage Rehabilitation and reconstruction, the \$1.4 million credit limitation will not apply to the 4% competitive tax credits for which such a development may qualify. The Department shall not allocate more than \$2 million of tax credits in any given Application Round to any Applicant, Developer, Related Party or Guarantor; Competitive Housing Tax Credits approved by the Board during the 2009 calendar year, including commitments from the 2009 Credit Ceiling and forward commitments from the 2010 Credit Ceiling, are applied to the credit cap limitation for the 2009 Application Round. ...”

Comment:

Commenter requested the following changes:

“In order to evaluate this \$2 million limitation, Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must provide the documentation required in the Application with regard to this requirement. In order to encourage the capacity enhancement of inexperienced Developers who are ineligible to receive an experience certificate under §49.9(g) of the chapter, the Department will prorate the credit amount allocated in situations where ~~an Application is submitted in the either the Rural Regional Allocation or Urban Regional Allocation~~ an inexperienced Developer partners with a Developer who can receive an experience certificate under §49.9(g) of this chapter. The Department will prorate the credits based on the percentage ownership in the Developer entity, if there is an ownership interest, or the proportional percentage of the Developer fee expected to be received, if this applies to when the inexperienced Developer without ~~does not have an ownership interest, in the Developer entity.~~ To be considered for this provision, a copy of a Joint Venture Agreement or similar document between the experienced Developer and the inexperienced Developer must be provided, along with and ~~a narrative on how this the arrangement~~ builds the capacity of the inexperienced Developers is required. Tax-Exempt Bond Development Applications are not subject to these Housing Tax Credit limitations, and Tax-Exempt Bond Development Applications will not count towards the total limit on tax credits per Applicant. The limitation does not apply (§2306.6711(b))”

Staff Response:

Staff believes this section does needs additional clarification, however, it would require additional time and comment. Staff will work with the stakeholders of the program to draft language for the 2010 QAP.

§49.6(e)(2) Limitations on the Size of Developments (25, 26)

Comment:

Comment was made requesting that Rural Bond transactions be allowed to exceed the 80 new unit construction limit, because the market demand should determine the number of units not an arbitrary number. Additionally, commenter requested that Rural Developments involving reconstruction not have a size limitation. (26)

Staff Response:

§2306.004 Texas Government Code specifically defines a Rural Development and imposes a maximum limit of 80 Units for Developments proposed in Rural Areas. The Department has applied this restriction consistently to all Department programs. Staff believes that allowing no more than 80 units as part of reconstruction is an appropriate application of the statute. No change is recommended.

Comment:

Commenter requested the following clarification:

“(2) Rural Developments involving any New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings) will be limited to 80 Units (this includes individual Tax-Exempt Bond Developments). Rural Developments involving only Rehabilitation (excluding reconstruction) do not have a size limitation as to the number of Units.”

Staff Response:

Staff agrees with the suggested language and recommends the changes at requested.

§49.6(h)(3) 30% Increase in Eligible Basis (16, 20, 28, 30, 32, 34, 37, 41, 44, 45, 47, 48, 51, 54, 55, 58, 67)**Comment:**

Comment was made supporting the 30% increase in eligible basis. Commenter requests revising the language relating to energy tax credits so that it is more objective. (16, 32, 54) Comment also supported the boost for location near mass transit but clarifies that it should be limited to developments that are to be located near major bus transfer stations and/or regional or local rail transport stations (16, 41) However, other comment was made stating that the 30% increase for developments near a public transportation does not address the need to diversify low income minority areas and pointed out that in the Dallas area 25 of the 58 DART transit centers are already in a QCT, and therefore the Department is refusing to stray from concentrated minority low income housing. (28) Comment was made asking the Department to include the following as eligible for the 30% boost: qualified elderly development, single family developments targeted for homeownership, an expanded concept of at-risk properties (20, 30, 34, 37, 44, 45, 47, 48, 51, 55) and supportive housing. (58) Comment also requests the boost for all proposed developments located in census tracts that have not received an award of tax credits or tax-exempt bonds in the last five years, not solely rural developments. (41, 67) Commenter also supports assigning an additional category for developments that are located in any of the First Tier Counties. (26, 41, 67)

Staff Response:

The QAP includes sufficient incentives for qualified elderly development, and the At-risk Set-aside addresses developments that rehabilitate or reconstruct rental housing to prevent losses of existing low income housing. Single family developments with a focus on homeownership does not guarantee the continuation of affordability and should not in itself be eligible for the 30% increase in eligible basis. The “At-Risk” definition is statutory and thereby would require a statutory change.

Staff believes that this criterion limiting the 30% increase in eligible basis to Rural Developments provides needed incentive for rural development. No change is recommended for the 30% increase for Rural Developments. The proposed Draft QAP does allow the 30% increase in eligible basis for Supportive Housing Development that propose at least 50% of the units to serve Supportive Housing tenants (§49.6(h)(4)(B)). Staff does agree that the 30% increase in eligible basis should be allowed for Developments located in the Hurricane Ike eligible counties. Staff proposes the following language:

(5) “The Development proposing to build in a Hurricane Ike eligible county as designated by the Emergency Economic Stabilization Act of 2008, H.R. 1424 and Presidential Declaration FEMA-1791-DR and is able to place in service by December 31, 2012 (or the date as revised by the Internal Revenue Service) as certified in the Application.”

Staff agrees that a way to objectively measure this requirement is needed. Staff suggests the following revision:

“(3) The Development qualifies for and receives Renewable Energy Tax Credits. For purposes of this paragraph, the Application will be required to include an architect’s letter or contractor bid as evidence that the Applicant will be eligible to request Renewable Energy Tax Credits in its income tax filings. Applicant will be required to show proof of receipt of the Renewable Energy Tax Credits at the time of Cost Certification; ...”

Staff agrees that public transportation section needs to be clarified. Staff suggests the following revision:

“(i) A Development that is proposed to be located within one-quarter mile of existing major bus transfer centers and/or regional or local rail transportation stations that are accessible to all residents including Persons with Disabilities;”

§49.6(h)(4)(B) and (D)(ii) – Development Proposing to Qualify for a 30% increase in Eligible Basis (25)

Comment:

(B) Developments proposing at least 50% of the total number of Units for Supportive Housing;
(C) Developments proposing to provide 10% of the Low-Income Units, that will serve individuals and families at or below 30% of AMGI, in excess of those that are proposed in §49.9(i)(3) of this chapter; or

(D) Developments proposed in High Opportunity Areas as provided in clauses (i)–(iv) of this subparagraph:

(i) A Development that is proposed to be located within one-quarter mile of existing public transportation or commuter rail transportation stations that are accessible to all residents including Persons with Disabilities;

(ii) A Development that is proposed to be located in a census tract which has an AMGI that is higher than the AMGI of the county or place in which the census tract is located as of the first day of the Application Submission Acceptance Period;

Staff Response:

Staff agrees with the suggested language and recommends the changes as requested.

§49.6(k) Appeals and Administrative Deficiencies for Site and Development Restrictions.

Comments:

Commenter requested the following language change:

“(k) **Appeals and Administrative Deficiencies for Site and Development Restrictions.** An Application or Development found to be in violation of or conflict with under-subsections (a) - (j) of this section will be notified in accordance with the Administrative Deficiency process described in §49.9(d)(4) of this chapter. They may also utilize the appeals process described in §49.17(b) of this chapter.”

Staff Response:

Staff agrees with the suggested language and recommends the changes as requested.

§49.7(b) Set-Asides

Comment:

Commenter suggested the following language change:

“(b) **Set-Asides.** An Applicant may elect to compete in as many of the following Set-Asides for which the proposed Development qualifies (§2306.111(d)):

(1) 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 the Code, §42(h)(5). Qualified Nonprofit Organizations must have the Controlling interest in the Qualified Nonprofit Development Owner applying for this Set-Aside. If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the controlling managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, a Qualified Nonprofit Development submitting an Application in the nonprofit Set-Aside must have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or a co-Developer as evidenced in the development agreement. (§2306.6729 and §2306.6706(b))”

Staff Response:

Staff agrees with the suggested language and recommends the changes as requested.

§49.8(d)(3)(B) Pre-Application Threshold Criteria and Review (26, 66)

Comment:

Comment was made requesting that the evidence of proof of delivery expand because a recipient may refuse to sign a receipt for mail or courier delivery, in which case a returned receipt that had been properly addressed but not signed should be allowed as proof of delivery. Comment also suggests that this requirement will be difficult to meet in order to receive confirmation from the recipients. Comment was indicated that municipalities who oppose a deal could pose a problem by simply not signing or provide evidence of proof of delivery. (26, 66)

Staff Response:

Staff believes that a returned receipt, although not signed, would be acceptable evidence as long as the delivering agent (courier, postal service, etc) indicates that delivery was attempted and refused. Staff notes that the requirements of the QAP have not changed only the clarification for what satisfies “proof of delivery”. The Department does not require the Applicant to submit such evidence unless the notification process is challenged. The Department must have a mechanism that shows the notification was delivered to the intended recipient.

§49.9(c) Adherence to Obligations (52)

Comment:

Commenter states that these penalties are too severe and can be disproportionate in regards to the size of the infraction. Commenter recommends a system of escalating penalties; or to revise the application to have a section in which all material “Representations” concerning the project are reflected, so that the developer can refer to that section whenever plan changes are anticipated in order to determine whether an amendment is needed. (52)

Staff Response:

Staff is finalizing an Application Verification Form, which the Developer will complete at the time of Commitment or Carryover which will be the verification for all divisions in the Department as well as a reference for the Applicant. No change is recommended to the QAP.

§49.9(d)(5)(C) Subsequent Evaluations of Applications (60)

Comment:

Comment was made that an application that qualifies for the At-Risk Set-Aside should also be able to roll over into the Regional pool for consideration against other applicants in the region. (60)

Staff Response:

This section of the QAP currently allows that “To the extent that Applications in the At-Risk and TRDO-USDA Set-Asides are not competitive enough within their respective Set-Asides, they will also be able to compete, with no Set-Aside preference, within their appropriate sub-region.” No change is recommended.

§49.9(h)(4)(A)(ii)(XXV) Green Building Initiative (27, 32, 38, 43, 54, 60, 66)

Comment:

Comment was made supporting the green building initiatives. Commenter stated that NAHB has put out some guidelines and they will forward them to the Department. (27, 38) Comments were made asking to improve the point allocations for green building, to award points proportionally according to the impact of particular green practices and equipment will have on the project overall, and to clarify language to ensure more performance-based and not prescriptive goals to again meet overall green building goals. (32, 54) Comment was made suggesting that more points are awarded to larger photovoltaic panels, as opposed to smaller ones. Comment also suggested excluding the cost of solar insulations from the project cost so that developers are not deterred from including such systems in their projects. (43) Comment was made asking the Department to consider scoring rehabilitation projects with 1.5 points per Green Building item achieved, because rehabilitation projects have less flexibility. (60) Comment was made suggesting “the addition of tankless hot water heaters for 3 points” to the Green Building criteria. (66)

Staff Response:

Staff agrees with the clarifications received. These comments appear to be substantial, however, staff believes these clarifications will enable the development community to understand what is required and will enable the Department to inspect and/or monitor the amenities. Staff recommends the following revisions:

49.9(h)(4)(A)(ii)(XXV)

(-a-) evaporative coolers (for use in designated counties listed in the Application Materials, 2009 Housing Tax Credit Site Demographics Information) (1 point);

(-b-) passive solar heating/cooling (3 points maximum)

(-1-)Two points if the glazing area on the north- and south-facing walls of the building is at least 50% greater than the sum of the glazing area on the east- and west- facing walls; and the east-west axis of the building is within 15 degrees of due east-west.

(-2-)One point if in addition to the east-west axis of the building oriented within 15 degrees of due east-west, utilize a narrow floor plate (less than 40 feet), single loaded corridors and open floor plan to optimize daylight penetration and passive ventilation (note: to qualify for this particular point, application must also implement the 15 degree building orientation option above); and 100% of HVAC condenser units are shaded so they are fully shaded 75% of the time during summer months (May through August); and solar screens or solar film on all East, West, and South Windows with building oriented to east-west axis within 15 degrees of due east-west, west-south axis within 15 degrees of due west-south, and south-east axis within 15 degrees of due south-east.

(-c-) water conserving features (2 points maximum, 1 point for each):

(-1-)Install low-flow toilets using less than or equal to 1.6 gallons per flush, or high efficiency toilets using less than or equal to 1.28 gallons/flush.

(-2-)Install bathroom lavatory faucets and showerheads that do not exceed 2.0 gallons/minute and kitchen faucets that do not exceed 1.5 gallons/minute. Applies to all fixtures throughout development. Rehab projects may choose to install compliant faucet aerators instead of replacing entire faucets.

(-d-) solar water heaters (Solar water heaters designed to provide at least 25% of the average energy used to heat domestic water throughout the entire development.) (2 points);

(-e-) irrigation and landscaping (must implement both of the following) (2 points)

(-1-)collected water (at least 50%) for irrigation purposes;

(-2-)selection of native trees and plants that are appropriate to the site's soils and microclimate and locate them to allow for shading in the summer and allow for heat gain in the winter

(-f-) sub-metered utility meters (2 points maximum);

(-1-)Sub-metered utility meters on rehab project without existing sub-meters or new construction senior project (2 points); or

(-2-)Sub-metered utility meters on new construction project (excluding new construction senior project) (1 point)

(-g-) energy efficiency (4 points maximum);

(-1-)Three points if Energy Elements include Energy-Star qualified windows and glass doors; and Exterior envelope insulation, vapor barriers and air barriers greater than or equal to Energy Star air barrier and insulation criteria; and HVAC, domestic hot water heater, or insulation that exceeds Energy Star standards or exceeds the IRC 2006;

OR

(-2-)Four points if the project promotes energy efficiency by meeting the requirements of Energy Star for Homes by either complying with the appropriate builder option package or a HERS score of 85.

- (-h-) thermally and draft efficient doors (SHGC of 0.40 or lower and U-value specified by climate zone according to the 2006 IECC) (2 points);
- (-i-) photovoltaic panels for electricity and design and wiring for the use of such panels (3 points maximum);
 - (-1-)Photovoltaic panels that total 10 kW (1point);
 - (-2-)Photovoltaic panels that total 20 kW (2 points);
 - (-3-)Photovoltaic panels that total 30 kW (3 points)
- (-j-) construction waste management and implementation of EPA’s Best Management Practices for erosion and sedimentation control during construction (1 point);
- (-k-) recycling service provided throughout the compliance period (1 point);
- (-l-) water permeable walkways (at least 20% of walkways and parking) (1 point).
- (-m-) bamboo flooring, wool carpet, linoleum flooring, straw board, poplar OSB, or cotton batt insulation (50% of flooring on the ground floor of the development must be finished concrete and/or ceramic tile. 50% of the flooring on upper floors must be ceramic tile and/or a flooring material that is Floor Score Certified (developed by the Resilient Floor Covering Institute), applied with a Floor Score Certified adhesive and comes with a minimum 7-year wear through warranty. (2 points);

Staff agrees that reconfiguration of existing Developments to include green building initiatives does require additional consideration. The Department allows this same consideration with other amenities. Staff agrees with the 1.5 point consideration. Staff proposes the following language:

“(XXV) Green Building amenities (Rehabilitation Developments will receive 1.5 points for each point requested for the green building amenities)

Staff believes including tankless hot water heaters may be a reasonable request. However, it would require further research and input for staff to establish an appropriate recommendation for this year’s QAP. Staff proposes this suggestion be incorporated into the 2010 QAP and commits to further research this issue. The limited amount of research that staff has conducted to date indicates many possible disadvantages to the installation of such units; including, the limited in the amount of hot water that can be produced at one time; the longer period it may take to get hot water, since they don’t start heating the water until you turn on the faucet; the possibility of an increase in water wastage since you have to let the water run longer to get your hot water; and the limited the rate of the heated water flow. Staff recommends no change.

§49.9(h)(4)(B) Threshold Criteria (62)

Comment:

Comment asks the Department to be more specific in its definition of “lighting fixtures.” Comment went on to question whether an option is available to either provide Energy Star light fixtures, or simply provide tenants with Energy Star bulbs. It is their contention that the energy star light fixtures will be obsolete soon. (62)

Staff Response:

Staff agrees that this requirement should be revised and recommends the following:

- (vii) Energy-Star or equivalently rated lighting fixtures in all Units, which may include compact florescent bulbs.

§49.9(h)(4)(C) Threshold Criteria (25)

Comment:

Commenter suggested the following clarifying language:

“(C) A certification that the Development will meet the minimum threshold for size of Units as provided in clauses (i) – (v) of this subparagraph. These minimum requirements are not associated with the selection criteria points in subsection (i) of this section. Developments

proposing Rehabilitation (excluding Reconstruction) or Single Room Occupancy will not be subject to the requirements of this subparagraph.

- (i) 550 square feet for an efficiency Unit;
- (ii) 650 square feet for a ~~non-elderly~~ one Bedroom Unit that is not in a Qualified Elderly Development; 550 square feet for a ~~an-elderly~~ one Bedroom Unit in the Qualified Elderly Development;
- (iii) 900 square feet for a ~~non-elderly~~ two Bedroom Unit that is not in a Qualified Elderly Development; 700 square feet for a ~~an-elderly~~ two Bedroom Unit in a Qualified Elderly Development;
- (iv) 1,000 square feet for a three Bedroom Unit; and
- (v) 1,200 square feet for a four Bedroom Unit.”

Staff Response:

Staff believes this change would not address the Units in an Intergenerational Development. Staff recommends no change.

§49.9 (h)(4) Certifications (66)

Comment:

Comment requested that the Department reduce the number of signatures to one in respect to all of its certifications. (66)

Staff Response:

This is not relevant to the QAP, however staff will consider this request in the application materials.

§49.9(h)(4)(E) Certification to comply with accessibility requirements (31)

Comment:

Comment was made referring to S.B. 1458 passed by the 2005 Texas legislature adopting 2003 International Building Code (IBC) for all municipalities, excluding unincorporated areas, and the 2003 and 2006 IBC are enforced in Texas. Commenter went on to note that HUD also certified the 2003 and 2006 IBC in compliance with the federal Fair Housing Act. Commenter suggests that the Department include such language; “(E) A certification that the Applicant is in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301... the 2003 International Building Code, the 2006 International Building Code published by the International Code Council, the Code requirements for Housing Accessibility 200...” (31)

Staff Response:

§49.9(h)(4) (D) of the QAP already includes this requirement. No change is recommended.

§49.9 (h)(6)(E) Evidence of Development Cost (42)

Comment:

Comment was made asking the Department to reconsider its policy on requiring a Property Condition Assessment Report for reconstruction projects. Commenter stated that when an applicant considers a reconstruction project some basic architect work must have already been done. Commenter would like to have the timeline for PCA revisited. (42)

Staff Response:

Staff believes that the Property Condition Assessment is necessary in order for the Department to be able to determine whether the demolition and reconstruction of an existing development is the most effective use of tax credits. No change is recommended.

§49.9(h)(7)(A)(iii) Evidence of Readiness to Proceed (25)

Comment:

Commenter suggested the following clarification:

“(iii) A contract for sale, an exclusive option to purchase or a lease which is valid for the entire period the Development is under consideration for tax credits. For Tax Exempt Bond

Development Applications, site control must be valid through December 1, 2008 with option to extend through March 1, 2009 (Applications submitted for lottery) or 90 days from the date of the bond reservation with the option to extend through the scheduled TDHCA Board meeting at which the award of Housing Tax Credits will be considered (Applications not submitted for lottery). The potential expiration of site control does not warrant the Application being presented to the TDHCA Board prior to the scheduled meeting.”

Staff Response:

Staff agrees with the suggested clarification and recommends the changes as requested.

§49.9 (h)(7)(A)(iv) Identity of Interest Transaction (20, 30, 34, 37, 44, 45, 47, 48, 51, 55, 65)

Comment:

Comment states that the QAP unfairly limits acquisition costs to the lesser of initial acquisition costs plus costs of owning, holding, or improving the property or the as-is appraised value. Commenter suggests that the Department should allow the as-is appraised value as the acquisition costs, because some may be unable to document the costs of owning, holding or improving the land. Furthermore, the commenter suggests that limiting the acquisition cost to the lesser of the two, limits unfairly limits at-risk projects, USDA, and Housing Authorities trying to preserve low income housing. (20, 30, 34, 37, 44, 45, 47, 48, 51, 55) Comment states that Department did not permit the applicants to take the value of the land being contributed by the LPS for points because the land contributions were characterized as identity of interest transactions which require a settlement statement or other verifiable costs of owning the properties. Commenter believes that an appraisal should be sufficient to justify the value of the land contribution even in identity of interest transactions. (65)

Staff Response:

Staff believes that limiting the acquisition cost to the lesser of initial cost plus costs of owning, holding, or improving the property or the as-is appraised value ensures that the acquisition amount is not inflated. In the rare case that an issue arises regarding the Applicant’s inability to document the costs of owning, holding or improving the land, the Department will resolve that issue on an individual basis. Staff does not believe that this provision in any way limits at-risk projects, USDA, and Housing Authorities trying to preserve low-income housing. No change is recommended.

§49.9(h)(7)(B)(i) and (ii) Evidence of Readiness to Proceed (25)

Comment:

Commenter suggested the following clarifying language:

“(i) For New Construction or reconstruction Developments, a letter from the chief executive officer of the Local Political Subdivision ~~political subdivision~~ or another local official with appropriate jurisdiction stating that (For Tax-Exempt Bond Applications the items in clauses (I) - (III) of this clause must be submitted no later than 14 days prior to the Board meeting when the housing tax credits will be considered):

- (I) The Development is located within the boundaries of a Local Political Subdivision ~~political subdivision~~ which does not have a zoning ordinance; and either subclauses (II) or (III) of this clause;
- (II) The letter must state that the Development is consistent with a local consolidated plan, comprehensive plan, or other local planning document that addresses affordable housing; or
- (III) The letter must state that there is a need for affordable housing, if no such planning document exists.

(ii) For New Construction or reconstruction Developments, a letter from the chief executive officer of the Local Political Subdivision ~~political subdivision~~ or another local official with appropriate jurisdiction stating that:”

Staff Response:

Staff agrees with the clarification and recommends the changes as requested.

§49.9(h)(7)(C)(i) Evidence of Readiness to Proceed (25)

Comment:

Commenter requested the following change:

- (i) Bona fide financing in place as evidenced by:
 - (I) A valid and binding loan agreement; and
 - (II) Deed(s) of trust in the name of the Development Owner as grantor ~~expressly allowing transfer to the Development Owner; and/or~~

Staff Response:

Staff agrees with the suggested language and recommends the changes as requested.

§49.9(h)(7)(D)(ii) and (iii) County and Property Taxes (19, 21, 25)

Comment:

Comment was made that there are places in Texas where there are not any property or county taxes. Commenter asserts that Tribal Land for Federally Recognized Indian Tribes is not assessed property taxes and the commenter would like to have a condition inserted to address this. Commenter suggests that this threshold item be deemed not applicable for tribal lands. (19, 21)

Staff Response:

Staff agrees that this item requires revision and recommends the following:

- (ii) A current valuation report from the county tax appraisal district and documentation of the current total property tax rate for the Development Site (unless the site is located on land that is not subject to federal, state or local property taxes), and...

§49.9(h)(7)(D)(iii)(I)-(III) Title Policy/Commitment (19, 21, 25)

Comment:

Comment was made that Trust Lands are unable to provide a Title Policy or Title Commitment, because Title Commitments are only beneficial for fee-simple land. Commenter is asking the Department to consider accepting a Title Status Report in lieu of a Title Commitment for such lands. The Title Status Report (TSR) is issued by the Bureau of Indian Affairs (BIA). The commenter states that this would be the best, and only alternative to a Title Commitment from Tribe Lands. (19, 21)

Staff Response:

Staff concurs and suggests the following revision:

- “(iii) A copy of:
 - (I) The current title policy (or title status report if on Tribal Land) which shows that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner; or
 - (II) a current title commitment with the proposed insured matching ~~exactly~~ the name of the Development Owner and the title of the Development Site vested in the ~~exact~~ name of the seller or lessor as indicated on the sales contract, option or lease.
 - (III) If the title policy, title status report, or commitment is more than six months old as of the day the Application Acceptance Period closes, then a letter from the title company Bureau of Indian Affairs indicating that nothing further has transpired on the policy, title status report or commitment.

§49.9(h)(8)(A)(ii) Certification of Notification (25)

Comment:

Commenter suggested the following clarifying language:

- “(ii) Not later than the date the Application is submitted, notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt return or similar tracking mechanism e-mail, fax or mail with registered receipt in the format required in the "Application Notification Template" provided in the Application. Developments located in an

Extra Territorial Jurisdiction (ETJ) of a city are not required to notify city officials, however, are required to notify county officials....”

Staff Response:

Staff agrees with the suggested language and recommends the changes as requested.

§49.9(h)(8)(B) Certification of Notification for Signage (25)

Comment:

Commenter suggested the following clarifying language:

(B) Signage on Property or Alternative. A Public Notification Sign shall be installed on the Development Site prior to the date the Application is submitted unless prohibited by local ordinance or code or restrictive covenants. Scattered site Developments must install a sign on each non-contiguous Development Site. For Competitive Housing Tax Credit Applications the date, time and location of the public hearing, as published by the Department and closest to the Development Site, must be included on the sign. For Tax-Exempt Bond Developments, regardless of the Priority of the Application or the Issuer, the sign must be installed within thirty (30) days of the Department's receipt of Volumes I and II. The date, time and location of the bond Tax Exempt Fiscal Responsibility Act (TEFRA) public hearing must be included on the sign no later than thirty (30) days prior to the scheduled public hearing. Evidence submitted with the Application must include photographs of the site with the installed sign. The sign must be at least 4 feet by 8 feet in size and located within twenty feet of, and facing, the main road adjacent to the site. The sign shall be continuously maintained on the site until the day that the Board takes final action on the Application for the Development. The information and lettering on the sign must meet the minimum requirements identified in the Application. For Tax-Exempt Bond Developments, regardless of the issuer, the Applicant must certify to the fact that the sign was installed within 30 days of submission and the date, time and location of the TEFRA hearing is indicated on the sign at least 30 days prior to the date of the scheduled hearing. In areas where the Public Notification Sign is prohibited by local ordinance or code or restrictive covenants, an alternative to installing a Public Notification Sign and at the same required time, the Applicant shall, mail written notification to those addresses described in either clause (i) or (ii) of this subparagraph. This written notification must include the information otherwise required for the sign as provided in the Application. The final Application must include a map of the proposed Development Site and mark the distance required by clause (i) or (ii) of this subparagraph, up to 1,000 feet, showing street names and addresses; a list of all addresses the notice was mailed to; an exact copy of the notice that was mailed; and a certification that the notice was mailed through the U.S. Postal Service and stating the date of mailing. If Public Notification Sign is prohibited by local ordinance or code or restrictive covenants, evidence of the applicable ordinance or code or restrictive covenants must be submitted in the Application.

Staff Response:

Staff believes further research into restrictive covenants would be necessary to make certain that the restrictions are placed on all signage required by statute as is this signage. No change is recommended at this time for the use of restrictive covenants. Staff does agree with the addition of non-contiguous language and recommends this change.

§49.9(h)(13) Evidence of Financial Statement (27)

Comment:

Comment was made requesting that financial statements for individuals be good for six months or one year instead of the current ninety days. (27)

Staff Response:

Staff believes this is a reasonable request and proposes the following language:

“(A) Financial statements for an individual must not be older than six months from the first day of the Application Acceptance Period.”

§49.9(h)(15) Self-Scoring (25)

Comment:

Commenter suggested the following clarifying language:

(15) Self-Scoring. Applicant's self-score must be completed on the "Application Self-Scoring Form." An Applicant may not adjust the Application Self Scoring Form, after the submission of the Application, without a request from the Department as a result of an Administrative Deficiency.

Staff Response:

Staff agrees with the suggested language and recommends the changes as requested.

§49.9(i) Selection Criteria (25, 33)

Comment:

The commenter supported the changes to the QAP that promote more affordable housing in downtown areas. The commenter requested that on development location points they would like to see downtown included in any definition to be awarded four points. Commenter indicated that the City of Fort Worth is working on language that would also include other areas of the city where high-density residential and probably mixed-use development is appropriate and has been so zoned. (33)

Staff Response:

Staff appreciates the feedback provided by representatives from the City of Fort Worth and appreciates their support of affordable housing. Comment is regarding changes already proposed in the QAP. No further change is recommended.

Comment:

Commenter suggested the following clarifying language:

“(i) **Selection Criteria.** All Applications will be scored and ranked using the point system identified in this subsection. Unless otherwise stated, do not round calculations. Points other than those provided in paragraphs (2) and (6) of this subsection will not be awarded unless requested in the Self Scoring Form.”

Staff Response:

Staff agrees with the suggested clarification and recommends the changes as requested.

§49.9(i)(2)(A) Quantifiable Community Participation (20, 26, 27, 30, 34, 37, 44, 45, 47, 48, 51, 55)

Comment:

Comment was made that the Department continues to limit the rights of a Resident Council to rehabilitate or reconstruct a property occupied by the residents. A resident council, according to the commenter, should be allowed to comment and appropriately be scored for New Construction, if the proposed New Construction is within the boundaries of the property in which they reside or within the boundaries of their organization. Commenter gives a few examples of small public Housing developments on large tracts of land that could easily support much more low income housing and another where the small development should be demolished because it is obsolete. (20, 30, 34, 37, 44, 45, 47, 48, 51, 55)

Staff Response:

The Board has supported the requirement for “resident councils” to only comment on the rehabilitation of a Development in which they reside because a resident council is required by HUD in all public housing developments. This gives an unequal advantage to Housing Authority Applicants for the QCP scoring item. Staff does believe that a resident council could be a member of a larger neighborhood organization that could qualify for the QCP points.

Comment:

Comment was made asking that the Applicant/Developer be permitted to provide production assistance, because the Neighborhood Organizations are not used to working with TDHCA rules and deadlines, and are ordinary citizens with work and busy lives of their own. The commenter suggests that due to the size of the points available it is unfair to leave it in the hands of inexperienced volunteers. Additionally, the commenter believes that it should be permissible to forward TDHCA notices of deficiency and other correspondence to Neighborhood Organizations so that deadlines are not missed. Additional comments that the time for Neighborhood Organizations should be lengthened rather than shortened, and that support from a Mayor or City Council and other than QCP points be permitted to counterbalance Neighborhood Organization opposition. (26)

Staff Response:

Staff proposed a change in the 2009 QAP to allow Applicants to interact with Neighborhood Organizations. Staff believes the Applicant may provide informational assistance to a Neighborhood Organization but may not provide production or delivery assistance. Staff suggests the following additional revision:

“(vi) ...Any deficiency notices issued to the Neighborhood Organization will also be sent to the Applicant for information purposes only. Applicants may not provide delivery assistance of any communication between the Neighborhood Organization and the Department and Applicants may not assist the Neighborhood Organization in preparing its response to a deficiency notice. Applicants may provide information about the deficiency notice process and deadlines to a Neighborhood Organization;”

Comment:

Comment was made about the additional signature on neighborhood for QCP points, and that one signature from the president should be more than enough. Commenter went on to suggest that as far as time goes, it is hard to obtain these signatures because many of the organizations are volunteers, so their accountability is sometimes not as reliable as they would like. (27)

Staff Response:

Staff agrees with the accountability and reliability of these organizations. Staff believes that requiring more than one signature on the submission assures the Department that more than one person from the organization made the decision to provide a letter of support or opposition to the Department. No change is recommended.

§49.9(i)(2)(A)(v) Quantifiable Community Participation (25, 52)

Comment:

Comment was made that the third sentence in the subsection should read; “The Neighborhood Organization letter must be signed by two officials or board members of the Neighborhood Organization and must include a contact name with a mailing address and phone number of the persons signing the letter; one additional contact for the organization; a written description and map of the organization's geographical boundaries;...” .

Staff Response:

Staff recommendeds the following revision:

The Neighborhood Organization letter must be signed by two officials or board members of the Neighborhood Organization and must include in its letter, a contact name with a mailing address and phone number of the persons signing the letter; one additional contact for the organization; a written description and map of the organization's geographical boundaries;...” .

§49.9(i)(2)(A)(vi) Quantifiable Community Participation (52)

Comment:

Comment that the next to the last sentence in the subsection should read; “Applicants may not provide delivery assistance or any communication...” (52)

Staff Response:

The QAP as proposed states “Applicants may not provide delivery assistance of any communication...” This language is correct. No change is recommended.

§49.9(i)(3) Income levels of tenants in the development (23, 35, 38)

Comment:

Comment was made that recognized the Department for the proposed changes in the 2009 QAP which address the inequality between mixed income and 100% low income proposals, in an effort to revitalize neighborhoods. (23)

Staff Response:

Staff appreciates the commendation regarding the encouragement of mixed income Developments. Comment is regarding changes already proposed in the QAP. No change to the QAP is applicable.

Comment:

Comment was made asking the Department to strike the current, low income criteria, that focuses on 50% of AMGI and replace it with 60% of AMGI. Comment suggests that changing this criterion to a maximum rent ceiling of 60% would enable a higher first mortgage to be obtained by the developer which would benefit the project sources in light of current market pricing decreases. (35) Conversely, separate comment was made supporting the proposed changes to this section that encourage a greater number of Low-Income units set aside for households with incomes at 30% to 50% of area median income. (38)

Staff Response:

The Department encourages the development of Low-Income Units for households with incomes at 50% or below area median income. No change is recommended.

§49.9 (i)(4)(A) The Size and Quality of the Units (Development Characteristics) (26, 36, 38, 54, 58)

Comment:

Comment suggested not increasing the minimum size of units at a time when there is a need to reduce construction costs. Comment states that increasing square footages increases both the construction costs and the utility costs once completed. Comment stated that it is more beneficial to build bigger units because that boosts the cost for the entire unit. It was also noted that from a green building perspective, smaller, more efficient units use less building materials and are easier to heat and cool. Commenter recommends keeping unit sizes the same as 2008 or requiring 50 square feet smaller. (26, 38, 54)

Staff Response:

Staff believes it appropriate to have minimum unit sizes. The minimum threshold sizes are below the sizes as proposed by the majority of units over the past few years. No change is recommended.

Comment:

Comment was made requesting that the Department allow for certain common areas to be included in the per net rentable square foot cost calculation for SRO housing and for the exemption of SRO units from minimum size thresholds and allowing for automatic award of 6 points for unit size. (36, 58)

Staff Response:

The request for common area space to be included in the net rentable area for SRO Developments is already included in the current draft of the QAP. SRO development is exempt from the size requirements and is automatically awarded the points if they are requested by the Applicant. No change is recommended. No change is recommended.

§49.9(i)(5)(B) Scoring of Commitment of Development Funding by Local Political Subdivisions (25, 26, 67)

Comment:

Comment received applauding the Department’s percentage reduction of LPS funds needed to receive maximum points. Furthermore, would like same rule applied to all Non Participating Jurisdictions.

Commenter argues that small cities suffer the same lack of funding sources as well as rural. Commenter goes further and asks that the requirement is removed completely, because according to commenter there are areas that need affordable housing, but do not have the ability to provide the support needed. Commenter argues that if a project is fiscally viable without political subdivision support then the project should be allowed to proceed. (25, 26, 67)

Staff Response:

Staff agrees that this scoring item could be revised further and agrees to work with the program stakeholders to revise this section for the 2010 QAP. Staff does recommend striking the language added in the draft as follows:

~~“(i)(5)(B) ... The required percentages for Rural Developments listed in clauses (i) — (iii) of this subparagraph only apply to Rural Developments applying for local funds.”~~

§49.9(i)(6)(A)(iv) Support from State Representative or State Senator (20, 25, 30, 34, 37, 44, 45, 47, 48, 51, 55)

Comment:

Comment was made in regards to the timeline that a State Senator or Representative may withdraw a letter submitted by the April 1st deadline. As it stands now the Senator/Representative has until June 15, 2009, and the commenter suggests that the deadline should be May 31, 2009. Commenter states that if a letter is to be withdrawn the State Senator or Representative must inform the applicant in writing no less than two weeks before withdrawing the letter of support. (20, 25, 30, 34, 37, 44, 45, 47, 48, 51, 55). Comment suggested the following clarifying language:

“A State Representative or State Senator may withdraw (in writing) a letter that is submitted by the April 1st deadline on or before June 15, 2009 but may not submit a new letter. The previous position of support or opposition that is withdrawn will be scored as neutral (0 points). “

Staff Response:

Staff believes that keeping the deadline when for a State Senator or Representative may withdraw a letter submitted to the Department in line with the close of the public comment period is reasonable. The Department will not require a senator or representative to notify an applicant of withdrawal of support. Staff does agree with the clarifying language and will include the change in the QAP.

§49.9(i)(7) Rent Level Units (23, 38, 58, 67)

Comment:

Comment was made that recognized the Department for the proposed changes in the 2009 QAP which address the inequality between mixed income and 100% low income proposals, in an effort to revitalize neighborhoods. (23)

Staff Response:

Staff appreciates the commendation regarding the encouragement of mixed income Developments. Comment is regarding changes already proposed in the QAP. No change to the QAP is applicable.

Comment:

Comment was made supporting the proposed changes for this item. (38). Comment was also made asking that points be added to encourage the availability of units at or below 50% AMGI (58) and supporting the elimination of the percentage of Market Rate units advocating instead for new language which encourages additional units marketed to families and seniors at 50%. (67)

Staff Response:

Staff believes that including a percentage of market rate units encourages mixed-income Developments. The Draft QAP includes incentives for additional units marketed to families and seniors at or below 50% AMFI. No change is recommended.

§49.9(i)(8) Cost of Development by Square Foot (25, 29, 32, 38, 40, 49, 52, 54, 65, 67)

Comment:

Commenter submitted the following clarifying language:

“(8) ...For the purposes of this paragraph only, if ~~the proposed Development is~~ a building is in a Qualified Elderly Development or is an age restricted building in an Intergenerational Housing Development with an elevator building serving elderly or a high rise building with four or more stories serving any population, the NRA may include elevator served interior corridors....” (25)

Staff Response:

Staff agrees with the clarifying language and recommends the changes as requested.

Comment:

Comment made suggesting that the term “elevator-served” be removed because most SROs will be single story developments, and they would be better served if the language were changed as proposed. Comment was made requesting that the Department allow for certain common areas to be included in the net-rentable square footage calculation for SRO housing because, in SRO housing, living-rooms, dining-room, and kitchens are congregate and thus make the net-rentable square footage smaller.(32, 36, 54) Comment was made in support of increased construction costs and the inclusion of common area in the NRA calculation for SROs (38) as well as the increase in cost per unit (67)

Commenter proposes change to the third sentence in the paragraph to add, “This calculation does not include indirect construction costs or any other construction costs that are excluded by the Applicant from eligible basis.” (32, 40, 49, 54) Commenter would like an allowance for developers to exclude hard costs from eligible basis and not receive tax credits for certain costs as a way for high-cost developments to earn the cost-per square foot points, and for the cost of any parking to be excluded from calculating cost per square foot. (40, 49, 29, 52, 54) Comment states that this will prevent developments in urban areas from being penalized for building parking garages that exceed the construction cost caps established for scoring points under this section. (32, 54) Commenter asks that the Department clarify the language of this section with 49.17(d)(1) (amendments) so that applicants are not penalized for being forthright about rising construction costs. (40, 49) Commenter would like to ensure that structured parking not count against any per unit cap. (54) Commenter asks for demolition costs not be included in the cost of the development per square foot calculation. (65)

Staff Response:

Some SRO developments do contain elevators. The “elevator-served” language does not negatively effect a development but does address the NRA issues that some SRO developments may have. The Draft QAP allows up to 50 square feet of common area to be included in the net rentable area. Staff appreciates the commendation regarding the inclusion of definitions for Supportive Housing and Single Room Occupancy.

The cost of the land and the cost of the parking are costs that are necessary for the development and clearly impact the total cost of the development. Including the square footage for parking is wholly inconsistent with the purpose of comparing the cost per net rentable square foot as the parking itself does not constitute living area for the unit. Excluding the cost for any pledged amenity such as a parking facility and/or land for required parking from the total cost of the development or the eligible basis (in the case of building for tenant use) is wholly inconsistent with the ability to determine financial viability of the entire development. Making modification to the cost per square foot scoring item in this regard will also confuse the determination of total development cost and true eligible costs at underwriting and later in the development process and at the issuance of 8609. This scoring item is specifically directed toward development with a low total cost per square foot of living space and making exceptions for high cost features or amenities of a development, worthy though they might be in their own right, diminish the specific intent of this scoring item and will confuse the understanding of the product that is being pledged to be delivered. No further change is recommended.

Demolition costs on the site that improve the land but are also required to construct the property are site work cost just as a detention pond or landscaping that permanently improved the value of the land would be considered a cost of construction but may not an eligible cost. Excluding ineligible but required

construction costs from the cost per square foot diminish the specific intent of the cost per square foot scoring item and again could lead to confusion over what is being constructed and the reasonableness of the cost of that construction. No further change is recommended.

§49.9(i)(9)(B) Services to be Provides to Tenants (25)

Comment:

Commenter suggested the following clarifying language:

“(B) In addition, Applications will receive 1 point for providing Notary Public Services to tenants at no cost to the tenant during regular business hours. If this point is selected, this requirement will be included in the LURA.”

Staff Response:

Staff agrees with the clarifying language and recommend the changes as requested.

§49.9(i)(12) Housing Needs Characteristics (22, 25)

Comment:

Comment suggested that because of the devastation caused by Hurricane Ike the housing needs score should be raised to 6 in all cities affected by the Hurricane. (22)

Staff Response:

Staff believes that since the affected areas have been declared disaster areas, the 30% increase in eligible basis is a sufficient incentive for the affected areas. No change is recommended.

Comment:

Commenter suggested the following clarifying language:

“(12) Housing Needs Characteristics. (§42(m)(1)(C)(ii)). Applications may qualify to receive up to 6 points (if theDevelopment Site is located in an Area with a certain Affordable Housing Needs Score). Each Application may receive a score if correctly requested in the self score form based on objective measures of housing need in the Area where the Development is located. This Affordable Housing Need Score for each Area will be published in a Site Demographic Characteristics table in the Reference Manual.” (25)

Staff Response:

Staff agrees with the clarifying language and recommends the changes as requested.

§49.9(i)(13) Community Revitalization (25)

Comment:

Comment suggested following change:

“(A) The Development includes the use of an Existing Residential Housing-Development and proposes any Rehabilitation or any Reconstruction that is part of a Community Revitalization Plan. Evidence of the Community Revitalization Plan and a letter from the chief executive officer or other local official with appropriate jurisdiction of the Local Political Subdivision Governing Body stating that the Development Site is located within the targeted development areas outlined in the Community Revitalization Plan must be submitted; or
(B) The Development includes the use of an existing building that is designated as historic by a Governmental Entity federal or state Entity and proposes Rehabilitation (including reconstruction) or Adaptive Reuse. The Development itself must have the designation; points in this subparagraph are not available for Developments simply located within historic districts or areas that do not have a designation on the building. The Development must include the historic building. Evidence will include proof of the historic designation from the appropriate Governmental Entity ~~Body~~.”

Staff Response:

Staff believes the current language in the Draft QAP covers most of the request. Staff recommends the following additional change:

“(A) The Development includes the use of an Existing Residential Development and proposes any Rehabilitation or any Reconstruction that is part of a Community Revitalization Plan. Evidence of the Community Revitalization Plan (such evidence must include an ordinance, resolution, or otherwise recorded documentation of a vote taken by the local elected Governing Body specifically adopting the Community Revitalization Plan) and a letter from the chief executive officer or other local official with appropriate jurisdiction of local Governing Body stating that the Development Site is located within the targeted development areas outlined in the Community Revitalization Plan must be submitted; or
(B) The Development includes the use of an existing building that is designated as historic by a federal or state Entity and proposes Rehabilitation (including reconstruction) or Adaptive Reuse. The Development itself must have the designation; points in this subparagraph are not available for Developments simply located within historic districts or areas that do not have a designation on the building. The Development must include the historic building. Evidence will include proof of the historic designation from the appropriate Governmental Entity Body.”

§49.9(i)(14)(D) Pre-Application Participation Incentive Points (25)

Comment:

Commenter proposed the following clarifying language:

“(D) Be ~~servicing~~ applying for the same ~~target~~ Set-Asides as indicated in the Pre-Application (Set-Asides can be dropped between Pre-Application and Application, but no Set-Asides can be added); and”

Staff Response:

Staff agrees with the clarification and recommends the changes as requested.

§49.9(i)(15)(C) Economic Development Initiatives (25)

Comment:

Commenter suggested the following clarifying language:

“(C) Points under subparagraphs (A) and (B) of this paragraph will not be granted if more than 3 ~~tax credit~~ Developments have ~~been awarded~~ received a Housing Tax Credit Allocation in that the applicable area in the last 7 years prior to _____. The Applicant must provide evidence of the boundaries of the area, as required in the Application and Application Submission Procedures Manual.”

Staff Response:

Staff partially agrees with the suggested comment and recommends the following language:

“(C) Points under subparagraphs (A) and (B) of this paragraph will not be granted if more than 3 ~~tax credit~~ Developments ~~have been awarded~~ received an award of Housing Tax Credits in the applicable area in the 7 years prior to the Application Acceptance Period in that area in the last 7 years. The Applicant must provide evidence of the boundaries of the area, as required in the Application and Application Submission Procedures Manual.”

§49.9(i)(16)(D)(E)(F) Development Location Points (25, 40, 41, 50, 52)

Comment:

Commenter requested a change in subsection (D) and (E) in reference to the eligible bedroom mix and total number of units.

Staff Response:

Staff believes the subsection is clear and does not require clarification. No change is recommended.

Comment:

Comment was made that the definition of types of Urban Core sites is too vague, and requested clarification that “infill” does not necessarily mean scattered sites and to clarify the zoning requirements

for these points. Comments suggest that Developments proposed to be located in municipalities without zoning would not be eligible for these points. (40, 52)

Staff Response:

Staff deleted the reference to “infill housing” previously included in the Draft QAP.

Comment:

Comment was made asking the Department to reconsider the removal of Ex Urban language from the 2009 QAP. Commenter argued that the removal of the Ex Urban language from the QAP makes it difficult to provide affordable senior housing in the North Texas area outside of urban areas. (41, 50)

Staff Response:

Staff removed the “ex-urban” points at the suggestion of the development community during the drafting of the QAP. The points were removed because other point items had been added that all developments can receive (i.e green building, revitalization, income/rent targeting). Because input on the deletion of this item was limited, staff does not recommend reinstating it. No change is recommended.

§49.9(i)(17)(C) Green Building Initiatives (16, 39, 54)

Comment:

Global Green USA, Foundation Communities, and the Sierra Club suggest language for the green building initiative section that was developed collaboratively by members of both the environmental and developer communities including the Texas Association of Affordable Housing Providers and the Rural Rental Housing Association of Texas. (16, 39, 54)

Staff Response:

Using the collaborative language provide in the comment, staff suggests the following revision to this section:

(-a-) evaporative coolers (for use in designated counties listed in the Application Materials, 2009 Housing Tax Credit Site Demographics Information) (1 point);

(-b-) passive solar heating/cooling (3 points maximum)

(-1-)Two points if the glazing area on the north- and south-facing walls of the building is at least 50% greater than the sum of the glazing area on the east- and west- facing walls; and the east-west axis of the building is within 15 degrees of due east-west.

(-2-)One point if in addition to the east-west axis of the building oriented within 15 degrees of due east-west, utilize a narrow floor plate (less than 40 feet), single loaded corridors and open floor plan to optimize daylight penetration and passive ventilation (note: to qualify for this particular point, application must also implement the 15 degree building orientation option above); and 100% of HVAC condenser units are shaded so they are fully shaded 75% of the time during summer months (May through August); and solar screens or solar film on all East, West, and South Windows with building oriented to east-west axis within 15 degrees of due east-west, west-south axis within 15 degrees of due west-south, and south-east axis within 15 degrees of due south-east.

(-c-) water conserving features (2 points maximum, 1 point for each):

(-1-)Install low-flow toilets using less than or equal to 1.6 gallons per flush, or high efficiency toilets using less than or equal to 1.28 gallons/flush.

(-2-)Install bathroom lavatory faucets and showerheads that do not exceed 2.0 gallons/minute and kitchen faucets that do not exceed 1.5 gallons/minute. Applies to all fixtures throughout development. Rehab projects may choose to install compliant faucet aerators instead of replacing entire faucets.

(-d-) solar water heaters (Solar water heaters designed to provide at least 25% of the average energy used to heat domestic water throughout the entire development.) (2 points);

(-e-) irrigation and landscaping (must implement both of the following) (2 points)

(-1-)collected water (at least 50%) for irrigation purposes;

- (-2-)selection of native trees and plants that are appropriate to the site's soils and microclimate and locate them to allow for shading in the summer and allow for heat gain in the winter
- (-f-) sub-metered utility meters (2 points maximum);
- (-1-)Sub-metered utility meters on rehab project without existing sub-meters or new construction senior project (2 points); or
- (-2-)Sub-metered utility meters on new construction project (excluding new construction senior project) (1 point)
- (-g-) energy efficiency (4 points maximum);
- (-1-)Three points if Energy Elements include Energy-Star qualified windows and glass doors; and Exterior envelope insulation, vapor barriers and air barriers greater than or equal to Energy Star air barrier and insulation criteria; and HVAC, domestic hot water heater, or insulation that exceeds Energy Star standards or exceeds the IRC 2006;
- OR
- (-2-)Four points if the project promotes energy efficiency by meeting the requirements of Energy Star for Homes by either complying with the appropriate builder option package or a HERS score of 85.
- (-h-) thermally and draft efficient doors (SHGC of 0.40 or lower and U-value specified by climate zone according to the 2006 IECC) (2 points);
- (-i-) photovoltaic panels for electricity and design and wiring for the use of such panels (3 points maximum);
- (-1-)Photovoltaic panels that total 10 kW (1point);
- (-2-)Photovoltaic panels that total 20 kW (2 points);
- (-3-)Photovoltaic panels that total 30 kW (3 points)
- (-j-) construction waste management and implementation of EPA's Best Management Practices for erosion and sedimentation control during construction (1 point);
- (-k-) recycling service provided throughout the compliance period (1 point);
- (-l-) water permeable walkways (at least 20% of walkways and parking) (1 point).
- (-m-) bamboo flooring, wool carpet, linoleum flooring, straw board, poplar OSB, or cotton batt insulation (50% of flooring on the ground floor of the development must be finished concrete and/or ceramic tile. 50% of the flooring on upper floors must be ceramic tile and/or a flooring material that is Floor Score Certified (developed by the Resilient Floor Covering Institute), applied with a Floor Score Certified adhesive and comes with a minimum 7-year wear through warranty. (2 points);

§49.9(i)(18) Demonstration of Community Input other than Quantifiable Community Participation (25, 26, 52, 64)

Comment:

Commenter requests that these points be allowed even if a project receives 0 points under paragraph 49.9(i)(2) Quantifiable Community Participation. (26)

Staff Response:

The QAP already allows this request. No change is recommended.

Comment:

Comment suggested that the last sentence in the subsection should properly apply to the entire §49.9(i)(18), instead of just subsection (C). Recommends moving the last sentence to the next line, flush left so that it applies to all of the subsection. (52)

Staff Response:

Staff agree and proposes the following revision:

"...An Application may not receive points under more than one of the subparagraphs (A) – (C). At no time will the Application receive a score lower than zero for this item."

Comment:

Comment was made supporting the inclusion of language that provides for input from municipal management districts in the application review process. (64) Comment was also received stating that Local Political Subdivision should be excluded from participation.

Staff Response:

Staff appreciates the commendation regarding the inclusion of language that provides for input from municipal management districts in the application review process. Staff believes this subsection of the QAP is clear and includes and excludes the appropriate entities. No change to the QAP is recommended.

§49.9(i)(19) Developments in Census Tracts with no other Existing Same-type Development Supported by Tax Credits (35, 38)

Comment:

Comment was made to eliminate any rule that penalizes HTC applications located in a qualified census tract with existing HTC developments if supported by the local community. Comment suggests that the local community should have the right to dictate developments regardless of census tract and relative location to previous HTC developments.(35)

Staff Response:

The QAP does not prohibit a development from moving forward. However, it does restrict the availability of the 30% increase in eligible basis. Staff believes this is an appropriate restriction to control over-concentration of affordable housing.

Comment:

Comment was made asking to reduce the number of points awarded to developments in census tracts with no other existing same-type development supported by tax credits. They suggested a reduction in points for this criterion to one point so that the number of points under the criteria does not overwhelm high housing needs in community support scores. (38)

Staff Response:

The QAP does not prohibit Development in these areas. No change is recommended.

§49.9(i)(22) Site Characteristics (38)

Comment:

Comment was made suggesting that an additional four points be provided to developments located within five miles of a major employment center or located within one mile from a proposed light rail line. (38)

Staff Response:

Staff believes that incentives provided under §49.6(h)(4) sufficiently addresses this comment. No change is recommended.

§49.9(i)(29) Bonus Points (26, 27, 32, 41, 52, 54, 60, 66, 67)

Comment:

Comment was made that the addition of Bonus Points will create more issues than it solves and that it is unfair to developers who are new to the program or who did not have a project in 2008 (26)(60) and works against the goal of the Department to diversify the pool of tax credit recipients (32, 41, 54). Other comments emphasized that more clarification would be needed if these points remain. (27) Different commenters noted various concerns with this section (52, 66, 67).

Staff Response:

Staff believes that including criteria where bonus points may be awarded to an Application is a reasonable goal. However, it requires further research and input for staff to establish an appropriate recommendation for this year's QAP and would warrant additional public comment. Staff proposes this suggestion be

incorporated into the 2010 QAP and commits to further research this issue. Staff recommends removing § 49.9(i)(29) Bonus Points from the 2009 QAP.

~~(29) Bonus Points. Applications may qualify to receive up to 6 points for this item.~~

~~(A) An Application may receive 2 points if the Applicant had submitted acceptable proof of site control at the time of Carryover (November 1, 2008) for Applications that received a Housing Tax Credit commitment made in the Application Round preceding the current round. For purposes of this subparagraph, evidence of site control will consist of an executed deed for the subject property bearing the marks of receipt for filing by the county clerk and confirming the Development Owner as the grantee;~~

~~(B) An Application may receive 2 points if the Applicant has submitted the complete, acceptable, required documentation for the 10% Test, on or before June 1 for Applications that received a Housing Tax Credit commitment made in the Application Round preceding the current round (Applications that request extensions of the June 1 date, are not eligible for these bonus points);~~

~~(C) An Application may receive 2 points for having 5 or less aggregate deficiencies through the combined Eligibility, Selection and Threshold reviews;~~

~~(D) An Application may receive 1 point for having 10 or less aggregate deficiencies through the combined Eligibility, Selection and Threshold reviews; and/or~~

~~(E) An Application may receive 1 point if an Applicant satisfies deficiencies, to the satisfaction of the Department, on or before the third business day following the date of the deficiency notice.~~

§49.9(i)(30) Scoring Criteria Penalties (25)

Comment:

Commenter suggested the language of “penalties will be imposed” to “penalties may be imposed”.

Staff Response:

Staff believes the language is correct in directing staff on how penalties are to be imposed. It is the Board’s discretion to consider other alternatives to penalties. No change is recommended.

§49.12(a)(1) Tax-Exempt Bond Applications (27)

Comment:

Comment received requesting that the requirement that the Application be submitted within three days of receipt of the bond reservation be extended. (27)

Staff Response:

This timeline is required by the Bond Review Board Rules, §190.3(13) of the Administrative Code, and cannot be adjusted by the Department.

§49.13(c)(1) Documentation Submission Requirements (25, 52)

Comment:

Comment was received detailing multiple changes as to the evidence of organizational documents that would meet the requirements for this subsection. (25) Comment noted that it is unclear what the Department expects to receive in order to provide evidence that an entity has the authority to do business in Texas. (52)

Staff Response:

Staff believes the changes requested by commenter 25 need further research. Staff commits to work with the stakeholders of the programs to recommend changes to the 2010 QAP. Staff recommends one change to be applied to §49.9(h)(9)(B)(ii) and §49.13(c)(1):

“Evidence that the entity has the authority to do business in Texas in the form of a Certificate of Filing from the Texas Secretary of State;”

§49.14(a)(5) Carryover; 10% Test; Commencement of Substantial Construction (25)

Comment:

Commenter requested the following change:

“(5) The Department will not execute a Carryover Allocation Agreement with any Development Owner in Material Noncompliance on October 1, 2009, and the Commitment Notice for such Development shall be rescinded.”

Staff Response:

Although staff does agree the requested language change should be the correct language and process, staff believes this is a change that warrants additional comment. Staff will consider this language change for the 2010 QAP. No change is recommended at this time.

§49.9(b)(1) Carryover; 10% Test; Commencement of Substantial Construction (25)

Comment:

Commenter suggested the following clarifying language:

“(1) Evidence that the Development Owner ~~for all Developments must have~~ has purchased, transferred, leased or otherwise ~~have~~has ownership of, the Development Site.”

Staff Response:

Staff agrees with the clarifying language and recommends the change as requested.

§49.14(b)(4) Carryover; 10% Test; Commencement of Substantial Construction (52, 57)

Comment:

Comment was made that in order to meet the 10% test the developer must provide evidence of having commenced and continued substantial construction. Commenter goes on to say that a developer has been able to obtain an extension of the Commencement of Substantial Construction Deadline if needed. Although under the proposed QAP the 10% test is due 11 months after the Carryover Agreement, and if meeting the commencement of substantial construction deadline is part and parcel of the 10% test then the commencement of substantial construction deadline can only be extended until December 31 at the very most. This is because the 10% test must be met within 12 months after the carryover allocation agreement under the Internal Revenue Code. Commenter suggests deleting §49.14(b)(4) and reference to the §49.14(b)(5). (52)

Staff Response:

The Department has the ability to have requirements that are more restrictive than the federal requirements. Staff believes the deadlines stated in the 2008 QAP are more realistic and safer for developments as a whole and keep the focus on producing affordable units as quickly as possible. In an effort to implement the changes allowed in H.R 3221, staff is proposing that the 10% Test be met in accordance with the legislation. Staff believes it is prudent for the Department to require the commencement of substantial construction be met at the time of 10% Test to help ensure the Development can be completed by the placed in service deadline.

§49.9(i)(b)(5) Carryover; 10% Test; Commencement of Substantial Construction

Staff recommends deleting subparagraph (5) of this subsection because staff earlier recommended deleting the bonus points in Selection that are referenced in the subparagraph.

Comment:

Comment was made regarding the definition of commencement of substantial construction. which is described in Chapter 60, the Compliance Rules. (57)

Staff Response:

This comment will be included with the comment for the Compliance Rules Chapter 60. The Compliance Rules will be presented to the Board in final form at the January Board meeting.

§49.17 Appeals Process and Amendment of Application Subsequent to Allocation by Board (49)

Comment:

Comment was received that there should be more flexibility from the Department in regards to amendments. Comment goes on to suggest that due to current financial circumstances if the Department is not more flexible in the amendment process many 9% tax credit allocations will fail to be syndicated by

investors. Suggestion was made to alter the definition as follows; “The board’s policy is that an amendment should be generally viewed favorably unless the amendment proposes removing a significant threshold criteria item or proposes altering a selection criteria item that would have decreased the number of points to a level that would have resulted in the application not receiving an allocation.” (49)

Staff Response:

Staff believes that the Board has and uses the discretion to be flexible in regards to amendments. Staff commits to revisit the amendment policy previously approved by the Board and work with the development community to amend the policy if necessary. No change to the QAP is recommended.

§49.17(d) Appeals Process and Amendment of Application Subsequent to Allocation by Board (25)

Comment:

Comment was received requesting the Department add language to the QAP as follows:

“(9) The Department may promulgate policies or procedures for the administration of amendment requests hereunder.”

Staff Response:

The Department currently has an amendment policy that is in accordance with the Department’s governing statute and the QAP. Staff does not believe this additional language is necessary at this time. No change is recommended.

§49.17(e) Housing Tax Credit and Ownership Transfers (49)

Comment:

Comment asked for clarification for the transfer of ownership. Comment states that the rule implies that transfers to an affiliated entity do not require agency approval, and furthermore asks that the Department allow transfers prior to issuance of 8609s due to changes made at time of partnership closing. The commenter suggests that “other than an Affiliate of the Development Owner...” be struck through in section (e). Also that in section 49.17(e)(1) add the language as follows; Transfers (other than to an Affiliate) be added. (49)

Staff Response:

Staff recommends the following change:

“(e) A Development Owner may not transfer an allocation of Housing Tax Credits or ownership of a Development supported with an allocation of Housing Tax Credits to any Person ~~other than including~~ an Affiliate of the Development Owner unless the Development Owner obtains the Executive Director’s prior, written approval of the transfer...”

“(1) Transfers (other than an Affiliate included in the ownership structure) will not be approved prior to the issuance of IRS Forms 8609...”

	2009 Rule Cycle Proposed Rules: (INCLUDES Public Hearing Testimony, Emails, & letters received; DOES NOT INCLUDE Staff Comments)
Number	COMMENTER
15	Kathy Tyler, Housing Services Director, Motivation Education & Training, Inc.
16	Cyrus Reed, PhD, Conservation Director, Lone Star Chapter of Sierra Club
17	Dennis Hoover
18	Matt Hull, Executive Director, Habitat Texas
19	Albert Joseph, Ysleta del Sur Pueblo
20	Apolonio (Nono) Flores, Flores Residential, LC
21	Bryan C. Schuler, Travois, Inc.
22	Charles Holcomb
23	Charlie Price, Housing Program Manager, City of Fort Worth
24	Christopher C Finlay, President/CEO, Finlay Development, LLC
25	Cynthia L. Bast, Partner, Locke Lord Bissell & Liddell LLP
26	David Mark Koogler, President, Mark-Dana Corporation
27	Debra Guerrero, NRP Group
28	Elizabeth Julian, Inclusive Communities Project
29	Fei Dai, Catellus Development Group
30	J. Fernando Lopez, Interim Executive Director, Pharr Housing Authority
31	Jack D. Burlison, Regional Manager, Government Relations, International Code Council - Texas Field Office
32	Jennifer Daughtrey Hicks, Development Project Manager, Foundation Communities
33	Jim Johnson, Development Director, Downtown Fort Worth, Inc.
34	Joe Saenz, McAllen Housing Authority
35	Joseph W. Bishop, Capital Consultants
36	Joy Horack Brown, executive director, New Hope Housing
37	Linda Bryant, Executive Director, TEXAS HOUSING ASSOCIATION
38	Mary Lawler, Executive Director, Avenue Community Development Corporation
39	Mary Luévano, Policy and Legislative Affairs Director, Global Green USA
40	Matt Whelan, Sr. VP, Catellus Development Group

41	Michael A. Hartman, Roundstone Development, LLC
42	Ramon Guajardo, consultant Fort Worth Housing Authority
43	Representative Lon Burnam
44	Richard Franco, CEO, Corpus Christi Housing Authority
45	Richard Herrington, Jr., Executive Director, Housing Authority of the City of Texarkana
46	Robert H. (Bob) Sherman, SBG Development Services, L.P.
47	Robert Waggoner, SAHA
48	Ronnie Linden, Port Arthur Housing Authority
49	Scott Marks, Coats/Rose
50	Senator Chris Harris
51	Steve Shorts and Richard Herrington, NAHRO
52	Tamea A. Dula, Esq., Coats Rose
53	V.A. Stephens, Global Green USA
54	Walter Moreau, executive director of Foundation Communities
55	Esiquio (Zeke) Luna, HA of the City of Brownsville
56	Demetrio Jimenez, Tropicana Properties
57	Bobby Bowling
58	Frank Fernandez, Executive Director, Community Partnership for the Homeless
59	Eric Christophe, EFC Builders Ltd. Co.
60	Sarah Andre, S2A Development Consulting
61	Barry Kahn
62	Jill Moody, Gonzalez Newell Bender, Inc. Architects
63	Dennis Barnes
64	Jack Drake, Greenspoint
65	Doak Brown, Campbell & Riggs
66	Sarah Anderson, S. Anderson Consulting
67	Mike Sugrue, TAAHP
68	Gilbert M. Piette, Housing and Community Services, Inc.

Scoring Breakdown in Descending Order of Points for the Draft 2008 QAP

QAP Para. #	Topic	Total Points	Notes	Legislative Citation - Compare to QAP
1	Financial Feasibility	28	N/A	2306.6710(b)(1)(A)
2	QCP from Neighborhood Organizations	24 Max	Range of +24 to 0	2306.6710(b)(1)(B); 2306.6725(a)(2)
3	Income Levels of the Tenants	22	N/A	2306.6710(b)(1)(C) and (e); 2306.111(g)(3)(B) and (E); 42(m)(1)(B)(ii)(I)
4	Size and Quality of the Units	20	N/A	2306.6710(b)(1)(D); 42(m)(1)(C)(iii)
5	Commit. of Funds by LPS	18	N/A	2306.6710(b)(1)(E)
6	State Rep. or Senator Support/Opposition	14 Max	Range of +14 to -14	2306.6710(b)(1)(F) and (g); 2306.6725(a)(2)
7	Rent Levels of the Units	12	N/A	2306.6710(b)(1)(G)
8	Cost Per Square Foot	10	N/A	2306.6710(b)(1)(H); 42(m)(1)(C)(iii)
9	Services Provided to Tenants	8	N/A	2306.6710(b)(1)(I); Rider 7; 2306.254; 2306.6725(a)(1)
10	Declared Disaster Areas	7	N/A	2306.6710(b)(1)
11	Rehabilitation (which includes reconstruction) or Adaptive Reuse	6	N/A	N/A
12	Housing Needs Characteristics	6	N/A	42(m)(1)(C)(ii)
13	Revitalization or Historic Preservation	6	N/A	42(m)(1)(C)(iii)
14	Pre-Application Participation	6	N/A	2306.6704
15	Economic Development Initiative	4	N/A	2306.127
16	Development Location	4	N/A	2306.6725(a)(4) and (b)(2); 2306.127; Rider 6 42(m)(1)(C)(i) and (vii)
17	Green Building Initiatives	6	N/A	2306.6725(a)(4); 42(m)(1)(C)(i)
18	Community Input Other Than QCP	6	Range of 6 to 0	N/A
19	Census Tracts with No Other Existing Developments Supported by Tax Credits	6	N/A	2306.6725(b)(2)
20	Special Housing Needs Populations	4	N/A	42(m)(1)(C)(v)
21	Length of Affordability Period	4	N/A	2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); 42(m)(1)(B)(ii)(II)
22	Site Characteristics	4	Up to 4 points for positive amenities and -6 points for negative features.	N/A
23	Development Size	3	N/A	N/A
24	Location in QCT with Revitalization	1	N/A	42(m)(1)(B)(ii)(III)
25	Sponsor Characteristics	2	N/A	42(m)(1)(C)(iv)
26	Right of First Refusal	1	N/A	2306.6725(b); 42(m)(1)(C)(viii)
27	Leveraging of Private, State and Federal Funds	1	N/A	2306.6725(a)(3)
28	Third Party Commit. Outside of QCT	1	N/A	2306.6710(e)(1)
29	Penalties	N/A	Range	2306.6710(b)(2)

Maximum Number of Points Possible: 234



Multifamily Finance Production Division

2009 Housing Tax Credit Program

Qualified Allocation Plan and Rules

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Table with 3 columns: Section Number, Description, and Status. Includes sections like §49.1 PURPOSE AND AUTHORITY, §49.2 COORDINATION WITH RURAL AGENCIES, etc.

§49.1. Purpose and Authority; Program Statement; Allocation Goals.

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(a) Purpose and Authority. The rules in this chapter apply to the allocation by the Texas Department of Housing and Community Affairs (the Department) of Housing Tax Credits authorized by applicable federal income tax laws. The Internal Revenue Code of 1986, §42, (the "Code") as amended, provides for credits against federal income taxes for owners of qualified low-income rental housing Developments. That section provides for the allocation of the available tax credit amount by state housing credit agencies. Pursuant to Chapter 2306, Subchapter DD, of the Texas Government Code, the Department is authorized to make Housing Credit Allocations for the State of Texas. As required by the Internal Revenue Code, §42(m)(1), the Department developed this Qualified Allocation Plan (QAP) which is set forth in §§49.1 - 49.23 of this chapter. Sections in this chapter establish procedures for applying for and obtaining an allocation of Housing Tax Credits, along with ensuring that the proper Threshold Criteria, Selection Criteria, priorities and preferences are followed in making such allocations.

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(b) Program Statement. The Department shall administer the program to encourage the development and preservation of appropriate types of rental housing for households that have difficulty finding suitable, accessible, affordable rental housing in the private marketplace; maximize the number of suitable, accessible, affordable residential rental units added to the state's housing supply; prevent losses for any reason to the state's supply of suitable, accessible, affordable residential rental units by enabling the Rehabilitation of rental housing or by providing other preventive financial support; and provide for the participation of for-profit organizations and provide for and encourage the participation of nonprofit organizations in the acquisition, development and operation of accessible affordable housing developments in rural and urban communities. (§2306.6701)

(c) Allocation Goals. It shall be the goal of this Department and the Board, through these provisions, to encourage diversity through broad geographic allocation of tax credits within the state, and in accordance with the regional allocation formula; to promote maximum utilization of the available tax credit amount; and to allocate credits among as many different entities as practicable without diminishing the quality of the housing that is being built. The processes and criteria utilized to realize this goal are described in §49.7, §49.8 and §49.9 of this chapter, without in any way limiting the effect or applicability of all other provisions of this title. (General Appropriation Act, Article VII, Rider 8(e))

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§49.2. Coordination with Rural Agencies.

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To ensure maximum utilization and optimum geographic distribution of tax credits in rural areas, and to provide for sharing of information, efficient procedures, and fulfillment of Development requirements in rural areas, the Department will coordinate on existing, Rehabilitation, and New Construction housing Developments financed by TRDO-USDA; and will administer the Rural Regional Allocation with the Texas Office of Rural Community Affairs (ORCA). Through participation in hearings and meetings, ORCA will assist in developing all Threshold, Selection and Underwriting Criteria applied to Applications eligible for the Rural Regional Allocation. The Criteria will be approved by that Agency. To ensure that the Rural Regional Allocation receives a sufficient volume of eligible Applications, the Department and ORCA shall jointly implement outreach, training, and rural area capacity building efforts. (§2306.6723)

§49.3. Definitions.

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The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Adaptive Reuse--The renovation or rehabilitation of an existing non-residential building or structure (e.g., school, warehouse, office, hospital, etc.), including physical alterations that modify the building's previous or original intended use. If any Units are built outside the original building footprint or foundation, the Development will be considered New Construction and not Adaptive Reuse. A clubhouse or non-residential building may be outside the original footprint or foundation and still be considered Adaptive Reuse. The number of floors or stories may be increased in a building as long as the total number of Units for the Development does not exceed 80 Units in a Rural Area or 252 Units in an Urban Area.

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(2) **Administrative Deficiencies**--The absence of information or inconsistent information in the Application as is required under ~~§49.5, §49.6, §49.8 and §49.9~~ of this chapter that can be corrected by an additional submission to the Department, unless determined by the Department as unable to be corrected.

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(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, Controls, is Controlled by, or is under common Control with any other Person, and specifically shall include parents or subsidiaries. Affiliates also include all General Partners, Special Limited Partners and Principals with an ownership interest unless the entity is an experienced Developer as described in ~~§49.9(h)(9)(D)~~ of this chapter.

(4) **Agreement and Election Statement**--A document in which the Development Owner elects, irrevocably, to fix the Applicable Percentage with respect to a building or buildings, as that in effect for the month in which the Department and the Development Owner enter into a binding agreement as to the housing credit dollar amount to be allocated to such building or buildings.

(5) **Applicable Fraction**--The fraction used to determine the Qualified Basis of the qualified low-income building, which is the smaller of the Unit fraction or the floor space fraction, all determined as provided in the Code, §42(c)(1).

(6) **Applicable Percentage**--The percentage used to determine the amount of the Housing Tax Credit for any Development (New Construction, Reconstruction, and/or Rehabilitation), as defined more fully in the Code, §42(b).

(A) For purposes of the Application, the Applicable Percentage will be projected at:

(i) the greater of 9% or the current applicable percentage for 70% present value credits for new buildings, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department; or

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(ii) 15 basis points over the current applicable percentage for 30% present value credits associated with acquisition and with qualified Tax-Exempt Bond Developments, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department.

(B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based in order of priority on:

(i) The percentage indicated in the Agreement and Election Statement, if executed; or

(ii) The actual applicable percentage as determined by the Code, §42(b), if all or part of the Development has been placed in service and for any buildings not placed in service the percentage will be the actual percentage as determined by the Code, §42(b) for the most current month; or

(iii) The percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

(7) **Applicant**--Any Person or Affiliate of a Person who files a Pre-Application or an Application with the Department requesting a Housing Credit Allocation. (§2306.6702)

(8) **Application**--An application, in the form prescribed by the Department, filed with the Department by an Applicant, including any exhibits or other supporting material. (§2306.6702)

(9) **Application Acceptance Period**--That period of time during which Applications for a Housing Credit Allocation from the State Housing Credit Ceiling may be submitted to the Department, December ~~8, 2008~~ through February ~~27, 2009~~, as more fully described in ~~§§49.8 - 49.12~~ of this chapter. For Tax-Exempt Bond Developments this period is the date the Volumes 1 and 2 are submitted or the date the reservation is issued by the Texas Bond Review Board, whichever is earlier.

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(10) **Application Round**--The period beginning on the date the Department begins accepting Applications and continuing until all available Housing Tax Credits are allocated, but not extending past the last day of the calendar year. (§2306.6702). For purposes of this section, this definition applies to Housing Tax Credits allocated with the State Housing Credit Ceiling.

(11) **Application Submission Procedures Manual**--The manual produced and amended from time to time by the Department which sets forth procedures, forms, and guidelines for the filing of Pre-Applications and Applications for Housing Tax Credits.

(12) **Area**--

(A) The geographic area contained within the boundaries of:

(i) An incorporated place; or

(ii) Census Designated Place (CDP) as established by the U.S. Census Bureau for the most recent Decennial Census.

(B) For Developments located outside the boundaries of an incorporated place or CDP, the Development shall take up the Area characteristics of the incorporated place or CDP whose boundary is nearest to the Development site.

(13) **Area Median Gross Income (AMGI)**--Area median gross household income, as determined for all purposes under and in accordance with the requirements of the Code, §42. ~~(14) **At-Risk Development**--A Development that: (§2306.6702)~~

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(A) has received the benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive under at least one of the following federal laws, as applicable:

(i) Sections 221(d)(3) and (5), National Housing Act (12 U.S.C. §17151);

(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;

(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;

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

(viii) Section 42, of the Internal Revenue Code of 1986 (26 U.S.C. §42); and

(B) Is subject to the following conditions:

(i) The stipulation to maintain affordability in the contract granting the subsidy is nearing expiration (expiration will occur within two calendar years of July 31 of the year the Application is submitted); or

(ii) The federally insured mortgage on the Development is eligible for prepayment or is nearing the end of its mortgage term (the term will end within two calendar years of July 31 of the year the Application is submitted).

(C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in subparagraph (A) of this paragraph will not qualify as an At-Risk Development unless the redevelopment will include the same site.

(D) Developments must be at risk of losing all affordability from all of the financial benefits available on the Development, provided such benefit constitutes a subsidy, described in subparagraph (A) of this paragraph on the site. However, Developments that have an opportunity to retain or renew any of the financial benefit described in subparagraph (A) of this paragraph must retain or renew all possible financial benefit to qualify as an At-Risk Development.

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

(15) **Bedroom**--A portion of a Unit which is no less than 100 square feet; has no width or length less than 8 feet; is self contained with a door (or the unit is a "loft" design with an open sleeping area of 100 square feet or more); has at least one window that provides exterior access; and has at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to accommodate 5 feet of hanging space. A den, study or other similar space that could reasonably function as a bedroom and meets this definition is considered a bedroom.

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(16) **Board**--The governing Board of the Department. (§2306.004)

(17) **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 Treasury Regulations, §1.42-6.

(18) **Carryover Allocation Document**--A document issued by the Department, and executed by the Development Owner, pursuant to §49.14(a) of this chapter.

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(19) **Carryover Allocation Procedures Manual**--The manual produced and amended from time to time by the Department which sets forth procedures, forms, and guidelines for filing Carryover Allocation requests.

(20) **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 United States Department of the Treasury or the Internal Revenue Service.

(21) Colonia--A geographic Area that is located in a county some part of which is within 150 miles of the international border of this state, that consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood, and that (§2306.581):

(A) Has a majority population composed of individuals and families of low-income and very low-income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed Area under §17.921, Water Code; or

(B) Has the physical and economic characteristics of a colonia, as determined by the Department.

(22) Commitment Notice--A notice issued by the Department to a Development Owner pursuant to §49.13 of this chapter and also referred to as the "commitment."

(23) Community Revitalization Plan--A published document under any name, approved and adopted by the local Governing Body by ordinance, resolution, or vote that targets specific geographic areas for revitalization and development of residential developments.

(24) Competitive Housing Tax Credits--Tax credits available from the State Housing Credit Ceiling.

(25) Compliance Period--With respect to a building, the period of 15 taxable years, beginning with the first taxable year of the Credit Period pursuant to the Code, §42(i)(1).

(26) Control--(including the terms "Controlling," "Controlled by", and/or "under common Control with") the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Person, whether through the ownership of voting securities, by contract or otherwise, including specifically ownership of more than 50% of the General Partner interest in a limited partnership, or designation as a managing member of a limited liability company.

(27) Cost Certification Procedures Manual--The manual produced, and amended from time to time, by the Department which sets forth procedures, forms, and guidelines for filing requests for IRS Form(s) 8609 for Developments placed in service under the Housing Tax Credit Program.

(28) Credit Period--With respect to a building within a Development, the period of ten taxable years beginning with the taxable year the building is placed in service or, at the election of the Development Owner, the succeeding taxable year, as more fully defined in the Code, §42(f)(1).

(29) Department--The Texas Department of Housing and Community Affairs, an agency of the State of Texas, established by Chapter 2306, Texas Government Code, including Department employees and/or the Board. (§2306.004)

(30) Determination Notice--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which states that the Development may be eligible to claim Housing Tax Credits without receiving an allocation of Housing Tax Credits from the State Housing Credit Ceiling because it satisfies the requirements of this QAP; sets forth conditions which must be met by the Development before the Department will issue the IRS Form(s) 8609 to the Development Owner; and specifies the Department's determination as to the amount of tax credits necessary for the financial feasibility of the Development and its viability as a rent restricted Development throughout the extended use period. (§42(m)(1)(D))

(31) Developer--Any Person entering into a contract with the Development Owner to provide development services with respect to the Development and receiving a fee for such services (which fee cannot exceed the limits identified in §49.9(d)(6)(B) of this chapter) and any other Person receiving any portion of such fee, whether by subcontract or otherwise.

(32) Development--A proposed qualified and/or approved low-income housing project, as defined by the Code, §42(g), for Adaptive Reuse, New Construction, reconstruction, or Rehabilitation, that consists of one or more buildings containing multiple Units, and that, if the Development shall consist of multiple buildings, is financed under a common plan and is owned by the same Person for federal tax purposes, and the buildings of which are either:

(A) Located on a single site or contiguous site; or

(B) Located on scattered sites and contain only rent-restricted units. (§2306.6702)

(33) Development Consultant--Any Person (with or without ownership interest in the Development) who provides professional services relating to the filing of an Application, Carryover Allocation Document, and/or cost certification documents.

(34) Development Funding--Means:

(A) a loan or grant; or

(B) an in-kind contribution, including a donation of real property, a fee waiver for a building permit or for water or sewer service, or a similar contribution that:

(i) provides an economic benefit; and

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(ii) results in a quantifiable cost reduction for the applicable Development. (§2306.004(4-a))

(35) **Development 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. (§2306.6702)

(36) **Development Site**--The area, or if scattered site areas, for which the Development is proposed to be located and which is to be under the Applicant's control pursuant to §49.9(h)(7)(A) of this chapter.

(37) **Development Team**--All Persons or Affiliates thereof that play a role in the Development, construction, Rehabilitation, management and/or continuing operation of the subject Property, which will include any Development Consultant and Guarantor.

(38) **Disaster Area**--An area that has been declared as a disaster pursuant to §418.014 of the Texas Government Code.

(39) **Economically Distressed Area**--Consistent with §17.921 of Texas Water Code, an Area in which:

(A) Water supply or sewer services are inadequate to meet minimal needs of residential users as defined by Texas Water Development Board rules;

(B) Financial resources are inadequate to provide water supply or sewer services that will satisfy those needs; and

(C) An established residential subdivision was located on June 1, 1989, as determined by the Texas Water Development Board.

(40) **Eligible Basis**--With respect to a building within a Development, the building's Eligible Basis as defined in the Code, §42.

(41) **Executive Award and Review Advisory Committee ("The Committee")**--A Departmental committee as set forth in Chapter 2306 of the Texas Government Code. (§2306.1112)

(42) **Existing Residential Development**--Any Development Site which contains 4 or more existing residential Units at the time the Volume I is submitted to the Department.

(43) **Extended Housing Commitment**--An agreement between the Department, the Development Owner and all successors in interest to the Development Owner concerning the extended housing use of buildings within the Development throughout the extended use period as provided in the Code, §42(h)(6). The Extended Housing Commitment with respect to a Development is expressed in the LURA applicable to the Development.

(44) **General Contractor**--One who contracts for the construction or Rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. This party may also be referred to as the "contractor."

(45) **General Partner**--That partner, or collective of partners, identified as the general partner of the partnership that is the Development Owner and that has general liability for the partnership. In addition, unless the context shall clearly indicate the contrary, if the Development Owner in question is a limited liability company, the term "General Partner" shall also mean the managing member or other party with management responsibility for the limited liability company.

(46) **Governing Body**--An elected city, county or tribal entity that is responsible for the creation, implementation and/or enforcement of local rules and laws.

(47) **Governmental Entity**--Includes federal or state agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts, tribal governments and other similar entities.

(48) **Governmental Instrumentality**--A legal entity such as a housing authority of a city or county, a housing finance corporation, or a municipal utility, or a tribal designated housing entity, which is created by a local political subdivision under statutory authority and which instrumentality is authorized to transact business for the political subdivision.

(49) **Grant**--Financial assistance that is awarded in the form of money to a housing sponsor or Development for a specific purpose and that is not required to be repaid. A Grant includes a forgivable loan. (§2306.004)

(50) **Guarantor**--Any Person that provides, or is anticipated to provide, a guaranty for the equity or debt financing for the Development.

(51) **High Opportunity Area**--an area that includes:

(A) existing public transportation or major bus transfer centers and/or regional or local commuter rail transportation stations that are accessible to all residents including Persons with Disabilities; or

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(B) a census tract which has an AMGI that is higher than the AMGI of the county or place in which the census tract is located; or

(C) a school attendance zone that has an academic rating of "Exemplary" or "Recognized" rating (as determined by the Texas Education Agency) as of the first day of the Application Submission Acceptance Period; or

(D) a census tract that has no greater than 10% poverty population according to the most recent census data (these census tracts are designated in the 2009 Housing Tax Credit Site Demographic Characteristics Report).

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(52) **Historically Underutilized Businesses (HUB)**--Any entity defined as a historically underutilized business with its principal place of business in the State of Texas in accordance with Chapter 2161, Texas Government Code.

(53) **Housing Credit Agency**--A Governmental Entity charged with the responsibility of allocating Housing Tax Credits pursuant to the Code, §42. For the purposes of this chapter, the Department is the sole "Housing Credit Agency" of the State of Texas.

(54) **Housing Credit Allocation**--An allocation by the Department to a Development Owner for a specific Application of Housing Tax Credits in accordance with the provisions of this chapter.

(55) **Housing Credit Allocation Amount**--With respect to a Development or a building within a Development, that amount the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the affordability period and which it allocates to the Development.

(56) **Housing Tax Credit ("tax credits")**--A tax credit allocated, or for which a Development may qualify, under the Housing Tax Credit Program, pursuant to the Code, §42. (§2306.6702)

(57) **HUD**--The United States Department of Housing and Urban Development, or its successor.

(58) **Ineligible Building Types**--Those Developments which are ineligible, pursuant to this QAP, for funding under the Housing Tax Credit Program, as follows:

(A) Hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities which are usually classified as transient housing (other than certain specific types of transitional housing for the homeless and Single Room Occupancy units, as provided in the Code, §42(i)(3)(B)(iii) and (iv)) are not eligible. However, structures formerly used as hospitals, nursing homes or dormitories are eligible for Housing Tax Credits if the Development involves the conversion of the building to a non-transient multifamily residential Development. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living.

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(B) Any Qualified Elderly Development or age restricted buildings in Intergenerational Housing Developments of two stories or more that does not include elevator service for any Units or living space above the first floor.

(C) Any Qualified Elderly Development or age restricted buildings in Intergenerational Housing Developments with any Units having more than two bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, and/or security officer. These employee Units must be specifically designated as such.

(D) Any Development with building(s) with four or more stories that does not include an elevator.

(E) Any Qualified Elderly Development or age restricted buildings in Intergenerational Housing Developments proposing more than 70% two-bedroom Units.

(F) Any Development that violates the Integrated Housing Rule of the Department, §1.15 of this title.

(G) Any Development located in an Urban Area involving any New Construction of additional Units (other than a Qualified Elderly Development, a Development composed entirely of single family dwellings, and certain specific types of transitional housing for the homeless and Single Room Occupancy units, as provided in the Code, §42(i)(3)(B)(iii) and (iv)) in which any of the designs in clauses (i) - (iv) of this subparagraph are proposed. For Applications involving a combination of single family detached dwellings and multifamily dwellings, the percentages in this subparagraph do not apply to the single family detached dwellings. For Intergenerational Housing Applications, the percentages in this subparagraph do not apply to buildings that are restricted by the age requirements of a Qualified Elderly Development. An Application may reflect a total of Units for a given bedroom size greater than the percentages in clauses (i) - (iv) of this subparagraph to the extent that the increase is only to reach the next highest number divisible by four.

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(i) More than 30% of the total Units are one bedroom Units; or

- (ii) More than 55% of the total Units are two bedroom Units; or
- (iii) More than 40% of the total Units are three bedroom Units; or
- (iv) More than 5% of the total Units in the Development with four or more bedrooms.

(H) Any Development that includes age restricted units that are not consistent with the Intergenerational Housing definition and policy or the definition of a Qualified Elderly Development.

(I) Any Development that contains residential Units that violates the general public use requirement under Treasury Regulation §1.42-9.

(59) Intergenerational Housing--Housing that includes specific Units that are restricted to the age requirements of a Qualified Elderly Development and specific Units that are not age restricted in the same Development that:

- (A) Have separate and specific buildings exclusively for the age restricted Units;
- (B) Have specific leasing offices and leasing personnel for the age restricted Units;
- (C) Have separate and specific entrances, and other appropriate security measures for the age restricted Units;
- (D) Provide shared social service programs that encourage intergenerational activities but also provide separate amenities for each age group;
- (E) Share the same Development Site;
- (F) Are developed and financed under a common plan and owned by the same Person for federal tax purposes; and
- (G) Meet the requirements of the federal Fair Housing Act.

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(60) IRS--The Internal Revenue Service, or its successor.

(61) Land Use Restriction Agreement (LURA)--An agreement between the Department and the Development Owner which is binding upon the Development Owner's successors in interest, that encumbers the Development with respect to the requirements of this chapter, Chapter 2306, Texas Government Code, and the requirements of the Code, §42. (§2306.6702)

(62) Local Political Subdivision--A county or municipality (city or tribal reservation) in Texas. For purposes of §49.9(i)(5) of this chapter, a local political subdivision may act through a Government Instrumentality such as a housing authority, housing finance corporation, or municipal utility even if the Government Instrumentality's creating statute states that the entity is not itself a "political subdivision."

(63) Low-Income Unit--sometimes referred to as a tax credit Unit, that is a Unit that is income and rent restricted at no greater than 60% of AMGI and is included in the Applicable Fraction for the Housing Tax Credit program.

(64) Material Noncompliance--As defined in Chapter 60, Subchapter A of this title.

(65) Minority Owned Business--A business entity at least 51% of which is owned by members of a minority group or, in the case of a corporation, at least 51% of the shares of which are owned by members of a minority group, and that is managed and Controlled by members of a minority group in its daily operations. Minority group includes women, African Americans, American Indians, Asian Americans, and Mexican Americans and other Americans of Hispanic origin. (§2306.6734)

(66) Neighborhood Organization--An organization that is composed of persons living near one another within the organization's defined boundaries for the neighborhood and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood. A neighborhood organization includes a homeowners' association or a property owners' association. (§2306.001(23-a))

(67) Net Rentable Area (NRA)--The unit space that is available exclusively to the tenant and is typically heated and cooled by a mechanical HVAC system. NRA is measured to the outside of the studs of a unit or to the middle of walls in common with other units. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas.

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(68) New Construction--Any construction of a Development or a portion of a Development that does not meet the definition of Rehabilitation (which includes Reconstruction).

(69) ORCA--Office of Rural Community Affairs, as established by Chapter 487 of Texas Government Code.

(70) 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

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include any group of Persons acting in concert toward a common goal, including the individual members of the group.

(71) **Persons with Disabilities**--A person who:

(A) Has a physical, mental or emotional impairment that:

(i) Is expected to be of a long, continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that the disability could be improved by more suitable housing

conditions;

(B) Has a developmental disability, as defined in the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. §15002); or

(C) Has a disability, as defined in 24 CFR §5.403.

(72) **Persons with Special Needs**--Persons with alcohol and/or drug addictions, Colonia residents, Persons with Disabilities, victims of domestic violence, persons with HIV/AIDS, homeless populations and migrant farm workers.

(73) **Pre-Application**--A preliminary application, in a form prescribed by the Department, filed with the Department by an Applicant prior to submission of the Application, including any required exhibits or other supporting material, as more fully described in this chapter. (§2306.6704)

(74) **Pre-Application Acceptance Period**--That period of time during which Competitive Housing Tax Credit Pre-Applications for a Housing Credit Allocation from the State Housing Credit Ceiling may be submitted to the Department.

(75) **Principal**--The term Principal is defined as Persons that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) Partnerships, Principals include all General Partners, Special Limited Partners and Principals with ownership interest;

(B) Corporations, Principals include any officer authorized by the board of directors to act on behalf of the corporation, including the president, vice president, secretary, treasurer and all other executive officers, and each stock holder having a 10% or more interest in the corporation; and

(C) Limited liability companies, Principals include all managing members, members having a 10% or more interest in the limited liability company or any officer authorized to act on behalf of the limited liability company.

(76) **Property**--The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built thereon in connection with the Application.

(77) **Qualified Allocation Plan (QAP)** This Plan as adopted.

(78) **Qualified Basis**--With respect to a building within a Development, the building's Eligible Basis multiplied by the Applicable Fraction, within the meaning of the Code, §42(c)(1).

(79) **Qualified Census Tract**--Any census tract which is so designated by the Secretary of HUD in accordance with the Code, §42(d)(5)(C)(ii).

(80) **Qualified Elderly Development**--A Development which meets the requirements of the federal Fair Housing Act and:

(A) Is intended for, and solely occupied by, individuals 62 years of age or older; or

(B) Is intended and operated for occupancy by at least one individual 55 years of age or older per Unit, where at least 80% of the total housing Units are occupied by at least one individual who is 55 years of age or older; and where the Development Owner publishes and adheres to policies and procedures which demonstrate an intent by the owner and manager to provide housing for individuals 55 years of age or older. (See 42 U.S.C. §3607(b))

(81) **Qualified Market Analyst**--A real estate appraiser certified or licensed by the Texas Appraiser Licensing and Certification Board, a real estate consultant, or other professional currently active in the subject property's market area who demonstrates competency, expertise, and the ability to render a high quality written report. The individual's performance, experience, and educational background will provide the general basis for determining competency as a Market Analyst. Competency will be determined by the Department, in its sole discretion. The Qualified Market Analyst must be a Third Party.

(82) **Qualified Nonprofit Organization**--An organization that is described in the Code, §501(c)(3) or (4), as these cited provisions may be amended from time to time, that is exempt from federal income taxation

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(B) As defined in §2306.6702, Texas Government Code: A plan adopted by the board that provides the threshold, scoring, and underwriting criteria based on housing priorities of the Department that are appropriate to local conditions; provides a procedure for the Department, the Department's agent, or another private contractor of the Department to use in monitoring compliance with the qualified allocation plan and this subchapter; and consistent with §2306.6710(e), gives preference in Housing Tax Credit allocations to Developments that, as compared to the other Developments: ¶
(i) When practicable and feasible based on documented, committed, and available third-party funding sources, serve the lowest-income tenants per Housing Tax Credit; and ¶
(ii) Produce for the longest economically feasible period the greatest number of high quality units committed to remaining affordable to any tenants who are income-eligible under the low-income housing tax credit program.

under the Code, §501(a), that is not affiliated with or Controlled by a for profit organization, and includes as one of its exempt purposes the fostering of low-income housing within the meaning of the Code, §42(h)(5)(C). A Qualified Nonprofit Organization may select to compete in one or more of the Set-Asides, including, but not limited to, the nonprofit Set-Aside, the At-Risk Development Set-Aside and the TRDO-USDA Allocation. (§2306.6729)

(83) **Qualified Nonprofit Development**--A Development in which a Qualified Nonprofit Organization (directly or through a partnership or wholly-owned subsidiary):

(A) Holds a controlling interest in the Development proposed to be financed from the nonprofit allocation pool (§2306.6729); and

(B) Owns an interest in the Development and materially participates (within the meaning of the Code, §469(h), as it may be amended from time to time) in its development and operation throughout the Compliance Period, and otherwise meets the requirements of the Code, §42(h)(5). (§2306.6729)

(84) **Reference Manual**--That certain manual, and any amendments thereto, produced by the Department which sets forth reference material pertaining to the Housing Tax Credit Program.

(85) **Rehabilitation**--The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the reconstruction of a Development on the Development Site, but does not include Adaptive Reuse. Rehabilitation includes repairs necessary to correct the results of deferred maintenance, the replacement of principal fixtures and components, improvements to increase the efficient use of energy, and installation of security devices. Reconstruction, for these purposes, includes the demolition of one or more residential buildings in an Existing Residential Development and the re-construction of the Units on the Development Site. Developments proposing Adaptive Reuse or proposing to increase the total number of Units in the Existing Residential Development are not considered Rehabilitation or reconstruction.

(86) **Related Party**--As defined, (§2306.6702)

(A) The following individuals or entities:

(i) The brothers, sisters, spouse, ancestors, and descendants of a person within the third degree of consanguinity, as determined by Chapter 573, Texas Government Code;

(ii) A person and a corporation, if the person owns more than 50% of the outstanding stock of the corporation;

(iii) Two or more corporations that are connected through stock ownership with a common parent possessing more than 50% of:

(I) The total combined voting power of all classes of stock of each of the corporations that can vote;

(II) The total value of shares of all classes of stock of each of the corporations; or

(III) The total value of shares of all classes of stock of at least one of the corporations, excluding, in computing that voting power or value, stock owned directly by the other corporation;

(iv) A grantor and fiduciary of any trust;

(v) A fiduciary of one trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(vi) A fiduciary of a trust and a beneficiary of the trust;

(vii) A fiduciary of a trust and a corporation if more than 50% of the outstanding stock of the corporation is owned by or for:

(I) The trust; or

(II) A person who is a grantor of the trust.

(viii) A person or organization and an organization that is tax-exempt under the Code, §501(a), and that is controlled by that person or the person's family members or by that organization;

(ix) A corporation and a partnership or joint venture if the same persons own more than:

(I) 50% of the outstanding stock of the corporation; and

(II) 50% of the capital interest or the profits' interest in the partnership or joint venture.

(x) An S corporation and another S corporation if the same persons own more than 50% of the outstanding stock of each corporation;

(xi) An S corporation and a C corporation if the same persons own more than 50% of the outstanding stock of each corporation;

(xii) A partnership and a person or organization owning more than 50% of the capital interest or the profits' interest in that partnership; or

(xiii) Two partnerships, if the same person or organization owns more than 50% of the capital interests or profits' interests.

(B) Nothing in this definition is intended to constitute the Department's determination as to what relationship might cause entities to be considered "related" for various purposes under the Code.

(87) Residential Rental Development--For purposes of this definition, Residential Rental Development does not include: hotels, motels dormitories, fraternity or sorority houses, rooming houses, hospitals, nursing homes, sanitariums, rest homes, trailer parks and courts for use on a transient basis. Residential Rental Development means:

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(A) A property that meets specific requirements including occupancy of Low-Income Tenants during the affordability period when Units must be continually rented or available for rent;

(B) A building or structure, together with functionally related and subordinate facilities, containing one or more Units that are available to members of the general public; and

(C) A property that does not provide continual or frequent nursing, medical or psychiatric services.

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(88) Rules--The Department's Housing Tax Credit Program Qualified Allocation Plan and Rules as presented in this chapter.

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(89) Rural Area--An Area that is located (this definition is not the same as Rural Projects as defined in §520 of the Housing Act of 1949 for purposes of determining rural income as described in H.R 3221):

(A) Outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

(B) 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

(C) In an Area that is eligible for funding by Texas Rural Development Office or the United States Department of Agriculture (TRDO-USDA), other than an Area that is located in a municipality with a population of more than 50,000. (§2306.004)

(90) Rural Development--A Development or proposed Development that is located in a Rural Area, other than rural New Construction Developments with more than 80 Units.

(91) Selection Criteria--Criteria used to determine housing priorities of the State under the Housing Tax Credit Program as specifically defined in §49.9(i) of this chapter.

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(92) Set-Aside--A reservation of a portion of the available Housing Tax Credits under the State Housing Credit Ceiling to provide financial support for specific types of housing or geographic locations or serve specific types of Applications or Applicants as permitted by the Qualified Allocation Plan on a priority basis. (§2306.6702)

(93) Single Room Occupancy(SRO)--A single efficiency unit that contains sanitary facilities but may or may not include food preparation facilities and is intended for occupancy by one person.

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(94) Special Management Districts--Those districts named under Chapters 3801 to 3853, Texas Special District Local Laws Code, Subtitle C.

(95) State Housing Credit Ceiling--The limitation on the aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with the Code, §42(h)(3)(C) and/or additional ceiling provided by The Housing and Economic Recovery Act of 2008, H.R 3221.

(96) Student Eligibility--Per the Code, §42(i)(3)(D), A Unit shall not fail to be treated as a low-income Unit merely because it is occupied:

(A) By an individual who is:

(i) A student and receiving assistance under Title IV of the Social Security Act (42 U.S.C. §§601 et seq.), or

(ii) Enrolled in a job training program receiving assistance under the Job Training Partnership Act (29 USCS §§1501 et seq., generally; for full classification, consult USCS Tables volumes) or under other similar Federal, State, or local laws, or

(B) Entirely by full-time students if such students are:

(i) Single parents and their children and such parents and children are not dependents (as defined by the Code §152) of another individual, or

(ii) Married and file a joint return.

(97) Supportive Housing--Residential Rental Developments intended for occupancy by individuals or households transitioning from homelessness, at risk of homelessness, or in need of specialized and specific social services.

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(98) Tax-Exempt Bond Development--A Development requesting or having been awarded Housing Tax Credits and which receives a portion of its financing from the proceeds of tax-exempt bonds which are subject to the state volume cap as described in the Code, §42(h)(4), such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

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(99) Third Party--A Third Party is a Person who is not:
(A) An Applicant, General Partner, Developer, or General Contractor; or
(B) An Affiliate or a Related Party to the Applicant, General Partner, Developer or General Contractor; or

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(C) Receiving any portion of the fees from the Development.
(100) Threshold Criteria--Criteria used to determine whether the Development satisfies the minimum level of acceptability for consideration as specifically defined in §49.9(h) of this chapter. (§2306.6702)

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(101) Total Housing Development Cost--The total of all costs incurred or to be incurred by the Development Owner in acquiring, constructing, rehabilitating and financing a Development, as determined by the Department based on the information contained in the Application. Such costs include reserves and any expenses attributable to commercial areas. Costs associated with the sale or use of Housing Tax Credits to raise equity capital shall also be included in the Total Housing Development Cost. Such costs include but are not limited to syndication and partnership organization costs and fees, filing fees, broker commissions, related attorney and accounting fees, appraisal, engineering, and the environmental site assessment.

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(102) TRDO-USDA--Texas Rural Development Office (TRDO) of the United States Department of Agriculture (USDA) serving the State of Texas (also known as USDA Rural Development and formerly known as TxFmHA) or its successor.

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(103) Unit--Any residential rental unit 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 (such as a microwave), and sanitation. (§2306.6702)

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(104) Urban Area--The Area that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than an Area described in paragraph (89)(B) of this section or eligible for funding as described in paragraph (89)(C) of this section.

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(105) Urban Core--A compact and contiguous geographical area that is composed of adjacent block groups in which at least 90 percent of the land not in public ownership is zoned to accommodate a mix of medium or high density residential and commercial uses within the same zoning district.

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§49.4. State Housing Credit Ceiling.

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The Department shall determine the State Housing Credit Ceiling for each calendar year as provided in the Code, §42(h)(3)(C), using such information and guidance as may be made available by the Internal Revenue Service and/or The Housing and Economic Recovery Act of 2008, H.R. 3221 and H.R. 1424. The Department shall publish each such determination in the Texas Register within 30 days after the receipt of such information as is required for that purpose by the Internal Revenue Service. The aggregate amount of commitments of Housing Credit Allocations made by the Department during any calendar year shall not exceed the State Housing Credit Ceiling for such year as provided in the Code, §42. As permitted by the Code, §42(h)(4), Housing Credit Allocations made to Tax-Exempt Bond Developments are not included in the State Housing Credit Ceiling.

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§49.5. Ineligibility; Disqualification and Debarment; Certain Applicant and Development Standards; Representation by Former Board Member or Other Person; Due Diligence, Sworn Affidavit; Appeals and Administrative Deficiencies for Ineligibility, Disqualification and Debarment.

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(a) Ineligibility. An Application is ineligible if:
(1) The Applicant, Development Owner, Developer or Guarantor has been or is barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; or (§2306.6721(c)(2))

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(2) The Applicant, Development Owner, Developer or Guarantor has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen years preceding the Application deadline; or

(3) The Applicant, Development Owner, Developer or Guarantor at the time of Application is: subject to an enforcement or disciplinary action under state or federal securities law or by the NASD; is subject to a federal tax lien; or is the subject of an enforcement proceeding with any Governmental Entity; or

(4) The Applicant, Development Owner, Developer or Guarantor with any past due audits has not submitted those past due audits to the Department in a satisfactory format. A Person is not eligible to receive a commitment of Housing Tax Credits from the Department if any audit finding or questioned or disallowed cost is unresolved as of June 1 of each year, or for Tax-Exempt Bond Developments or other Applications not applying for Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) no later than 30 days after Volume III of the Application is submitted; or

(5) (§2306.6703(a)(1)). 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) A member of the Board; or

(B) The Executive Director, a Deputy Executive Director, the Director of Multifamily Finance Production, the Director of Portfolio Management and Compliance, the Director of Real Estate Analysis, or a manager over Housing Tax Credits employed by the Department.

(6) (§2306.6703(a)(2)). The Applicant proposes to replace in less than 15 years any private activity bond financing of the Development described by the Application, unless:

(A) The Applicant proposes to maintain for a period of 30 years or more 100% of the Development Units supported by Housing Tax Credits as rent-restricted and exclusively for occupancy by individuals and families earning not more than 50% of the Area Median Gross Income, adjusted for family size; and

(B) At least one-third of all the units in the Development are public housing units or Section 8 Development-based units; or,

(7) The Development is located in a municipality or in a valid Extra Territorial Jurisdiction (ETJ) of a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins (or for Tax-Exempt Bond Developments at the time the reservation is made by the Texas Bond Review Board) unless the Applicant: (§2306.6703(a)(4))

(A) Has obtained prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development; and

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(B) Has included in the Application a written statement of support from that Governing Body. This statement must reference this rule and authorize an allocation of Housing Tax Credits for the Development;

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(C) For purposes of this paragraph, evidence under subparagraphs (A) and (B) of this paragraph must be received by the Department no later than April 1, 2009 (or for Tax-Exempt Bond Developments no later than 14 days before the Board meeting where the credits will be considered) and may not be more than one year old from the date the Volume 1 is submitted to the Department; or

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(8) The Applicant proposes to construct a new Development proposing New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings) that is located one linear mile (measured by a straight line on a map) or less from a Development that: (§2306.6703(a)(3))

(A) Serves the same type of household as the new Development, regardless of whether the Development serves families, elderly individuals, or another type of household (Intergenerational Housing is not a type of household as it relates to this restriction); and

(B) Has received an allocation of Housing Tax Credits (including Tax-Exempt Bond Developments) 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 Volume I is submitted); and

(C) Has not been withdrawn or terminated from the Housing Tax Credit Program.

(D) An Application is not ineligible under this paragraph if:

(i) The Development is using federal HOPE VI funds received through the United States Department of Housing and Urban Development; locally approved funds received from a public improvement district or a tax increment financing district; funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.); or funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.); or

(ii) The Development is located in a county with a population of less than one million; or

(iii) The Development is located outside of a metropolitan statistical area; or

(iv) The Governing Body 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 subparagraphs (A) - (C) of this paragraph. For purposes of this clause, evidence of the Governing Body vote or evidence required by this subparagraph must be received by the Department no later than April 1, 2009 (or for Tax-Exempt Bond Developments no later than 14 days before the Board meeting where the credits will be committed) and may not be more than one year old.

(E) In determining when an existing Development received an allocation as it relates to the application of the three-year period, the Development will be considered from the date the Board took action on approving the allocation of tax credits. In dealing with ties between two or more Developments as it relates to this rule, refer to §49.9(j) of this chapter.

(9) A Development is proposed to be located adjacent to or within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined as stated in §243.002 of the Texas Government Code.

(10) A submitted Application has an entire Volume of the Application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review can not reasonably be performed by the Department, as determined by the Department. If an Application is determined ineligible pursuant to this subsection, the Application will be terminated without being processed as an Administrative Deficiency. To the extent that a review was able to be performed, specific reasons for the Department's determination of ineligibly will be included in the termination letter to the Applicant.

(b) **Disqualification and Debarment.** The Department will disqualify an Application, and/or debar a Person, if it is determined by the Department that any issues identified in the paragraphs of this subsection exist. The Department may debar a Person for one year from the date of debarment, or until the violation causing the debarment has been remedied, whichever term is longer, if the Department determines the facts warrant it. Causes for disqualification and debarment include: (§2306.6721)

(1) The provision of fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation in the Application or other information submitted to the Department at any stage of the evaluation or approval process; or

(2) The Applicant, Development Owner, Developer or Guarantor or anyone that has Controlling ownership interest in the Development Owner, Developer or Guarantor, or any Affiliate of such entities that is active in the ownership or Control of one or more other rent restricted rental housing properties in the state of Texas administered by the Department is in Material Noncompliance with the LURA (or any other document containing an Extended Housing Commitment) or the program rules in effect for such property as further described in Chapter 60 of this title on May 1, 2009 for Competitive Housing Tax Credit Applications or for Tax-Exempt Bond Development Applications or other Applications not applying for Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) no later than 30 days after Volume III of the Application is submitted (§2306.6721(c)(3)); or

(3) The Applicant, Development Owner, Developer, or any Guarantor, anyone that has Controlling ownership interest in the Development Owner, Developer or Guarantor, or any Affiliate of such entity that is active in the ownership or Control has been a Principal of any entity that failed to make all loan payments to the Department in accordance with the terms of the loan, as amended, or was otherwise in default with any provisions of any loans from the Department; or

(4) The Applicant or the Development Owner that is active in the ownership or Control of one or more tax credit properties in the state of Texas has failed to pay in full any fees or penalties within 30 days of when they were billed by the Department, as further described in §49.20 of this chapter; or

(5) An Applicant or a Related Party and any Person who is active in the construction, Rehabilitation, ownership, or Control of the proposed Development, including a General Partner or contractor,

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and a Principal or Affiliate of a General Partner or contractor, or an individual employed as a consultant, lobbyist or attorney by an Applicant or a Related Party, communicates with any Board member during the period of time beginning on the date Applications are filed in an Application Round and ending on the date the Board makes a final decision with respect to the approval of any Application in that Application Round, unless the communication takes place at any board meeting or public hearing held with respect to that Application but not during a recess or other non-record portion of the meeting or hearing. Communication with Department staff must be in accordance with §49.9(b) of this chapter; violation of the communication restrictions of §49.9(b) is also a basis for disqualification and/or debarment. (§2306.1113)

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(6) It is determined by the Department's General Counsel that there is evidence that establishes probable cause to believe that an Applicant, Development Owner, Developer, or any of their employees or agents has violated a state revolving door or other standard of conduct or conflict of interest statute, including §2306.6733, Texas Government Code, or a section of Chapter 572, Texas Government Code, in making, advancing, or supporting the Application.

(7) Applicants may be ineligible as further described in §49.5 of this chapter.

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(8) The Applicant, Development Owner, Developer, Guarantor, or any Affiliate of such entity whose previous funding contracts or commitments have been partially or fully deobligated due to a failure to meet contractual obligations during the 12 months prior to the submission of the applications.

(9) The Applicant, Development Owner, Developer, Guarantor, or any Affiliate of such entity whose pre-development award from the Department has not been repaid for the Development at the time of Carryover Allocation or Bond closing.

(c) **Certain Applicant and Development Standards.** Notwithstanding any other provision of this chapter, the Department may not allocate tax credits to a Development proposed by an Applicant if the Department determines that: (§2306.223)

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(1) The Development is not necessary to provide needed decent, safe, and sanitary housing at rental prices that individuals or families of low and very low-income or families of moderate income can afford;

(2) The Development Owner undertaking the proposed Development will not supply well-planned and well-designed housing for individuals or families of low and very low-income or families of moderate income;

(3) The Development Owner is not financially responsible;

(4) The Development Owner has contracted, or will contract for the proposed Development with, a Developer that:

(A) Is on the Department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development;

(B) Has breached a contract with a public agency and failed to cure that breach; or

(C) 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;

(5) The financing of the housing Development is not a public purpose and will not provide a public benefit; and/or

(6) The Development will be undertaken outside the authority granted by this chapter to the Department and the Development Owner.

(d) **Representation by Former Board Member or Other Person.** (§2306.6733)

(1) A former Board member or a former executive director, deputy executive director, director of multifamily finance production, director of portfolio management and compliance, director of real estate analysis or manager over Housing Tax Credits previously employed by the Department may not:

(A) For compensation, represent an Applicant or one of its Related Parties for an allocation of tax credits before the second anniversary of the date that the Board member's, director's, or manager's service in office or employment with the Department ceased; or

(B) Represent any Applicant or a Related Party of an Applicant or receive compensation for services rendered on behalf of any Applicant or Related Party regarding the consideration of an Application in which the former board member, director, or manager participated during the period of service in office or

employment with the Department, either through personal involvement or because the matter was within the scope of the board member's, director's, or manager's official responsibility; or for compensation, communicate directly with a member of the legislative branch to influence legislation on behalf of an Applicant or Related Party before the second anniversary of the date that the board member's, director's, or manager's service in office or employment with the Department ceased.

(2) A Person commits a criminal offense if the Person violates §2306.6733. An offense under this section is a Class A misdemeanor.

(e) **Due Diligence, Sworn Affidavit.** In exercising due diligence in considering information of possible ineligibility, possible grounds for disqualification and debarment, Applicant and Development standards, possible improper representation or compensation, or similar matters, the Department may request a sworn affidavit or affidavits from the Applicant, Development Owner, Developer, Guarantor, or other Persons addressing the matter. If an affidavit determined to be sufficient by the Department is not received by the Department within seven business days of the date of the request by the Department, the Department may terminate the Application.

(f) **Appeals and Administrative Deficiencies for Ineligibility, Disqualification and Debarment.** An Applicant or Person found ineligible, disqualified, debarred or otherwise terminated under subsections (a) - (e) of this section will be notified in accordance with the Administrative Deficiency process described in §49.9(d)(4) of this chapter. They may also utilize the appeals process described in §49.17(b) of this chapter. (§2306.6721(d))

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§49.6. Site and Development Restrictions: Floodplain; Ineligible Building Types; Scattered Site Limitations; Credit Amount; Limitations on the Size of Developments; Limitations on Rehabilitation Costs; Unacceptable Sites; Appeals and Administrative Deficiencies for Site and Development Restrictions.

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(a) **Floodplain.** Any Development proposing New Construction or Reconstruction and located within the 100 year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site so that all finished ground floor elevations are at least one foot above the flood plain and parking and drive areas are no lower than six inches below the floodplain, subject to more stringent local requirements. If no FEMA Flood Insurance Rate Maps are available for the proposed Development, flood zone documentation must be provided from the local government with jurisdiction identifying the 100 year floodplain. No buildings or roads that are part of a Development proposing Rehabilitation or Adaptive Reuse, with the exception of Developments with federal funding assistance from HUD or TX USDA-RHS, will be permitted in the 100 year floodplain unless they already meet the requirements established in this subsection for New Construction.

(b) **Ineligible Building Types.** Applications involving Ineligible Building Types as defined in §49.3(56) of this chapter will not be considered for allocation of tax credits.

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(c) **Scattered Site Limitations.** Consistent with §49.3(32) of this chapter, a Development must be financed under a common plan, be owned by the same Person for federal tax purposes, and the buildings may be either located on a single site or contiguous site, or be located on scattered sites and contain only rent-restricted units. Tax-Exempt Bond Developments are permitted to be located on multiple sites consistent with Chapter 1372, Texas Government Code and as further clarified by the Texas Bond Review Board.

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(d) **Credit Amount.** The Department shall issue tax credits only in the amount needed for the financial feasibility and viability of a Development throughout the affordability period. The issuance of tax credits or the determination of any allocation amount in no way represents or purports to warrant the feasibility or viability of the Development by the Department, or that the Development will qualify for and be able to claim Housing Tax Credits. The Department will limit the allocation of tax credits to no more than \$1.4 million per Development. In order to encourage Rehabilitation and reconstruction, the \$1.4 million credit limitation will not apply to the 4% competitive tax credits for which such a development may qualify. The Department shall not allocate more than \$2 million of tax credits in any given Application Round to any Applicant, Developer,

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Related Party or Guarantor; Competitive Housing Tax Credits approved by the Board during the 2009 calendar year, including commitments from the 2009 Credit Ceiling and forward commitments from the 2010 Credit Ceiling, are applied to the credit cap limitation for the 2009 Application Round. In order to evaluate this \$2 million limitation, Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must provide the documentation required in the Application with regard to this requirement. In order to encourage the capacity enhancement of inexperienced Developers, the Department will prorate the credit amount allocated in situations where an Application is submitted in the either the Rural Regional Allocation or the Urban Regional Allocation. The Department will prorate the credits based on the percentage ownership, if there is an ownership interest, or the proportional percentage of the Developer fee received, if this applies to a Developer without an ownership interest. To be considered for this provision, a copy of a Joint Venture Agreement and narrative on how this builds the capacity of the inexperienced Developers is required. Tax-Exempt Bond Development Applications are not subject to these Housing Tax Credit limitations, and Tax-Exempt Bond Development Applications will not count towards the total limit on tax credits per Applicant. The limitation does not apply (§2306.6711(b)):

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(1) To an entity which raises or provides equity for one or more Developments, solely with respect to its actions in raising or providing equity for such Developments (including syndication related activities as agent on behalf of investors);

(2) To the provision by an entity of "qualified commercial financing" within the meaning of the Code (without regard to the 80% limitation thereof);

(3) To a Qualified Nonprofit Organization or other not-for-profit entity, to the extent that the participation in a Development by such organization consists only of the provision of loan funds, grants or social services; and

(4) To a Development Consultant with respect to the provision of consulting services, provided the Development Consultant fee received for such services does not exceed 10% of the fee to be paid to the Developer (or 20% for Qualified Nonprofit Developments), or \$150,000, whichever is greater.

(e) Limitations on the Size of Developments.

(1) The minimum Development size will be 16 Units if the Development involves Housing Tax Credits. The minimum Development size will be 4 Units if the funding source only involves the Housing Trust Fund or HOME Program.

(2) Rural Developments involving any New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings) will be limited to 80 Units (this includes individual Tax-Exempt Bond Developments). Rural Developments involving only Rehabilitation (excluding reconstruction) do not have a limitation as to the number of Units.

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(3) Urban Developments involving any New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings), in the Competitive Housing Tax Credit Application Round will be limited to 252 total Units, wherein the maximum Department administered Units will be limited to 200 Units. Tax-Exempt Bond Developments will be limited to 252 restricted and total Units. These maximum Unit limitations also apply to those Developments which involve a combination of Rehabilitation, Reconstruction, and New Construction. Only Developments that consist solely of acquisition/Rehabilitation or Rehabilitation may exceed the maximum Unit restrictions.

(4) For Applications that are proposing an additional phase to an existing tax credit Development, that are otherwise adjacent to an existing tax credit Development; or that are proposing a Development on a contiguous site to another Application awarded in the same program year, the combined Unit total for the existing and proposed Developments may not exceed the maximum allowable Development size set forth in this subsection unless:

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(A) the first phase of the Development has been completed and has attained Sustaining Occupancy (as defined in §1.31 of this title) for at least six months; or

(B) a resolution from the Governing Body of the city or county in which the proposed Development is located, dated on or before the date the Application is submitted, is submitted with the Application. Such resolution must state that there is a need for additional Units and that the Governing Body has reviewed a market study, the conclusion of which supports the need for additional Units; or

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(C) the proposed Development is intended to provide replacement of previously existing affordable Units on the Development Site or that were originally located within a one mile radius from the

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Development Site; provided, however, the combined number of Units in the proposed Development may not exceed the number of Units being replaced. Documentation of such replacement units must be provided.

(f) **Limitations on the Location of Developments.** Staff will only recommend, and the Board may only allocate, Housing Tax Credits from the State Housing Credit Ceiling to more than one Development from the State Housing Credit Ceiling in the same calendar year if the Developments are, or will be, located more than one linear mile apart as determined by the Department. If the Board forward commits credits from the following year's State Housing Credit Ceiling, the Development is considered to be in the calendar year in which the Board votes, not in the year of the State Housing Credit Ceiling. This limitation applies only to communities contained within counties with populations exceeding one million (which for calendar year ~~2009~~ are Harris, Dallas, Tarrant and Bexar Counties). For purposes of this ~~chapter~~, any two sites not more than one linear mile apart are deemed to be "in a single community." (§2306.6711(f)). This restriction does not apply to the allocation of Housing Tax Credits to Developments financed through the Tax-Exempt Bond program, including the Tax-Exempt Bond Development Applications under review and existing Tax-Exempt Bond Developments in the Department's portfolio. (§2306.67021)

(g) **Limitations of Development in Certain Census Tracts.** Staff will not recommend and the Board will not allocate Housing Tax Credits for a Competitive Housing Tax Credit or Tax-Exempt Bond Development located in a census tract that has more than 30% Housing Tax Credit Units per total households in the census tract as established by the U.S. Census Bureau for the most recent Decennial Census unless the Applicant:

- (1) In an Area whose population is less than 100,000;
- (2) Proposes only reconstruction or Rehabilitation (excluding New Construction of non-residential buildings); or,
- (3) Submits to the Department an approval of the Development referencing this rule in the form of a resolution from the ~~Governing Body~~ of the appropriate municipality or county containing the Development. For purposes of this paragraph, evidence of the local government approval must be received by the Department no later than April 1, ~~2009~~ for Competitive Housing Tax Credit Applications (or for Tax-Exempt Bond Development Applications no later than 14 days before the Board meeting where the credits will be committed). These ineligible census tracts are outlined in the ~~2009~~ Housing Tax Credit Site Demographic Characteristics Report.

(h) **Developments Proposing to Qualify for a 30% increase in Eligible Basis.** Staff will only recommend a 30% increase in Eligible Basis ~~(paragraphs (3) and (4) of this subsection only apply to Competitive Housing Tax Credits allocated from the State Credit Ceiling) if:~~

- (1) ~~The Development proposing to build in a Hurricane Rita Gulf Opportunity Zone (Rita GO Zone), which was designated as a Difficult to Develop Area as determined by H.B. 4440, is able to be placed in service by December 31, 2010 (or date as revised by the Internal Revenue Service) as certified in the Application;~~
- (2) The Development is located in a Qualified Census Tract that has less than 40% Housing Tax Credit Units per households in the tract as established by the U.S. Census Bureau for the most recent Decennial Census. Developments located in a Qualified Census Tract that has in excess of 40% Housing Tax Credit Units per households in the tract are not eligible to qualify for a 30% increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to the Code, §42(d)(5)(C), unless the Development is proposing only Reconstruction or Rehabilitation (excluding New Construction of non-residential buildings). These ineligible Qualified Census Tracts are outlined in the ~~2009~~ Housing Tax Credit Site Demographic Characteristics Report:
 - (3) ~~The Development qualifies for and receives Renewable Energy Tax Credits. For purposes of this paragraph, the Application will be required to include an architect's letter or contractor bid as evidence that the Applicant will be eligible to request Renewable Energy Tax Credits in its income tax filings. Applicant will be required to show proof of receipt of the Renewable Energy Tax Credits at the time of Cost Certification; or~~
 - (4) ~~Pursuant to the authority granted by H.R. 3221, the Development meets one of the criteria described in subparagraphs (A)-(D) of this paragraph:~~
 - (A) ~~Rural Developments located in a census tract that has not received an award of Housing Tax Credits or Tax-Exempt Bonds (serving the same population type as proposed) in the last five years from the date of the Application Acceptance Period;~~
 - (B) ~~Developments proposing at least 50% of the total number of Units for Supportive Housing;~~

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- (4) Pursuant to the authority granted by H.R. 3221, the Development meets one of the criteria described in subparagraphs (A)
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(C) Developments proposing to provide 10% of the Low-Income Units, that will serve individuals and families at or below 30% of AMGI, in excess of those that are proposed in §49.9(i)(3) of this chapter; or (D) Developments proposed in High Opportunity Areas, as provided in clauses (i)-(iv) of this subparagraph;

(i) A Development that is proposed to be located within one-quarter mile of existing major bus transfer centers and/or regional or local rail transportation stations, that are accessible to all residents including Persons with Disabilities;

(ii) A Development that is proposed to be located in a census tract which has an AMGI that is higher than the AMGI of the county or place in which the census tract is located as of the first day of the Application Acceptance Period;

(iii) A Development (serving families with children) that is proposed to be located in a school attendance zone that has an academic rating of "Exemplary" or "Recognized" rating (as determined by the Texas Education Agency) as of the first day of the Application Submission Acceptance Period; or

(iv) A Development that is proposed in a census tract that has no greater than 10% poverty population according to the most recent census data (these census tracts are designated in the 2009 Housing Tax Credit Site Demographic Characteristics Report);

(5) The Development proposing to build in a Hurricane Ike eligible county as designated by the Emergency Economic Stabilization Act of 2008, H.R. 1424 and Presidential Declaration FEMA-1791-DR and is able to place in service by December 31, 2012 (or the date as revised by the Internal Revenue Service) as certified in the Application.

(i) Rehabilitation Costs. Developments involving Rehabilitation must establish that the Rehabilitation will substantially improve the condition of the housing and will involve at least \$15,000 per Unit in direct hard costs (including site work, contingency, contractor profit, overhead and general requirements) unless financed with TRDO-USDA in which case the minimum is \$9,000.

(j) Unacceptable Sites. Developments will be ineligible if the Development is located on a site that is determined to be unacceptable by the Department.

(k) Appeals and Administrative Deficiencies for Site and Development Restrictions. An Application or Development found to be in violation under subsections (a) - (j) of this section will be notified in accordance with the Administrative Deficiency process described in §49.9(d)(4) of this chapter. They may also utilize the appeals process described in §49.17(b) of this chapter.

§49.7. Regional Allocation Formula; Set-Asides; Redistribution of Credits.

(a) Regional Allocation Formula. §2306.1115 as required by §2306.111(d), Texas Government Code, the Department uses a regional distribution formula developed by the Department and commented on by the public to distribute credits from the State Housing Credit Ceiling to all Urban Areas and Rural Areas. This formula establishes separate targeted tax credit amounts for Rural Areas and Urban Areas within each of the Uniform State Service Regions. Each Uniform State Service Region's targeted tax credit amount will be published on the Department's web site. The regional allocation for Rural Areas is referred to as the Rural Regional Allocation and the regional allocation for Urban Areas is referred to as the Urban Regional Allocation. Developments qualifying for the Rural Regional Allocation must meet the Rural Development definition. The Regional Allocation target will reflect that at least 20% of the State Housing Credit Ceiling for each calendar year shall be allocated to Developments in Rural Areas with a minimum of \$500,000 for each Uniform State Service Region. (§2306.111(d)(3))

(b) Set-Asides. An Applicant may elect to compete in as many of the following Set-Asides for which the proposed Development qualifies (§2306.111(d)):

(1) 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 the Code, §42(h)(5). Qualified Nonprofit Organizations must have the Controlling interest in the Development Owner applying for this Set-Aside. If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the controlling managing General Partner. If the Application is filed on behalf of a limited liability company, the

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Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, a Qualified Nonprofit Development submitting an Application in the nonprofit Set-Aside must have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or a co-Developer as evidenced in the development agreement. (§2306.6729 and §2306.6706(b))

(2) At least 5% of the State Housing Credit Ceiling for each calendar year shall be allocated to Developments which are financed through TRDO-USDA, that meet the definition of a Rural Development, do not exceed 80 Units if proposing any New Construction (excluding New Construction of non-residential buildings), and have filed an "Intent to Request 2009 Housing Tax Credits" form by the Pre-Application submission deadline. (§2306.111(d)(2) 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. Developments financed through TRDO-USDA's §538 Guaranteed Rural Rental Housing Program, in whole or in part, will not be considered under this Set-Aside. Any Rehabilitation or Reconstruction of an existing §515 Development that retains the §515 loan and restrictions will be considered under the At-Risk Development and TRDO-USDA Set-Asides, unless such Development is also financed through TRDO-USDA's §538 Guaranteed Rural Rental Housing Program. Commitments of 2009 Competitive Housing Tax Credits issued by the Board in 2009 will be applied to each Set-Aside, Rural Regional Allocation, Urban Regional Allocation and/or TRDO-USDA Set-Aside for the 2009 Application Round as appropriate.

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(3) 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 formula required under subsection (a) of this section. Through this Set-Aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments designated as At-Risk Developments as defined in §49.3(14) of this chapter. (§2306.6714). To qualify as an At-Risk Development, the Applicant must provide evidence that it either is not eligible to renew, retain or preserve any portion of the financial benefit described in §49.3(14)(A) of this chapter, or provide evidence that it will renew, retain or preserve the financial benefit described in §49.3(14)(A) of this chapter; and must have filed an "Intent to Request 2009 Housing Tax Credits" form by the Pre-Application submission deadline. Up to 5% of the State Credit Ceiling associated with this Set-Aside may be given priority to Rehabilitation Developments funded with TRDO.

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(c) **Redistribution of Credits.** (§2306.111(d)). If any amount of Housing Tax Credits remain after the initial commitment of Housing Tax Credits among the Set-Asides, Rural Regional Allocation and Urban Regional Allocation, the Department may redistribute the credits amongst the different regions and Set-Asides depending on the quality of Applications submitted as evaluated under the factors described in §49.9(d) of this chapter, the need to most closely achieve regional allocation goals and then the level of demand exhibited in the Uniform State Service Regions during the Application Round, except that, if there are any tax credits set aside for Developments in a Rural Area in a specific Uniform State Service Region that remain after the allocation under §49.9(d)(5)(C) of this chapter, those tax credits shall be made available in any other Rural Area in the state, first, and then to Developments in Urban areas of any uniform state service region. (§2306.111(d)(3)). As described in subsection (b)(1) and (2) of this section, no more than 90% of the State's Housing Credit Ceiling for the calendar year may go to Developments which are not Qualified Nonprofit Developments. If credits will be transferred from a Uniform State Service Region which does not have enough qualified Applications to meet its regional credit distribution amount, then those credits will be apportioned to the other Uniform State Service Regions.

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§49.8. Pre-Applications for Competitive Housing Tax Credits: Submission; Communication with Departments Staff; Evaluation Process; Threshold Criteria and Review; Results. (§2306.6704)

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(a) **Pre-Application Submission.** Any Applicant requesting a Housing Credit Allocation may submit a Pre-Application to the Department during the Pre-Application Acceptance Period along with the required Pre-Application Fee as described in §49.20 of this chapter. Only one Pre-Application may be submitted by an Applicant for each site under the State Housing Credit Ceiling. The Pre-Application submission is a voluntary process. While the Pre-Application Acceptance Period is open, Applicants may withdraw their Pre-Application and subsequently file a new Pre-Application utilizing the original Pre-Application Fee that was paid as long as no evaluation was performed by the Department. The Department is authorized though not required to request

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the Applicant to provide additional information it deems relevant to clarify information contained in the Pre-Application or to submit documentation for items it considers to be Administrative Deficiencies. The rejection of a Pre-Application shall not preclude an Applicant from submitting an Application with respect to a particular Development or site at the appropriate time.

(b) **Communication with the Department.** Applicants that submit a Pre-Application are restricted from communication with Department staff as provided in §49.9(b) of this chapter. (§2306.1113)

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(c) **Pre-Application Evaluation Process.** Eligible Pre-Applications will be evaluated for Pre-Application Threshold Criteria. Applications that are associated with a TRDO-USDA Development are not exempt from Pre-Application and are eligible to compete for the Pre-Application points further outlined in §49.9(i)(14) of this chapter. Pre-Applications that are found to have Administrative Deficiencies will be handled in accordance with §49.9(d)(4) of this chapter. Department review at this stage is limited and not all issues of eligibility and threshold are reviewed at Pre-Application. Acceptance by staff of a Pre-Application does not ensure that an Applicant satisfies all Application eligibility, Threshold or documentation requirements. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or threshold deficiencies at the time of Pre-Application.

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(d) **Pre-Application Threshold Criteria and Review.** Applicants submitting a Pre-Application will be required to submit information demonstrating their satisfaction of the Pre-Application Threshold Criteria. The Pre-Applications not meeting the Pre-Application Threshold Criteria will be terminated and the Applicant will receive a written notice to the effect that the Pre-Application Threshold Criteria have not been met. The Department shall not be responsible for the Applicant's failure to meet the Pre-Application Threshold Criteria and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Pre-Application Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. The Pre-Application Threshold Criteria include:

(1) Submission of a "Pre-Application Submission Form" and "Certification of Pre-Application Itemized Self-Score". The Applicant may not change the Self-Score unless requested by the Department in a Deficiency Notice;

(2) Evidence of property control through February 27, 2009 as evidenced by the documentation required under §49.9(h)(7)(A) of this chapter; and

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(3) Evidence in the form of a certification that all of the notifications required under this paragraph have been made. Requests for Neighborhood Organizations under subparagraph (A) of this paragraph must be made by the deadlines described in that clause; notifications under subparagraph (C) of this paragraph must be made prior to the close of the Pre-Application Acceptance Period. (§2306.6704) Evidence of notification must meet the requirements identified in subparagraph (B) of this paragraph to all of the individuals and entities identified in subparagraph (B) of this paragraph. (§2306.6704)

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(A) The Applicant must request a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site as follows:

(i) No later than December 8, 2008, the Applicant must e-mail, fax or mail with registered receipt a completed "Neighborhood Organization Request" letter as provided in the Pre-Application to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an Area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located an Area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format.

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(ii) If no reply letter is received from the local elected officials by January 1, 2009, then the Applicant must certify to that fact in the "Pre-Application Notification Certification Form" provided in the Pre-Application.

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(iii) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the local elected officials, or

that the Applicant has knowledge of as of Pre-Application Submission in the "Pre-Application Notification Certification Form" provided in the Pre-Application.

(B) Not later than the date the Pre-Application is submitted, notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt return or similar tracking mechanism in the format required in the "Pre-Application Notification Template" provided in the Pre-Application. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are not required to notify city officials, however, are required to notify county officials. Evidence of Notification is required in the form of a certification in the "Pre-Application Notification Certification Form" provided in the Pre-Application, although it is encouraged that Applicants retain proof of delivery of the notifications, to the persons or entities prescribed in clauses (i) - (ix) of this paragraph, in the event that the Department requires proof of Notification. Evidence of proof of delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of receipt by the recipient for facsimile and electronic mail. Officials to be notified are those officials in office at the time the Pre-Application is submitted.

(i) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site as identified in subparagraph (A)(iii) of this paragraph;

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(ii) Superintendent of the school district containing the Development;

Development;

(iii) Presiding officer of the board of trustees of the school district containing the

(iv) Mayor of any municipality containing the Development;

Development;

(v) All elected members of the Governing Body of any municipality containing the

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(vi) Presiding officer of the Governing Body of the county containing the Development;

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(vii) All elected members of the Governing Body of the county containing the Development;

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(viii) State senator of the district containing the Development; and

(ix) State representative of the district containing the Development.

(C) Each such notice must include, at a minimum, all of the following:

(i) The Applicant's name, address, 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) Statement of whether the Development proposes New Construction, reconstruction, Adaptive Reuse or Rehabilitation;

(v) The type of Development being proposed (single family homes, duplex, apartments, townhomes, high-rise etc.) and population being served (family, Intergenerational Housing, or elderly);

(vi) The approximate total number of Units and approximate total number of low-income Units;

(vii) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the approximate percentage of Units that are market rate;

(viii) The number of Units and proposed rents (less utility allowances) for the low-income Units and the number of Units and the proposed rents for any market rate Units. Rents to be provided are those that are effective at the time of the Pre-Application, which are subject to change as annual changes in the area median income occur; and

(ix) The expected completion date if credits are awarded.

(e) **Pre-Application Results.** Only Pre-Applications which have satisfied all of the Pre-Application Threshold Criteria requirements set forth in subsection (d) of this section and §49.9(i)(14) of this chapter, will be eligible for Pre-Application points. The order and scores of those Developments released on the Pre-Application Submission Log do not represent a commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the Pre-Application Submission Log. Inclusion of a Development on the Pre-Application Submission Log does not ensure that an Applicant will receive points for a Pre-Application.

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§49.9. Application: Submission; Ex Parte Communications; Adherence to Obligations; Evaluation Process for Competitive Applications Under the State Housing Credit Ceiling; Evaluation Process for Tax-Exempt Bond Development Applications; Evaluation Process for Rural Rescue Applications Under the 2010 Credit

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Ceiling; Experience Pre-Certification Procedures; Threshold Criteria; Selection Criteria; Tiebreaker Factors; Staff Recommendations.

(a) **Application Submission.** Any Applicant requesting a Housing Credit Allocation or a Determination Notice must submit an Application, and the required Application fee as described in §49.20 of this chapter, to the Department during the Application Acceptance Period. Only complete Applications will be accepted. All required volumes must be submitted as required by the Application Submission Procedures Manual and fully complete for submission with all required copies and received by the Department not later than 5:00 p.m. on the date the Application is due. A bookmarked electronic copy of all required volumes and exhibits, unless otherwise indicated in the Application Submission Procedures Manual, must be submitted in the format of a single file presented in the order as required by the Application Submission Procedures Manual on a CD-R (non-rewritable) clearly labeled with the report type, Development name, and Development location is required for submission and must be received by the Department not later than 5:00 p.m. on the date the Application is due. Only one Application may be submitted for a site in an Application Round. While the Application Acceptance Period is open, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original Pre-Application Fee that was paid as long as no evaluation was performed by the Department. The Department is authorized, but not required, to request the Applicant to provide additional information it deems relevant to clarify information contained in the Application or to submit documentation for items it considers to be an Administrative Deficiency, including ineligibility criteria, site and development restrictions, and threshold and selection criteria documentation. (§2306.6708) An Applicant may not change or supplement any part of an Application in any manner after the filing deadline, and may not add any Set-Asides, increase the requested credit amount, or revise the Unit mix (both income levels and bedroom mixes), except in response to a direct request from the Department to remedy an Administrative Deficiency as further described in §49.3(2) of this chapter or by amendment of an Application after a commitment or allocation of tax credits as further described in §49.17(d) of this chapter.

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(b) **Ex Parte Communications.**

(1) During the period beginning on the first date of the Application Acceptance Period and ending on the date the Board makes a final decision with respect to the approval of any Application in that Application Round, a member of the Board may not communicate with the following Persons:

(A) an Applicant or Related Party; and

(B) any Person who is:

(i) active in the construction, rehabilitation, ownership, or Control of the proposed Development, including:

(I) a General Contractor; and

(II) a Developer; and

(III) a General Partner, Principal or Affiliate of a General Partner or General Contractor; or

(ii) employed as a consultant, lobbyist, or attorney by an Applicant or a Related Party.

(2) During the period beginning on the first date of the Application Acceptance Period and ending on the date the Board makes a final decision with respect to the approval of any Application in that Application Round, an employee of the Department may communicate about any Application with the following Persons:

(A) the Applicant or a Related Party; and

(B) any Person who is:

(i) active in the construction, rehabilitation, ownership, or Control of the proposed Development, including:

(I) a General Partner or General Contractor; and

(II) a Developer; and

(III) a Principal or Affiliate of a General Partner or General Contractor; or

(ii) employed as a consultant, lobbyist or attorney by the Applicant or a Related Party.

(3) A communication under paragraph (2) of this subsection may be oral or in any written form, including electronic communication through the Internet, and must satisfy the following conditions:

(A) the communication must be restricted to technical or administrative matters directly affecting the Application;

(B) the communication must occur or be received on the premises of the Department during established business hours; and

(C) a record of the communication must be maintained and included with the Application for purposes of Board review and must contain the following information:

(i) the date, time, and means of communication;

(ii) the names and position titles of the Persons involved in the communication and, if applicable, the Person's relationship to the Applicant;

(iii) the subject matter of the communication; and

(iv) a summary of any action taken as a result of the communication.

(4) Notwithstanding paragraphs (1) or (2) of this subsection, a Board member or Department employee may communicate without restriction with a Person listed in paragraphs (1) or (2) during any Board meeting or public hearing held with respect to the Application, but not during a recess or other non-record portion of the meeting or hearing.

(5) Paragraph (1) of this subsection 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 all matters related to Applications to be considered by the Board will not be discussed.

(c) **Adherence to Obligations.** (§2306.6720), General Appropriation Act, Article VII, Rider 8(a)). All representations, undertakings and commitments made by an Applicant in the Application process for a Development, whether with respect to Threshold Criteria, Selection Criteria or otherwise, shall be deemed to be a condition to any Commitment Notice, Determination Notice, or Carryover Allocation for such Development, the violation of which shall be cause for cancellation of such Commitment Notice, Determination Notice, or Carryover Allocation by the Department, and if concerning the ongoing features or operation of the Development, shall be enforceable even if not reflected in the LURA. All such representations are enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, as stated in the representations and in accordance with the LURA. If a Development Owner does not produce the Development as represented in the Application; does not receive approval for an amendment to the Application by the Department prior to implementation of such amendment; or does not provide the necessary evidence for any points received by the required deadline:

(1) The Development Owner must provide a plan to the Department, for approval and subsequent implementation, that incorporates additional amenities to compensate for the non-conforming components; and

(2) The Board will opt either to terminate the Application and rescind the Commitment Notice, Determination Notice or Carryover Allocation Agreement as applicable or the Department must:

(A) Reduce the score for Applications for Competitive Housing Tax Credits that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development by up to ten points for the two Application Rounds concurrent to, or following, the date that the non-conforming aspect, or lack of financing, was recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board.

(B) Prohibit eligibility to apply for Housing Tax Credits for a Tax-Exempt Bond Development that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development for up to 24 months from the date that the non-conforming aspect, or lack of financing, was recognized by the Department of the need for the amendment; the placed in service date; or the date the amendment is accepted by the Board, less any time delay caused by the Department.

(C) In addition to, or in lieu of, the penalty in subparagraph (A) or (B) of this paragraph, the Board may assess a penalty fee of up to \$1,000 per day for each violation.

(3) For amendments approved administratively by the Executive Director, the penalties in paragraph (2) of this subsection will not be imposed.

(d) **Evaluation Process for Competitive Applications Under the State Housing Credit Ceiling.** Applications submitted for competitive consideration under the State Housing Credit Ceiling will be reviewed according to the process outlined in this subsection. An Application, during any of these stages of review, may be determined to be ineligible as further described in §49.5 of this chapter; Applicants will be promptly notified in these instances.

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(1) Set-Aside and Selection Criteria Review. All Applications will first be reviewed as described in this paragraph. Applications will be confirmed for eligibility for Set-Asides. Then, each Application will be preliminarily scored according to the Selection Criteria listed in subsection (i) of this section. When a particular scoring criterion involves multiple points, the Department will award points to the proportionate degree, in its determination, to which a proposed Development complied with that criterion. As necessary to complete this process only, Administrative Deficiencies may be issued to the Applicant. This process will generate a preliminary Department score for every Application.

(2) Application Review Assessment. Each Application will be assessed based on either the Applicant's self-score or the Department's preliminary score, region, and any Set-Asides that the Application indicates it is eligible for, consistent with paragraph (5) of this subsection. Those Applications that appear to be most competitive will be reviewed in detail for Eligibility and Threshold Criteria during the Application Round.

(3) Eligibility and Threshold Criteria Review. Applications that appear to be most competitive will be evaluated for eligibility under §49.5(a)(7)-(9), (b)-(f), and §49.6 of this chapter. The remaining portions of the Eligibility Review under §49.5 of this chapter will be performed in the Compliance Evaluation and Eligibility Review as described under paragraph (7) of this subsection. The most competitive Applications will also be evaluated against the Threshold Criteria under subsection (h) of this section. The same portions of the Threshold Criteria review may be performed in the Underwriting Evaluation and Criteria review for financial feasibility by the Department's Real Estate Analysis Division as described under paragraph (6) of this subsection. Applications not meeting Threshold Criteria will be notified of any Administrative Deficiencies, in each event the Applicant will be given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria after receipt and review of the Administrative Deficiency response will be terminated and the Applicant will be provided a written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. Not all Applications will be reviewed in detail for Threshold Criteria. To the extent that the review of Threshold Criteria documentation, or submission of Administrative Deficiency documentation, alters the score assigned to the Application, an Applicant will be notified of its final score.

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(4) Administrative Deficiencies. If an Application contains Administrative Deficiencies pursuant to §49.3(2) of this chapter which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Selection, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made several times. The Department staff will request clarification or correction in a deficiency notice in the form of an email, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt of the email within 24 hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then for competitive Applications under the State Housing Credit Ceiling, five points shall be deducted from the Selection Criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not clarified or corrected by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. The time period for responding to a deficiency notice begins at the start of the 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. This Administrative Deficiency process applies to requests for information made by the Real Estate Analysis Division review.

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(5) Subsequent Evaluation of Applications and Methodology for Award Recommendations to the Board. The Department will assign, as herein described, Developments for review for financial feasibility by the Department's Real Estate Analysis Division--in general these will be those Applications identified as most competitive and that meet the requirements of Eligibility and Threshold. This procedure will also be used in making recommendations to the Board as follows:

(A) Assignments will be determined by separately selecting the Applications with the highest scores in the At-Risk Set-Aside Statewide until the minimum requirements stated in §49.7(b) of this chapter are attained.

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(B) Assignments will then be determined by selecting the Applications with the highest scores in the TRDO-USDA Allocation until the minimum requirements stated in §49.7(b) of this chapter are attained. If an Application in this Set-Aside involves Rehabilitation it will be attributed to, and come from the, At-Risk 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.

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(C) Remaining funds within each Uniform State Service Region will then be selected based on the highest scoring Developments in each of the 26 sub-regions, regardless of Set-Aside, in accordance with the requirements under §49.7(a) of this chapter, without exceeding the credit amounts available for a Rural Regional Allocation and Urban Regional Allocation in each region. To the extent that Applications in the At-Risk and TRDO-USDA Set-Asides are not competitive enough within their respective Set-Asides, they will also be able to compete, with no Set-Aside preference, within their appropriate sub-region.

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(D) If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region that remain after allocation under subparagraph (C) of this paragraph those tax credits shall then be made available in any other Rural Area in the state to the Application in the most underserved Rural sub-region as compared to the Region's Rural Allocation. (§2306.111(d)(3)). This will be referred to as the Rural collapse.

(E) If there are any tax credits remaining in any sub-region after the Rural collapse, in the Rural Regional Allocation or Urban Regional Allocation, they then will be combined and made available to the Application in the most underserved sub-region as compared to the sub-region's allocation. This will be referred to as the statewide collapse.

(F) Staff will ensure that at least 10% of the State Housing Credit Ceiling is allocated to Qualified Nonprofit Organizations to satisfy the Nonprofit Set-Aside. If 10% is not met, then the Department will add the highest scoring Application by a Qualified Nonprofit Organization statewide until the 10% Nonprofit Set-Aside is met. Staff will ensure that at least 20% of the State Housing Credit Ceiling is allocated to Rural Developments. If this 20% minimum is not met, then the Department will add the highest scoring Rural Development Application statewide until the 20% Rural Development Set-Aside is met. Selection for each of the Set-Asides will take precedence over selection for the Rural Regional Allocation and Urban Regional Allocation. Funds for the Rural Regional Allocation or Urban Regional Allocation within a region, for which there are no eligible feasible Applications, will be redistributed as provided in §49.7(c) of this chapter, Redistribution of Credits. If the Department determines that an allocation recommendation would cause a violation of the \$2 million limit described in §49.6(d) of this chapter, the Department will make its recommendation by selecting the Development(s) that most effectively satisfies(y) the Department's goals in meeting Set-Aside and regional allocation goals. Based on Application rankings, the Department shall continue to underwrite Applications until the Department has processed enough Applications satisfying the Department's underwriting criteria to enable the allocation of all available Housing Tax Credits according to regional allocation goals and Set-Aside categories. To enable the Board to establish a Waiting List, the Department shall underwrite as many additional Applications as necessary to ensure that all available Competitive Housing Tax Credits are allocated within the period required by law. (§2306.6710(a)-(f); §2306.111)

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(6) Underwriting Evaluation and Criteria. The Department shall underwrite an Application to determine the financial feasibility of the Development and an appropriate level of Housing Tax Credits. In determining an appropriate level of Housing Tax Credits, the Department shall, at a minimum, evaluate the cost of the Development based on acceptable cost parameters as adjusted for inflation and as established by historical final cost certifications of all previous Housing Tax Credit allocations for the county in which the Development is to be located; if certifications are unavailable for the county, then the metropolitan statistical area in which the Development is to be located; or if certifications are unavailable under the county or the metropolitan statistical area, then the Uniform State Service Region in which the Development is to be located. Underwriting of a Development will include a determination by the Department, pursuant to the Code §42, that the amount of Housing Tax Credits recommended for commitment to a Development is necessary for the financial feasibility of the Development and its long-term viability as a qualified rent restricted housing property. In making this determination, the Department will use the Underwriting Rules and Guidelines, §1.32 of this title. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline, and may not add any set-asides, increase their credit amount, or revise their unit mix (both income levels and bedroom mixes), except in response to a direct request from the Real Estate Analysis Division to remedy an Administrative Deficiency as further described in §49.3(2) of this chapter or by amendment of an Application after a commitment or allocation of tax credits as further described in §49.17(d)

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of this chapter. To the extent that the review of Administrative Deficiency documentation during this review alters the score assigned to the Application, Applicants will be re-notified of their final score. Receipt of feasibility points under ~~§49.9(i)(1)~~ of this chapter does not ensure that an Application will be considered feasible during the feasibility evaluation by the Real Estate Analysis Division and conversely, a Development may be found feasible during the feasibility evaluation by the Real Estate Analysis Division even if it did not receive points under subsection (i)(1) of this section. (§2306.6710 and §2306.11)

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(A) The Department may have an external party perform the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation.

(B) The Department will reduce the Applicant's estimate of Developer's and/or General Contractor fees in instances where these exceed the fee limits determined by the Department. In the instance where the General Contractor is an Affiliate of the Development Owner and both parties are claiming fees, General Contractor's overhead, profit, and general requirements, the Department shall be authorized to reduce the total fees estimated to a level that it determines to be reasonable under the circumstances. Further, the Department shall deny or reduce the amount of Housing Tax Credits allocated with respect to any portion of costs which it deems excessive or unreasonable. Excessive or unreasonable costs may include Developer fee attributable to Related Party acquisition costs. The Department also may require bids or Third Party estimates in support of the costs proposed by any Applicant. The Developer's fee limits will be calculated as follows:

(i) New construction pursuant to §42(b)(1)(A) U.S.C., the Developer fee cannot exceed 15% of the project's Total Eligible Basis, less Developer fees, or 20% of the project's Total Eligible Basis, less Developer fees if the Development proposes 49 total Units or less; and

(ii) Acquisition/rehabilitation Developments that are eligible for acquisition credits pursuant to §42(b)(1)(B) U.S.C., the acquisition portion of the Developer fee cannot exceed 15% of the existing structures acquisition basis, less Developer fee if the Development proposes 50 total Units or more, or 20% of the project's Total Eligible Basis, less Developer fees if the Development proposes 49 total Units or less, and will be limited to 4% credits. The rehabilitation portion of the Developer fee cannot exceed 15% of the total rehabilitation basis, less Developer fee if the Development proposes 50 total Units or more, or 20% of the project's Total Eligible Basis, less Developer fees if the Development proposes 49 total Units or less.

(7) Compliance Evaluation and Eligibility Review. After the Department has determined which Developments will be reviewed for financial feasibility, those same Developments will be reviewed for evaluation of the compliance status by the Department's Portfolio Management and Compliance Division, in accordance with Chapter 60 of this title, and will be evaluated in detail for eligibility under ~~§49.5(a)-(f)~~ of this chapter.

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(8) Site Evaluation. Site conditions shall be evaluated through a physical site inspection by the Department or its assigns. Such inspection will evaluate the Development Site based upon the criteria set forth in the Site Evaluation form provided in the Application and the inspector shall provide a written report of such site evaluation. The evaluations shall be based on the condition of the surrounding neighborhood, including appropriate environmental and aesthetic conditions and proximity to retail, medical, recreational, and educational facilities, and employment centers. The site's appearance to prospective tenants and its accessibility via the existing transportation infrastructure and public transportation systems shall be considered. "Unacceptable" sites include, without limitation, those containing a non-mitigable environmental factor that may adversely affect the health and safety of the residents. For Developments applying under the TRDO-USDA Set-Aside, the Department may rely on the physical site inspection performed by TRDO-USDA.

(e) **Evaluation Process for Tax-Exempt Bond Development Applications.** Applications submitted for consideration as Tax-Exempt Bond Developments will be reviewed according to the process outlined in this subsection. An Application, during any of these stages of review, may be determined to be ineligible as further described in ~~§49.5~~ of this chapter; Applicants will be promptly notified in these instances.

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(1) Eligibility and Threshold Criteria Review. All Tax-Exempt Bond Development Applications will first be reviewed as described in this paragraph. Tax-Exempt Bond Development Applications will be confirmed for eligibility under ~~§49.5~~ and ~~§49.6~~ of this chapter and Applications will be evaluated in detail against the Threshold Criteria. Tax-Exempt Bond Development Applications found to be ineligible and/or not meeting Threshold Criteria will be notified of any Administrative Deficiencies, in each event the Applicant will be given an opportunity to correct such deficiencies. Applications not meeting the Threshold Criteria after receipt and review of the Administrative Deficiency response will be terminated and the Applicant will be provided a

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written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled.

(2) Administrative Deficiencies. If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made several times. The Department staff will request clarification or correction in a deficiency notice in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt of the email within 24 hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. All Administrative Deficiencies shall be clarified or corrected to the satisfaction of the Department within five business days. Failure to resolve all outstanding deficiencies by 5:00 p.m. on the fifth business day following the date of the deficiency notice will result in a penalty fee of \$500 for each business day the deficiency remains unresolved. Applications with unresolved deficiencies after 5:00 p.m. on the tenth day following the date of the deficiency notice will be terminated. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination pursuant to §49.5(b)(4) of this chapter. The time period for responding to a deficiency notice begins at the start of the 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. The Application will not be presented to the Board for consideration until all outstanding fees have been paid. This Administrative Deficiency process applies equally to the Real Estate Analysis Division review and feasibility evaluation and the same penalty and termination will be assessed.

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(3) Underwriting and Compliance Evaluation and Criteria. The Department will assign all eligible Tax-Exempt Bond Development Applications meeting the eligibility and threshold requirements for review for financial feasibility by the Department's Real Estate Analysis Division, or the Department may have an external party perform the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation. The Department or external party shall underwrite an Application to determine the financial feasibility of the Development and an appropriate level of Housing Tax Credits as further described in subsection (d)(6) of this section. Tax-Exempt Bond Development Applications will also be reviewed for evaluation of the compliance status by the Department's Portfolio Management and Compliance Division in accordance with Chapter 60, Subchapter A, of this title.

(4) Site Evaluation. Site conditions shall be evaluated through a physical site inspection by the Department or its assigns as further described in subsection (d)(8) of this section.

(f) Evaluation Process for Rural Rescue Applications Under the 2010 Credit Ceiling. Applications submitted for consideration as Rural Rescue Applications pursuant to §49.10(c) of this chapter under the 2010 Credit Ceiling will be reviewed according to the process outlined in this subsection. A Rural Rescue Application, during any of these stages of review, may be determined to be ineligible as further described in §49.5 of this chapter; Applicants will be promptly notified in these instances.

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(1) Procedures for Intake and Review.

(A) Applications for Rural Rescue deals may be submitted between March 2, 2009 and November 15, 2009 and must be submitted in accordance with §49.21 of this chapter. A complete Application must be submitted at least 40 days prior to the date of the Board meeting at which the Applicant would like the Board to act on the proposed Development. Applications must include the full Application Fee as further described in §49.20(c) of this chapter. Applicants must submit documents in accordance with the procedures set out in the 2009 Application Submission Procedures Manual for Volumes I, II, III and IV. Volume IV, evidencing Selection Criteria, MUST be submitted.

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(B) Applicants do not need to participate in the Pre-Application process outlined in §49.8 of this chapter, nor will they need to submit pre-certification documents identified in subsection (g) of this section.

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(C) Applications will be processed on a first-come, first-served basis. Applications unable to meet all deficiency and underwriting requirements within 30 days of the request by the Department, will remain under consideration, but will lose their submission status and the next Application in line will be moved

ahead in order to expedite those Applications most able to proceed. Applications for Rural Rescue will be processed and evaluated as described in this paragraph. Applications will be reviewed to ensure that the Application is eligible as a rural "rescue" Development as described in paragraph (2) of this subsection.

(D) Prior to the Development being recommended to the Board, TRDO-USDA must provide the Department with a copy of the physical site inspection report performed by TRDO-USDA, as provided in subsection (d)(8) of this section.

(2) Eligibility Review. All Rural Rescue Applications will first be reviewed as described in this paragraph and eligibility will be confirmed pursuant to ~~§49.5~~ and ~~§49.6~~ of this chapter and the criteria listed in subparagraphs (A)-(C) of this paragraph. Applications found to be ineligible will be notified.

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(A) Applications must be funded through TRDO-USDA;

(B) Applications must be able to provide evidence that the loan:

(i) has been foreclosed and is in the TRDO-USDA inventory; or

(ii) is being foreclosed; or

(iii) is being accelerated; or

(iv) is in imminent danger of foreclosure or acceleration; or

(v) is for an Application in which two adjacent parcels are involved, of which at least one parcel qualifies under clauses (i) - (iv) of this subparagraph and for which the Application is submitted under one ownership structure, one financing plan and for which there are no market rate units; and

(C) Applicants must be identified as in compliance with TRDO-USDA regulations.

(3) Threshold Review. Applications will be evaluated in detail against the Threshold Criteria. Applications found to be ineligible and/or not meeting Threshold Criteria will be notified of any Administrative Deficiencies, in which event the Applicant is given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria after receipt and review of the Administrative Deficiency response will be terminated and the Applicant will be provided a written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. Not all Applications will be reviewed in detail for Threshold Criteria.

(4) Selection Criteria Review. All Rural Rescue Applications will be evaluated against the Selection Criteria and a score will be assigned to the Application. The minimum score for Selection Criteria is not required to be achieved to be eligible.

(5) Administrative Deficiencies. If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies as further described in subsection (d)(4) of this section.

(6) Underwriting and Compliance Evaluation and Criteria. The Department will assign all eligible Rural Rescue Applications meeting the eligibility and threshold requirements for review for financial feasibility by the Department's Real Estate Analysis Division, or the Department may have an external party perform the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation. The Department or external party shall underwrite an Application to determine the financial feasibility of the Development and an appropriate level of Housing Tax Credits as further described in subsection (d)(6) of this section. Rural Rescue Development Applications will also be reviewed for evaluation of the previous participation by the Department's Portfolio Management and Compliance Division in accordance with Chapter 60 of this title.

(7) Site Evaluation. Site conditions shall be evaluated through a physical site inspection by the Department or its assigns as further described in subsection (d)(8) of this section.

(8) Credit Ceiling and Applicability of this chapter. All Rural Rescue Applicants will receive their credit allocation out of the ~~2010~~ Credit Ceiling and therefore, will be required to follow the rules and guidelines identified in the ~~2010~~ Qualified Allocation Plan and Rules (QAP). However, because the ~~2010~~ QAP will not be in effect during the time period that the Rural Rescue Applications can be submitted, Applications submitted and eligible under the Rural Rescue Set-Aside will be considered by the Board to have satisfied the requirements of the ~~2010~~ QAP and are waived from ~~2010~~ QAP requirements that are changes from the ~~2009~~ QAP, to the extent permitted by statute.

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(9) Procedures for Recommendation to the Board. Consistent with subsection (k) of this section, staff will make its recommendation to the Committee. The Committee will make commitment recommendations to the Board. Staff will provide the Board with a written, documented recommendation which will address at a minimum the financial and programmatic viability of each Application and a breakdown of which Selection Criteria were met by the Applicant. The Board will make its decision based on ~~§49.10(a)~~ of this chapter. Any award made to a Rural Rescue Development will be credited against the TRDO-USDA Set-Aside for the ~~2010~~ Application Round, as required under subsection (d)(5) of this section.

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(10) Limitation on Allocation. No more than \$350,000 in credits will be forward committed from the ~~2010~~ State Housing Credit Ceiling. To the extent Applications are received that exceed the maximum limitation, staff will prepare the award for Board consideration noting for the Board that the award would require a waiver of this limitation.

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(g) Experience Pre-Certification Procedures. No later than 14 days prior to the close of the Application Acceptance Period for Competitive Housing Tax Credit Applications, an Applicant must submit the documents required in this subsection to obtain the required pre-certification. For Applications submitted for Tax-Exempt Bond Applications or Applications not applying for Competitive Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) all of the documents in this section must be submitted with the Application. Upon receipt of the evidence required under this section, a certification from the Department will be provided to the Applicant for inclusion in its Application(s). Evidence must show that one of the Development Owner's General Partners, the Developer or their Principals have a record of successfully constructing or developing residential units (single family or multifamily) in the capacity of owner, General Partner or Developer. If a Public Housing Authority organized an entity for the purpose of developing residential units the Public Housing Authority shall be considered a Principal for the purpose of this requirement. If the individual requesting the certification was not the Development Owner, General Partner or Developer, but was the individual within one of those entities doing the work associated with the development of the Units (responsibility for work associated with the development of Units includes, but is not limited to, application submission, third-party engagement, post award activities, construction, cost certification, etc.), the individual must show that the units were successfully developed as required in paragraphs (1) and (2) of this subsection, and also provide written confirmation from the entity involved stating that the individual was the person responsible for the development. If rehabilitation experience is being claimed to qualify for an Application involving New Construction, then the rehabilitation must have been substantial and involved at least \$12,000 of direct hard cost per unit.

(1) The term "successfully" is defined as acting in a capacity as the owner, General Partner, or Developer of:

(A) At least 100 residential units or, if less than 100 residential units, 80% of the total number of Units the Applicant is applying to build (e.g. you must have 40 units successfully built to apply for 50 Units); or

(B) At least 36 residential units if the Development is a Rural Development; or

(C) At least 25 residential units if the Development has 36 or fewer total Units.

(2) One or more of the following documents must be submitted: American Institute of Architects (AIA) Document A111 - Standard Form of Agreement Between Owner & Contractor, AIA Document G704 - Certificate of Substantial Completion, IRS Form 8609, HUD Form 9822, development agreements, partnership agreements, or other documentation satisfactory to the Department verifying that the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals have the required experience. If submitting the IRS Form 8609, only one form per Development is required. The evidence must clearly indicate:

(A) That the Development has been completed (i.e. Development Agreements, Partnership Agreements, etc. must be accompanied by certificates of completion);

(B) That the names on the forms and agreements tie back to the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals as listed in the Application; and

(C) The number of units completed or substantially completed.

(h) **Threshold Criteria.** The following Threshold Criteria listed in this subsection are mandatory requirements that must be submitted at the time of Application submission unless specifically indicated otherwise:

- (1) Completion and submission of the Application, which includes the entire Uniform Application and any other supplemental forms which may be required by the Department. (§2306.1111)
- (2) Completion and submission of the Site Packet as provided in the Application.
- (3) Set-Aside Eligibility. Documentation must be provided that confirms eligibility for all Set-Asides under which the Application is seeking funding as required in the Application.
- (4) Certifications. The "Certification Form" provided in the Application confirming the following items:

(A) A certification of the basic amenities selected for the Development. All Developments must meet at least the minimum threshold of points. These points are not associated with the selection criteria points in subsection (i) of this section. The amenities selected must be made available for the benefit of all tenants. If fees in addition to rent are charged for amenities reserved for an individual tenant's use, then the amenity may not be included among those provided to satisfy this requirement. Developments must provide a minimum number of common amenities in relation to the Development size being proposed. The amenities selected must be selected from clause (ii) of this subparagraph and made available for the benefit of all tenants. Developments proposing Rehabilitation (excluding Reconstruction) or proposing Single Room Occupancy will receive 1.5 points for each point item (do not round). Applications for non-contiguous scattered site housing, including New Construction, reconstruction, Adaptive Reuse, Rehabilitation, and single-family design, will have the threshold test applied based on the number of Units per individual site, and must submit a separate certification for each individual site under control by the Applicant. Any future changes in these amenities, or substitution of these amenities, must be approved by the Department in accordance with §49.17(d) of this chapter and may result in a decrease in awarded credits if the substitution or change includes a decrease in cost, or in the cancellation of a Commitment Notice or Carryover Allocation if all of the Common Amenities claimed are no longer met.

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(i) Applications must meet a minimum threshold of points (based on the total number of Units in the Development) as follows:

- (I) Total Units are less than 16, 0 points are required to meet Threshold for Single Room Occupancy and 1 point is required to meet threshold for all other Developments;
- (II) Total Units are 16 to 24, 2 points are required to meet Threshold;
- (III) Total Units are 25 to 40, 3 points are required to meet Threshold;
- (IV) Total Units are 41 to 76, 6 points are required to meet Threshold;
- (V) Total Units are 77 to 99, 9 points are required to meet Threshold;
- (VI) Total Units are 100 to 149, 12 points are required to meet Threshold;
- (VII) Total Units are 150 to 199, 15 points are required to meet Threshold; or
- (VIII) Total Units are 200 or more, 18 points are required to meet Threshold.

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(ii) Amenities for selection include those items listed in subclauses (I)-(XXV) of this clause. Both Developments designed for families and Qualified Elderly Developments can earn points for providing each identified amenity unless the item is specifically restricted to one type of Development. All amenities must meet accessibility standards as further described in subparagraphs (D) and (F) of this paragraph. An Application can only count an amenity once, therefore combined functions (a library which is part of a community room) only count under one category. Spaces for activities must be sized appropriately to serve the anticipated population.

- (I) Full perimeter fencing (2 points);
- (II) Controlled gate access (1 point);
- (III) Gazebo w/sitting area (1 point);
- (IV) Accessible walking/jogging path separate from a sidewalk (1 point);
- (V) Community laundry room with at least one front loading washer (1 point);
- (VI) Barbecue grill and picnic table-at least one of each for every 50 Units (1 point);
- (VII) Covered pavilion that includes barbecue grills and tables (2 points);
- (VIII) Swimming pool (3 points);
- (IX) Furnished fitness center equipped with a minimum of two of the following fitness equipment options with at least one option per every 40 Units or partial increment of 40 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, sauna,

stair climber, etc. The maximum number of equipment options required for any Development, regardless of number of Units, shall be five (2 points);

(X) Equipped and functioning business center or equipped computer learning center with 1 computer for every 30 Units proposed in the Application, 1 printer for every 3 computers (with minimum of one printer), and 1 fax machine (2 points);

(XI) Furnished Community room (1 point);

(XII) Library with an accessible sitting area (separate from the community room) (1 point);

(XIII) Enclosed sun porch or covered community porch/patio (2 points);

(XIV) Service coordinator office in addition to leasing offices (1 point);

(XV) Senior Activity Room (Arts and Crafts, etc.) (2 points);

(XVI) Health Screening Room (1 point);

(XVII) Secured Entry (elevator buildings only) (1 point);

(XVIII) Horseshoe pit, putting green or shuffleboard court (1 point);

(XIX) Community Dining Room w/full or warming kitchen (3 points);

(XX) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot (1 Point);

(XXI) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of

each (2 points);

(XXII) Sport Court (Tennis, Basketball or Volleyball) (2 points);

(XXIII) Furnished and staffed Children's Activity Center (3 points);

(XXIV) Community Theater Room equipped with a 52 inch or larger screen with surround sound equipment; DVD player; and theater seating (3 points); or

(XXV) Green Building amenities. Rehabilitation Developments will receive 1.5 points for each point requested for the green building amenities.

(-a-) evaporative coolers (for use in designated counties listed in the Application Materials, 2009 Housing Tax Credit Site Demographics Information) (1 point);

(-b-) passive solar heating/cooling (3 points maximum)

(-1-) Two points if the glazing area on the north- and south-facing walls of the building is at least 50% greater than the sum of the glazing area on the east- and west- facing walls; and the east-west axis of the building is within 15 degrees of due east-west.

(-2-) One point if in addition to the east-west axis of the building oriented within 15 degrees of due east-west, utilize a narrow floor plate (less than 40 feet), single loaded corridors and open floor plan to optimize daylight penetration and passive ventilation (note: to qualify for this particular point, application must also implement the 15 degree building orientation option above); and 100% of HVAC condenser units are shaded so they are fully shaded 75% of the time during summer months (May through August); and solar screens or solar film on all East, West, and South Windows with building oriented to east-west axis within 15 degrees of due east-west, west-south axis within 15 degrees of due west-south, and south-east axis within 15 degrees of due south-east.

(-c-) water conserving features (2 points maximum, 1 point for each):

(-1-) Install low-flow toilets using less than or equal to 1.6 gallons per flush, or high efficiency toilets using less than or equal to 1.28 gallons/flush.

(-2-) Install bathroom lavatory faucets and showerheads that do not exceed 2.0 gallons/minute and kitchen faucets that do not exceed 1.5 gallons/minute. Applies to all fixtures throughout development. Rehab projects may choose to install compliant faucet aerators instead of replacing entire faucets.

(-d-) solar water heaters (Solar water heaters designed to provide at least 25% of the average energy used to heat domestic water throughout the entire development.) (2 points);

(-e-) irrigation and landscaping (must implement both of the following) (2 points)

(-1-) collected water (at least 50%) for irrigation purposes;

(-2-) selection of native trees and plants that are appropriate to the site's soils and microclimate and locate them to allow for shading in the summer and allow for heat gain in the winter

(-f-) sub-metered utility meters (2 points maximum):

(-1-) Sub-metered utility meters on rehab project without existing sub-meters or new construction senior project (2 points); or

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(-2-)Sub-metered utility meters on new construction project (excluding new construction senior project) (1 point)

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(-g-) energy efficiency (4 points maximum):

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(-1-)Three points if Energy Elements include Energy-Star qualified windows and glass doors; and Exterior envelope insulation, vapor barriers and air barriers greater than or equal to Energy Star air barrier and insulation criteria; and HVAC, domestic hot water heater, or insulation that exceeds Energy Star standards or exceeds the IRC 2006;

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OR

(-2-)Four points if the project promotes energy efficiency by meeting the requirements of Energy Star for Homes by either complying with the appropriate builder option package or a HERS score of 85.

Deleted: (-a-) evaporative coolers (for use in designated counties listed in the Application Materials, 2009 Housing Tax Credit Site Demographics Information) (1 point);
(-b-) passive solar heating/cooling (3 points);
(-c-) water conserving features (toilets using less than or equal to 1.6 gallons per flush, showerheads, kitchen faucets or bathroom faucets using less than or equal to 2.0 gallons per minute) (1 point for each);
(-d-) solar water heaters (2 points);
(-e-) collected water (at least 50%) for irrigation purposes (2 points);
(-f-) sub-metered utility meters (3 points);
(-g-) Energy Star qualified windows and glass doors (2 points);
(-h-) thermally and draft efficient doors (SHGC of 0.40 and U-value specified by climate zone according to the 2006 IECC) (2 points);
(-i-) photovoltaic panels for electricity and design and wiring for the use of such panels (3 points);
(-j-) construction waste management and implementation (... [25])

(-h-) thermally and draft efficient doors (SHGC of 0.40 or lower and U-value specified by climate zone according to the 2006 IECC) (2 points);

(-i-) photovoltaic panels for electricity and design and wiring for the use of such panels (3 points maximum):

(-1-)Photovoltaic panels that total 10 kW (1point);

(-2-)Photovoltaic panels that total 20 kW (2 points);

(-3-)Photovoltaic panels that total 30 kW (3 points);

(-j-) construction waste management and implementation of EPA's Best Management Practices for erosion and sedimentation control during construction (1 point);

(-k-) recycling service provided throughout the compliance period (1 point);

(-l-) water permeable walkways (at least 20% of walkways and parking) (1 point).

(-m-) bamboo flooring, wool carpet, linoleum flooring, straw board, poplar OSB, or cotton batt insulation (50% of flooring on the ground floor of the development must be finished concrete and/or ceramic tile. 50% of the flooring on upper floors must be ceramic tile and/or a flooring material that is Floor Score Certified (developed by the Resilient Floor Covering Institute), applied with a Floor Score Certified adhesive and comes with a minimum 7-year wear through warranty. (2 points);

(B) A certification that the Development will have all of the following Amenities at no charge to the tenants. All New Construction or Reconstruction Units must provide the amenities in clauses (i)-(viii) of this subparagraph. Rehabilitation (excluding Reconstruction) and Adaptive Reuse must provide the amenities in clauses (ii) - (ix) of this subparagraph unless expressly identified as not required. (§2306.187)

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(i) All New Construction Units must be wired with RG-6 COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;

Inserted: (-o-) water permeable walkways (1 point);
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(ii) Blinds or window coverings for all windows;

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(iii) Disposal and Energy-Star or equivalently rated dishwasher (not required for TRDO-USDA or SRO Developments);

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(iv) Energy-Star or equivalently rated (not required for SRO Developments) Refrigerator;

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(v) Oven/Range (not required for SRO Developments);

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(vi) Exhaust/vent fans (vented to the outside) in bathrooms;

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(vii) Energy-Star or equivalently rated ceiling fans in living areas and bedrooms; and

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(viii) Energy-Star or equivalently rated lighting in all Units, which may include compact fluorescent bulbs.

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(C) A certification that the Development will meet the minimum threshold for size of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with the Selection Criteria points in subsection (i) of this section. Developments proposing Rehabilitation (excluding Reconstruction) or Single Room Occupancy will not be subject to the requirements of this subparagraph.

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(i) 550 square feet for an efficiency Unit;

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(ix) Emergency 911 or public (... [27])

(ii) 650 square feet for a non-elderly one Bedroom Unit; 550 square feet for an elderly one

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Bedroom Unit;

(iii) 900 square feet for a non-elderly two Bedroom Unit; 700 square feet for an elderly two

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Bedroom Unit;

(iv) 1,000 square feet for a three Bedroom Unit; and

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(v) 1,200 square feet for a four Bedroom Unit.

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(D) A certification that 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.

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(E) A certification that the Applicant is 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.), and the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, the Code Requirements for Housing Accessibility 2000 (or as amended from time to time) produced by the International Code Council and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))

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(F) A certification that 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, and that the Applicant will submit a report at least once in each 90-day period following the date of the Commitment Notice until the Cost Certification is submitted, in a format prescribed by the Department and provided at the time a Commitment Notice is received, on the percentage of businesses with which the Applicant has contracted that qualify as Minority Owned Businesses. (§2306.6734)

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(G) Pursuant to §2306.6722, any Development supported with a Housing Tax Credit allocation shall comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C. The Applicant must provide a certification from the Development engineer, an accredited architect or Department-approved third party accessibility specialist, that the Development will comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C and this subparagraph. (§2306.6722 and §2306.6730)

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(H) For Developments involving New Construction (excluding New Construction of non-residential buildings) where some Units are two-stories or single family design and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A similar certification will also be required after the Development is completed from an inspector, architect, or accessibility specialist.

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(I) A certification that the Development will be equipped with energy saving devices that meet the standard statewide energy code adopted by the state energy conservation office, unless historic preservation codes permit otherwise for a Development involving historic preservation. All Units must be air-conditioned. The measures must be certified by the Development architect as being included in the design of each tax credit Unit at the time the 10% Test Documentation is submitted and in actual construction upon Cost Certification. (§2306.6725(b)(1))

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(J) A certification that the Development will be built by a General Contractor that satisfies the requirements of the General Appropriation Act, Article VII, Rider 8(c) applicable to the Department which requires that the General Contractor hired by the Development Owner or the Applicant, if the Applicant serves as General Contractor, must demonstrate a history of constructing similar types of housing without the use of federal tax credits.

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(K) A certification that the Development Owner agrees to establish a reserve account consistent with §2306.186 Texas Government Code and as further described in §1.37 of this title.

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(L) A certification that the Applicant, Developer, or any employee or agent of the Applicant has not formed a Neighborhood Organization for purposes of subsection (i)(2) of this section, has not given money or a gift to cause the Neighborhood Organization to take its position of support or opposition, nor has provided any assistance to a Neighborhood Organization to meet the requirements under subsection (i)(2) of this section which are not allowed under that subsection, as it relates to the Applicant's Application or any other Application under consideration in 2009.

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(M) Operate in accordance with the requirements pertaining to rental assistance in Chapter 60 of this title.

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~~(N)~~ A certification that the Development Owner will contract with a Management Company throughout the Compliance Period that will perform criminal background checks on all adult tenants, head and co head of households.

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(5) Design Items. This exhibit will provide:

(A) All of the architectural drawings identified in clauses (i) - (iii) of this subparagraph. While full size design or construction documents are not required, the drawings must have an accurate and legible scale and show the dimensions. All Developments involving New Construction, or conversion of existing buildings not configured in the Unit pattern proposed in the Application, must provide all of the items identified in clauses (i) - (iii) of this subparagraph. For Developments involving Rehabilitation for which the Unit configurations are not being altered, only the items identified in clauses (i) and (iii) of this subparagraph are required:

(i) A site plan which:

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(I) Is consistent with the number of Units and Unit mix specified in the "Rent Schedule" provided in the Application;

~~(II) Is consistent with the number of buildings and building type/unit mix specified in the "Building/Unit Configuration" provided in the Application; and~~

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~~(III) Identifies all residential and common buildings;~~

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(ii) Floor plans and elevations for each type of residential building and each common area building clearly depicting the height of each floor and a percentage estimate of the exterior composition. Adaptive Reuse Developments, are only required to provide building plans delineating each unit by number, type and area consistent with those in the "Rent Schedule" and pictures of each elevation of the existing building depicting the height of each floor and percentage estimate of the exterior composition; and

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(iii) Unit floor plans for each type of Unit. The net rentable areas these Unit floor plans represent should be consistent with those shown in the "Rent Schedule" and "Building/Unit Configuration" provided in the Application. Adaptive Reuse Developments, are only required to provide Unit floor plans for each distinct typical Unit type (i.e. one-bedroom, two-bedroom) and for all Units types that vary in area by 10% from the typical Unit; and

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(B) A boundary survey of the proposed Development Site and of the property to be purchased. In cases where more property is purchased than the proposed Development Site, the survey or plat must show the survey calls for both the larger site and the Development Site. The survey must clearly delineate the flood plain boundary lines and show all easements. The survey does not have to be recent; but it must show the property purchased and the property proposed for the Development Site. In cases where the Development Site is only a part of the site being purchased, the depiction or drawing of the Development Site may be professionally compiled and drawn by an architect, engineer or surveyor.

(6) Evidence of the Development's development costs and corresponding credit request and syndication information as described in subparagraphs (A) - (G) of this paragraph.

(A) A written narrative describing the financing plan for the Development, including any non-traditional financing arrangements; the use of funds with respect to the Development; the funding sources for the Development including construction, permanent and bridge loans, rents, operating subsidies, and replacement reserves; and the commitment status of the funding sources for the Development. This information must be consistent with the information provided throughout the Application. (§2306.6705(1))

(B) All Developments must submit the "Development Cost Schedule" provided in the Application. This exhibit must have been prepared and executed not more than 6 months prior to the close of the Application Acceptance Period.

(C) Provide a letter of commitment from a syndicator that, at a minimum, provides an estimate of the amount of equity dollars expected to be raised for the Development in conjunction with the amount of Housing Tax Credits requested for allocation to the Development Owner, including pay-in schedules, syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis. (§2306.6705(2) and (3))

(D) For Developments located in a Qualified Census Tract (QCT) as determined by the Secretary of HUD or otherwise qualifying for a 30% increase in Eligible Basis, pursuant to the Code, §42(d)(5)(C) or §49.6(h)(3) and (4) of this chapter, if permitted under §49.6(h) of this chapter, Applicants must submit a copy of the census map clearly showing that the proposed Development is located within a QCT. Census tract numbers must be clearly marked on the map, and must be identical to the QCT number stated in the Department's Reference Manual.

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(E) Rehabilitation Developments (including reconstruction) and Adaptive Reuse must submit a Property Condition Assessment meeting the requirements of paragraph (14)(C) of this subsection.

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(F) If offsite costs are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the supplemental form "Off Site Cost Breakdown" must be provided.

(G) If projected site work costs include unusual or extraordinary items or exceed \$9,000 per Unit, then the Applicant must provide a detailed cost breakdown prepared by a Third Party engineer or architect, and a letter from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis and which ones may be ineligible.

(7) Evidence of readiness to proceed as evidenced by at least one of the items under each of subparagraphs (A)-(D) of this paragraph:

(A) Evidence of Property control in the name of the Development Owner. If the evidence is not in the name of the Development Owner, then the documentation should reflect an expressed ability to transfer the rights to the Development Owner. All of the sellers of the proposed Property for the 36 months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development team must be identified at the time of Application (not required at Pre-Application). One of the following items described in clauses (i)-(iii) of this subparagraph must be provided, and if the acquisition can be characterized as an identity of interest transaction as described in §1.32 of this title, items described in clause (iv) of this subparagraph must also be provided:

(i) A recorded warranty deed with corresponding executed settlement statement, unless required to submit items under clause (iv) of this subparagraph; or

(ii) A contract for lease (the minimum term of the lease must be at least 45 years) which is valid for the entire period the Development is under consideration for tax credits; or

(iii) A contract for sale, an exclusive option to purchase or a lease which is valid for the entire period the Development is under consideration for tax credits. For Tax Exempt Bond Development Applications, site control must be valid through December 1, 2008 with option to extend through March 1, 2009 (Applications submitted for lottery) or 90 days from the date of the bond reservation with the option to extend through the scheduled TDHCA Board meeting at which the award of Housing Tax Credits will be considered (Applications not submitted for lottery). The potential expiration of site control does not warrant the Application being presented to the TDHCA Board prior to the scheduled meeting.

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(iv) If the acquisition can be characterized as an identity of interest transaction, as described in §1.32 of this title, subclauses (I), (II) and (III) of this clause, the Applicant must provide (not required at Pre-Application):

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(I) Documentation of the original acquisition cost in the form of a settlement statement or, if a settlement statement is not available, the seller's most recent audited financial statement specifically indicating the asset value for the Development Site; and

(II) If the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost claimed in the Application;

(-a-) An appraisal meeting the requirements of paragraph (14)(D) of this subsection; and

(-b-) Any other verifiable costs of owning, holding, or improving the Property that, when added to the value from subclause (I) of this clause, justifies the Applicant's proposed acquisition amount.

(-1-) For land-only transactions, documentation of owning, holding or improving costs since the original acquisition date may include property taxes, interest expense, a calculated return on equity at a rate consistent with the historical returns of similar risks, the cost of any physical improvements made to the property, the cost of rezoning, replatting or developing the property, or any costs to provide or improve access to the property.

(-2-) For transactions which include existing buildings that will be rehabilitated or otherwise maintained as part of the Development, documentation of owning, holding, or improving costs since the original acquisition date may include capitalized costs of improvements to the property, a calculated return on equity at a rate consistent with the historical returns of similar risks, and allow the cost of exit taxes not to exceed an amount necessary to allow the sellers to be made whole in the original and subsequent investment in the property and avoid foreclosure.

(III) In no instance will the acquisition cost utilized by the underwriter exceed the lesser of the original acquisition cost evidenced by subclause (I) of this clause plus costs identified in subclause (II)(-b-) of this clause, or the "as-is" value conclusion evidenced by subclause (II)(-a-) of this clause.

(v) As described in clauses (ii) and (iii) of this subparagraph, property control must be continuous. Closing on the property is acceptable, as long as evidence is provided that there was no period in which control was not retained.

(B) Evidence from the appropriate local municipal authority that satisfies one of clauses (i) - (iii) of this subparagraph. Documentation may be from more than one department of the municipal authority and must have been prepared and executed not more than 6 months prior to the close of the Application Acceptance Period. (§2306.6705(5))

(i) For New Construction, Adaptive Reuse or reconstruction Developments, a letter from the chief executive officer of the Local Political Subdivision or another local official with appropriate jurisdiction stating that (For Tax-Exempt Bond Applications the items in clauses (I) - (III) of this clause must be submitted no later than 14 days prior to the Board meeting when the housing tax credits will be considered):

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(I) The Development is located within the boundaries of a Local Political Subdivision which does not have a zoning ordinance; and either subclauses (II) or (III) of this clause;

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(II) The letter must state that the Development is consistent with a local consolidated plan, comprehensive plan, or other local planning document that addresses affordable housing; or

(III) The letter must state that there is a need for affordable housing, if no such planning document exists.

(ii) For New Construction or reconstruction Developments, a letter from the chief executive officer of the Local Political Subdivision or another local official with appropriate jurisdiction stating that:

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(I) The Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development; or

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(II) The Applicant is in the process of seeking the appropriate zoning and has signed and provided to the political subdivision a release agreeing to hold the political subdivision and all other parties harmless in the event that the appropriate zoning is denied, (§2306.6705(1)(B)). The Applicant must also provide at the time of Application a copy of the application for appropriate zoning filed with the local entity responsible for zoning approval and proof of delivery of that application in the form of a signed certified mail receipt, signed overnight mail receipt, or confirmation letter from said official. Final approval of appropriate zoning must be achieved and documentation of acceptable zoning for the Development, as proposed in the Application, must be provided to the Department at the time the Commitment Fee, or Determination Notice Fee, is paid. If this evidence is not provided with the Commitment Fee, any commitment of credits will be rescinded. No extensions may be requested for the deadline for submitting evidence of final approval of appropriate zoning.

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(iii) For Rehabilitation Developments, if the property is currently a non-conforming use as presently zoned, a letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction which addresses the items in subclauses (I) - (IV) of this clause:

(I) A detailed narrative of the nature of non-conformance;

(II) The applicable destruction threshold;

(III) Owner's rights to reconstruct in the event of damage; and

(IV) Penalties for noncompliance.

(C) Evidence of interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department and any other sources documented in the Application. Any local, state or federal financing identified in this section which restricts household incomes at any AMGI lower than restrictions required pursuant to the Rules must be identified in the Rent Schedule and the local, state or federal income restrictions must include corresponding rent levels that do not exceed 30% of the income limitation in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be imposed by the Housing Tax Credit LURA and monitored throughout the extended use period. Such evidence must be consistent with the sources and uses of funds represented in the Application and shall be provided in one or more of the following forms described in clauses (i) - (iv) of this subparagraph:

(i) Bona fide financing in place as evidenced by:

(I) A valid and binding loan agreement; and

(II) Deed(s) of trust in the name of the Development Owner as grantor; or

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(III) For TRDO-USDA §515 Developments involving, an executed TRDO-USDA letter indicating TRDO-USDA has received a Consent Request, also referred to as a Preliminary Submittal, as described in 7 CFR §3560.406 and a copy of the original loan documents; or,

(ii) Bona fide commitment or term sheet for the interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money which is addressed to the Development Owner and which has been executed by the lender (the term of the loan must be for a minimum of 15 years with at least a 30 year amortization). The commitment must state an expiration date and all the terms and conditions applicable to the financing including the mechanism for determining the interest rate, if applicable, and the anticipated interest rate and any required Guarantors. Such a commitment may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits; or,

(iii) Any Federal, State or local gap financing, whether of soft or hard debt, must be identified at the time of Application as evidenced by:

(I) Evidence from the lending agency that an application for funding has been made or from the Applicant indicating an intent to apply for funding; and

(II) A term sheet which clearly describes the amount and terms of the funding, and the date by which the funding determination will be made and any commitment issued, must be submitted; and

(III) Evidence of application for funding from another Department program is not required except as indicated on the Uniform Application, as long as the Department funding is on a concurrent funding period with the Application submitted and the Applicant clearly indicates that such an Application has been filed as required by the Application Submission Procedures Manual; and

(IV) If the commitment from any funding source identified in this subparagraph has not been received by the date the Department's Commitment Notice is to be submitted, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the funding source, the Commitment Notice may be rescinded; or

(iv) If the Development will be financed through more than 5% of Development Owner contributions, provide a letter from an Third Party CPA verifying the capacity of the Development Owner to provide the proposed financing with funds that are not otherwise committed together with a letter from the Development Owner's bank or banks confirming that sufficient funds are available to the Development Owner. Documentation must have been prepared and executed not more than 6 months prior to the close of the Application Acceptance Period.

(D) Provide the documents in clauses (i) - (iii) of this subparagraph:

(i) A copy of the full legal description for the Development Site; and

(ii) A current valuation report from the county tax appraisal district and documentation of the current total property tax rate for the Development Site, unless the site is located on land that is not subject to federal, state or local property taxes, and

(iii) A copy of:

(I) The current title policy or title status report if on Tribal Land which shows that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner; or

(II) a current title commitment with the proposed insured matching the name of the Development Owner and the title of the Development Site vested in the name of the seller or lessor as indicated on the sales contract, option or lease.

(III) If the title policy, title status report, or commitment is more than six months old as of the day the Application Acceptance Period closes, then a letter from the title company/Bureau of Indian Affairs indicating that nothing further has transpired on the policy, title status report or commitment.

(8) Evidence in the form of a certification of all of the notifications described in the subparagraphs of this paragraph. Such notices must be prepared in accordance with the "Public Notifications" certification provided in the Application.

(A) Evidence in the form of a certification that the Applicant met the requirements and deadlines identified in clauses (i) - (iii) of this subparagraph. Notification must not be older than three months from the first day of the Application Acceptance Period. (§2306.6705(9)). If evidence of these notifications was submitted with the Pre-Application Threshold for the same Application and satisfied the Department's review of Pre-Application Threshold, then no additional notification is required at Application, except that re-notification is required by tax credit Applicants who have submitted a change in the Application, whether from Pre-Application to Application or as a result of an Administrative Deficiency that reflects a total Unit increase

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of greater than 10%, a total increase of greater than 10% for any given level of AMGI, or a change to the population being served (elderly, Intergenerational Housing or family). For Applications submitted for Tax-Exempt Bond Developments or Applications not applying for Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.), notifications and proof thereof must not be older than three months prior to the date the Volume III of the Application is submitted.

(i) The Applicant must request a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site from local elected officials as follows:

(I) No later than January 20, 2009 for Competitive Housing Tax Credit Applications (or for Tax-Exempt Bond Applications, Rural Rescue, or Applications not applying for Tax Credits, but applying only for other Multifamily Programs such as HOME, Housing Trust Fund, etc., not later than 14 days prior to submission of the Threshold documentation), the Applicant must e-mail, fax or mail with registered receipt a completed "Neighborhood Organization Request" letter as provided in the Application to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an Area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located an Area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format.

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(II) If no reply letter is received from the local elected officials by February 20, 2009, (or For Tax-Exempt Bond Developments or Applications not applying for Tax Credits, but applying only for other Multifamily Programs such as HOME, Housing Trust Fund, etc., by 7 days prior to the submission of the Application), then the Applicant must certify to that fact in the "Application Notification Certification Form" provided in the Application.

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(III) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as outlined by the local elected officials, or that the Applicant has knowledge of as of the submission of the Application, in the "Application Notification Certification Form" provided in the Application.

(ii) Not later than the date the Application is submitted, notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt return or similar tracking mechanism e-mail, fax or mail with registered receipt in the format required in the "Application Notification Template" provided in the Application. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are not required to notify city officials, however, are required to notify county officials. Evidence of Notification is required in the form of a certification in the "Application Notification Certification Form" provided in the Application, although it is encouraged that Applicants retain proof of delivery of the notifications, to the persons or entites prescribed subclauses (I)-(IX) of this clause, in the event that the Department requires proof of Notification. Evidence of proof of delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of receipt by recipient for facsimile and electronic mail. Officials to be notified are those officials in office at the time the Application is submitted.

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(I) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site as identified in clause (i)(III) of this subparagraph.

(II) Superintendent of the school district containing the Development;

Development;

(III) Presiding officer of the board of trustees of the school district containing the

(IV) Mayor of the Governing Body of any municipality containing the Development;

Development;

(V) All elected members of the Governing Body of any municipality containing the

(VI) Presiding officer of the Governing Body of the county containing the Development;

Development;

(VII) All elected members of the Governing Body of the county containing the

(VIII) State senator of the district containing the Development; and

(IX) State representative of the district containing the Development.

(iii) Each such notice must include, at a minimum, all of the following:

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- (I) The Applicant's name, address, 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) Statement of whether the Development proposes New Construction, reconstruction, Adaptive Reuse or Rehabilitation;
- (V) The type of Development being proposed (single family homes, duplex, apartments, townhomes, high-rise etc.) and population being served (family, Intergenerational Housing or elderly);
- (VI) The approximate total number of Units and approximate total number of low-income Units;
- (VII) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the approximate percentage of Units that are market rate;
- (VIII) The number of Units and proposed rents (less utility allowances) for the low-income Units and the number of Units and the proposed rents for any market rate Units. Rents to be provided are those that are effective at the time of the Application, which are subject to change as annual changes in the area median income occur; and
- (IX) The expected completion date if credits are awarded.

(B) Signage on Property or Alternative. A Public Notification Sign shall be installed on the Development Site prior to the date the Application is submitted unless prohibited by local ordinance or code. Scattered site Developments must install a sign on each non-contiguous Development Site. For Competitive Housing Tax Credit Applications the date, time and location of the public hearing, as published by the Department and closest to the Development Site, must be included on the sign. For Tax-Exempt Bond Developments, regardless of the Priority of the Application or the Issuer, the sign must be installed within thirty (30) days of the Department's receipt of Volumes I and II. The date, time and location of the bond Tax Exempt Fiscal Responsibility Act (TEFRA) public hearing must be included on the sign no later than thirty (30) days prior to the scheduled public hearing. Evidence submitted with the Application must include photographs of the site with the installed sign. The sign must be at least 4 feet by 8 feet in size and located within twenty feet of, and facing, the main road adjacent to the site. The sign shall be continuously maintained on the site until the day that the Board takes final action on the Application for the Development. The information and lettering on the sign must meet the minimum requirements identified in the Application. For Tax-Exempt Bond Developments, regardless of the issuer, the Applicant must certify to the fact that the sign was installed within 30 days of submission and the date, time and location of the TEFRA hearing is indicated on the sign at least 30 days prior to the date of the scheduled hearing. In areas where the Public Notification Sign is prohibited by local ordinance or code, an alternative to installing a Public Notification Sign and at the same required time, the Applicant shall, mail written notification to those addresses described in either clause (i) or (ii) of this subparagraph. This written notification must include the information otherwise required for the sign as provided in the Application. The final Application must include a map of the proposed Development Site and mark the distance required by clause (i) or (ii) of this subparagraph, up to 1,000 feet, showing street names and addresses; a list of all addresses the notice was mailed to; an exact copy of the notice that was mailed; and a certification that the notice was mailed through the U.S. Postal Service and stating the date of mailing. If Public Notification Sign is prohibited by local ordinance or code, evidence of the applicable ordinance or code must be submitted in the Application.

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(i) All addresses required for notification by local zoning notification requirements. For example, if the local zoning notification requirement is notification to all those addresses within 200 feet, then that would be the distance used for this purpose; or

(ii) For Developments located in communities that do not have zoning, communities that do not require a zoning notification or those located outside of a municipality, all addresses located within 1,000 feet of any part of the proposed Development Site.

(C) If any of the Units in the Development are occupied at the time of Application, then the Applicant must certify that it has notified each tenant at the Development of all the information otherwise required on the sign, including the Department's public hearing schedule for comment on submitted Applications.

(9) Evidence of the Development's proposed ownership structure and the Applicant's previous experience as described in subparagraphs (A) - (D) of this paragraph.

(A) Chart which clearly illustrates the complete organizational structure of the final proposed Development Owner and of any Developer or Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner or the Developer or Guarantor, as applicable, whether directly or through one or more subsidiaries. Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must be included in this exhibit.

(B) Each Applicant, Development Owner, Developer or Guarantor, or any entity shown on an organizational chart as described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, shall provide the following documentation, as applicable:

(i) For entities that are not yet formed but are to be formed either in or outside of the state of Texas, a certificate of reservation of the entity name from the Texas Secretary of State; or

(ii) For existing entities whether formed in or outside of the state of Texas, evidence that the entity has the authority to do business in Texas or has applied for such authority in the form of a Certificate of Filing from the Texas Secretary of State.

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(C) Evidence that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, has provided a copy of the completed and executed Previous Participation and Background Certification Form to the Department. Nonprofit entities, public housing authorities and publicly traded corporations are required to submit documentation for the entities involved; documentation for individual board members and executive directors is required for this exhibit. Any Person receiving more than 10% of the Developer fee will also be required to submit documents for this exhibit. The 2009 versions of these forms, as required in the Uniform Application, must be submitted. Units of local government are also required to submit this document. The form must include a list of all developments that are, or were, previously under ownership or Control of the Person. All participation in any TDHCA funded or monitored activity, including non-housing activities, must be disclosed.

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(D) Evidence, in the form of a certification, that one of the Development Owner's General Partners, the Developer or their Principals have a record of successfully constructing or developing residential units in the capacity of owner, General Partner or Developer. Evidence must be a certification from the Department that the Person with the experience satisfies this exhibit, as further described under subsection (g)(1) of this section. Applicants must request this certification at least fourteen days prior to the close of the Application Acceptance Period. Applicants must ensure that the Person whose name is on the certification appears in the organizational chart provided in subparagraph (A) of this paragraph.

(10) Evidence of the Development's projected income and operating expenses as described in subparagraphs (A) - (D) of this paragraph:

(A) All Developments must provide a 30-year proforma estimate of operating expenses and supporting documentation used to generate projections (operating statements from comparable properties).

(B) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds or proof of application for such funds must be provided, which at a minimum identifies 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. (§2306.6705(4))

(C) Applicant must provide 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.

(D) Occupied Developments undergoing Rehabilitation must also submit the items described in clauses (i) - (iv) of this subparagraph.

(i) The items in subclauses (I) and (II) of this clause are required unless the current property owner is unwilling to provide the required documentation. In that case, submit a signed statement as to the Applicant's inability to provide all documentation as described.

(I) Submit at least one of the following:

(-a-) Historical monthly operating statements of the subject Development for 12 consecutive months ending not more than 3 months from the first day of the Application Acceptance Period;

(-b-) The two most recent consecutive annual operating statement summaries;

(-c-) The most recent consecutive six months of operating statements and the most recent available annual operating summary;

(-d-) All monthly or annual operating summaries available and a written statement from the seller refusing to supply any other summaries or expressing the inability to supply any other summaries, and any other supporting documentation used to generate projections may be provided; and

(II) A rent roll not more than 6 months old as of the first day the Application Acceptance Period, that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, tenant names or vacancy, and dates of first occupancy and expiration of lease.

(ii) A written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))

(iii) For Intergenerational Housing Applications or Qualified Elderly Developments, identification of the number of existing tenants qualified under the target population elected under this title;

(iv) A relocation plan outlining relocation requirements and a budget with an identified funding source; and (§2306.6705(6))

(v) If applicable, evidence that the relocation plan has been submitted to the appropriate legal or governmental agency. (§2306.6705(6))

(11) Applications involving Nonprofit General Partners and Qualified Nonprofit Developments.

(A) All Applications involving a nonprofit General Partner, regardless of the Set-Aside applied under, in which the Development will receive some financial or tax benefit for the involvement of the nonprofit General Partner, must submit all of the documents described in clauses (i) and (ii) of this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609: (§2306.6706)

(i) An IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity or; and

(ii) The "Nonprofit Participation Exhibit."

(B) Additionally, all Applications applying under the Nonprofit Set-Aside, established under §49.7(b)(1) of this chapter, must also provide the following information with respect to the Qualified Nonprofit Organization as described in clauses (i) - (iii) of this subparagraph.

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(i) A Third Party legal opinion stating:

(I) That the nonprofit organization is not affiliated with or Controlled by a forprofit organization and the basis for that opinion; and

(II) That the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside and the basis for that opinion. Eligibility is contingent upon the non-profit organization Controlling the Development, or if the organization's Application is filed on behalf of a limited partnership, or limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member; and otherwise meet the requirements of the Code, §42(h)(5); and

(III) That one of the exempt purposes of the nonprofit organization is to provide low-income housing; and

(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; and

(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

(ii) A copy of the nonprofit organization's most recent audited financial statement; and

(iii) 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 90 miles from the Development, if the Development is not located in a Rural Area.

(12) Applicants applying for acquisition credits must provide:

(A) An appraisal meeting the requirements of paragraph (14)(D) of this subsection; and

(B) An "Acquisition of Existing Buildings Form."

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(13) Evidence of Financial Statement and Authorization to Release Credit Information. The financial statements and authorization to release credit information must be unbound and clearly labeled. A "Financial Statement and Authorization to Release Credit Information" must be completed and signed for any General Partner, Developer or Guarantor and any Person that has an ownership interest of 10% or more in the

Development Owner, General Partner, Developer, or Guarantor. Nonprofit entities, public housing authorities and publicly traded corporations are only required to submit documentation for the entities involved; documentation for individual board members and executive directors is not required for this exhibit.

(A) Financial statements for an individual must not be older than **6 months** from the first day of the Application Acceptance Period.

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(B) Financial statements for partnerships or corporations should be for the most recent fiscal year ended 90 days from the first day of the Application Acceptance Period. An audited financial statement should be provided, if available, and all partnership or corporate financials must be certified. Financial statements are required for an entity even if the entity is wholly-owned by a Person who has submitted this document as an individual.

(C) Entities that have not yet been formed and entities that have been formed recently but have no assets, liabilities, or net worth are not required to submit this documentation, but must submit a statement with their Application that this is the case.

(14) Supplemental Threshold Reports. All Applications must include documents under subparagraphs (A) and (B) of this paragraph. If required under paragraph (6) of this subsection, a Property Condition Assessment as described in subparagraph (C) of this paragraph must be submitted. If required under paragraphs (7) or (12) of this subsection, an appraisal as described in subparagraph (D) of this paragraph must be submitted. All submissions must meet the requirements stated in subparagraphs (E) - (G) of this paragraph.

(A) A Phase I Environmental Site Assessment (ESA) report:

(i) Prepared by a qualified Third Party;

(ii) Dated not more than 12 months prior to the first day of the Application Acceptance Period. In the event that a Phase I Environmental Site Assessment on the Development is more than 12 months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated letter or updated report dated not more than three months prior to the first day of the Application Acceptance Period from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report; and

(iii) Prepared in accordance with the Department's Environmental Site Assessment Rules and Guidelines, §1.35 of this title.

(iv) Developments whose funds have been obligated by TRDO-USDA will not be required to supply this information; however, the Applicants of such Developments 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.

(B) A comprehensive Market Analysis report:

(i) Prepared by a Third Party Qualified Market Analyst approved by the Department in accordance with the approval process outlined in the Market Analysis Rules and Guidelines, §1.33 of this title;

(ii) Dated not more than 6 months prior to the first day of the Application Acceptance Period. In the event that a Market Analysis is more than 6 months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated Market Analysis from the Person or organization which prepared the initial report; however the Department will not accept any Market Analysis which is more than 12 months old as of the first day of the Application Acceptance Period; and

(iii) Prepared in accordance with the methodology prescribed in the Department's Market Analysis Rules and Guidelines, §1.33 of this title.

(iv) For Applications in the TRDO-USDA Set-Aside proposing acquisition and Rehabilitation with residential structures at or above 80% occupancy at the time of Application Submission, the appraisal, required under paragraphs (7) or (12) of this subsection and prepared in accordance with the Uniform Standards of Professional Appraisal Practice and the Department's Appraisal Rules and Guidelines, §1.34 of this title, will satisfy the requirement for a Market Analysis; however the Department may request additional information as needed. (§2306.67055) (§42(m)(1)(A)(iii))

(C) A Property Condition Assessment (PCA) report required for Rehabilitation, reconstruction and Adaptive Reuse Developments:

(i) Prepared by a qualified Third Party;

(ii) Dated not more than 6 months prior to the first day of the Application Acceptance Period; and

(iii) Prepared in accordance with the Department's Property Condition and Assessment Rules and Guidelines, §1.36 of this title.

(iv) For Developments which require a capital needs assessment from TRDO-USDA, the capital needs assessment may be substituted and may be more than 6 months old, as long as TRDO-USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §1.36 of this title.

(D) An appraisal report:

(i) Prepared by a qualified Third Party;

(ii) Dated not more than 6 months prior to the first day of the Application Acceptance Period. In the event that an appraisal is more than 6 months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated appraisal from the Person or organization which prepared the initial report; however the Department will not accept any appraisal which is more than 12 months old as of the first day of the Application Acceptance Period; and

(iii) Prepared in accordance with the Uniform Standards of Professional Appraisal Practice and the Department's Appraisal Rules and Guidelines, §1.34 of this title.

(iv) For Developments that require an appraisal from TRDO-USDA, the appraisal may be more than 6 months old, as long as TRDO-USDA has confirmed in writing that the existing appraisal is still acceptable.

(E) Inserted at the front of each of these reports must be a transmittal letter from the individual preparing the report that states that the Department is granted full authority to rely on the findings and conclusions of the report. The transmittal letter must also state the report preparer has read and understood the Department rules specific to the report found at §§1.33 - 1.36 of this title.

(F) All Applicants acknowledge by virtue of filing an Application that the Department is not bound by any opinion expressed in the report. The Department may determine from time to time that information not required in the Department's Rules and Guidelines will be relevant to the Department's evaluation of the need for the Development and the allocation of the requested Housing Credit Allocation Amount. The Department may request additional information from the report provider or revisions to the report to meet this need. In instances of non-response by the report provider, the Department may substitute in-house analysis.

(G) The requirements for each of the reports identified in subparagraphs (A) - (C) of this paragraph can be satisfied in either of the methods identified in clause (i) or (ii) of this subparagraph and meet the requirements of clause (iii) of this subparagraph.

(i) Upon Application submission, the documentation for each of these exhibits may be submitted in its entirety; or

(ii) Upon Application submission, the Applicant may provide evidence in the form of an executed engagement letter with the party performing each of the individual reports that the required exhibit has been commissioned to be performed and that the delivery date will be no later than April 1, ~~2009~~. In addition to the submission of the engagement letter with the Application, a map must be provided that reflects the Qualified Market Analyst's intended market area. Subsequently, the entire exhibit must be submitted on or before 5:00 p.m. ~~CDT~~, April 1, ~~2009~~. If the entire exhibit is not received by that time, the Application will be terminated and will be removed from consideration.

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(iii) A single hard copy of the report and a searchable soft copy in the format of a single file containing all information and exhibits in the hard copy report, presented in the order they appear in the hard copy report on a CD-R clearly labeled with the report type, Development name, and Development location are required.

(15) Self-Scoring. Applicant's self-score must be completed on the "Application Self-Scoring Form." An Applicant may not adjust the Application Self Scoring Form, after the submission of the Application, without a request from the Department as a result of an Administrative Deficiency.

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(i) Selection Criteria. All Applications will be scored and ranked using the point system identified in this subsection. Unless otherwise stated, do not round calculations. Points other than those provided in paragraphs (2) and (6) of this subsection will not be awarded unless requested in the Self Scoring Form. All Applications, with the exception of TRDO-USDA Applications, must receive a final score totaling a minimum of 118, not including any points awarded or deducted pursuant to paragraphs (2) and (6) of this subsection to be eligible for an allocation of Housing Tax Credits. Maximum Total Points: 240.

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(1) Financial Feasibility of the Development. Financial Feasibility of the Development based on the supporting financial data required in the Application that will include a Development underwriting pro forma from the permanent or construction lender. (§2306.6710(b)(1)(A)). Applications may qualify to receive 28 points for this item. No partial points will be awarded. Evidence will include the documentation required for this exhibit, as reflected in the Application submitted, in addition to the commitment letter required under subsection (h)(7)(C) of this section. The supporting financial data shall include:

(A) A fifteen year pro forma prepared by the permanent or construction lender:

(i) Specifically identifying each of the first five years and every fifth year thereafter;

(ii) Specifically identifying underlying assumptions including, but not limited to general growth factor applied to income and expense; and

(iii) Indicating that the Development maintains a minimum 1.15 debt coverage ratio throughout the initial fifteen years proposed for all third party lenders that require scheduled repayment; and

(B) A statement in the commitment letter, or other form deemed acceptable by the Department, indicating that the lender's assessment finds that the Development will be feasible for fifteen years.

(C) For Developments receiving financing from TRDO-USDA, the form entitled "Sources and Uses Comprehensive Evaluation for Multi-Family Housing Loans" or other form deemed acceptable by the Department shall meet the requirements of this section.

(2) Quantifiable Community Participation from Neighborhood Organizations on Record with the State or County and Whose Boundaries Contain the Proposed Development Site. Points will be awarded based on written statements of support or opposition from Neighborhood Organizations on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development site. (§2306.6710(b)(1)(B); §2306.6725(a)(2)). It is possible for points to be awarded or deducted based on written statements from organizations that were not identified by the process utilized for notification purposes under subsection (h)(8)(A)(ii) of this section if the organization provides the information and documentation required in subparagraphs (A) - (C) of this paragraph. It is also possible that neighborhood organizations that were initially identified as appropriate organizations for purposes of the notification requirements will subsequently be determined by the Department not to meet the requirements for scoring. If an organization is determined not to be qualified under this paragraph, the organization may qualify under paragraph (18)(B) of this subsection.

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(A) Basic Submission Requirements for Scoring. Each Neighborhood Organization may submit one letter (and enclosures) that represents the organization's input. In order to receive a point score, the letter (and enclosures) must be received by the Department, or postmarked if mailed by the U.S Postal Service, no later than February 27, 2009, for letters relating to Applications that submitted a Pre-Application, or April 1, 2009 if a Pre-Application was not submitted. Letters should be addressed to the Texas Department of Housing and Community Affairs, "Attention: Director of Multifamily Finance (Neighborhood Input)." Letters received after the applicable deadline will be summarized for the Board's information and consideration, but will not affect the score for the Application. The organization's letter (and enclosures) must:

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(i) State the name and location of the proposed single Development;

(ii) Certify that the letter is signed by the person s with the authority to sign on behalf of the neighborhood organization, and provide:

(I) the street and/or mailing addresses;

(II) day and evening phone numbers;

(III) and e-mail addresses and/or facsimile numbers for the signer of the letter and one additional contact for the organization;

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(iii) Certify that the organization has boundaries, and that the boundaries in effect February 27, 2009 contain the proposed Development Site;

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(iv) Certify that the organization meets the definition of "Neighborhood Organization as defined in §49.3(63) of this chapter." For the purposes of this section, a "Neighborhood Organization" is defined as an organization of persons living near one another within the organization's defined boundaries in effect February 27, 2009 that contain the proposed Development site and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood. "Neighborhood Organizations" include homeowners associations, property owners associations, and resident councils in which the council is

commenting on the Rehabilitation or reconstruction of the property occupied by the residents. "Neighborhood Organizations" do not include broader based "community" organizations;

(v) Include documentation showing that the organization is on record as of February 27, 2009 with the state or county in which the Development is proposed to be located. The receipt of a QCP letter, by the Department on or before February 27, 2009, that meets the requirements outlined in the QCP neighborhood information packet and the 2009 QAP, will constitute being on record with the State. The Neighborhood Organization letter must be signed by two officials or board members of the Neighborhood Organization and must include in its letter, a contact name with a mailing address and phone number of the persons signing the letter; one additional contact for the organization a written description and map of the organization's geographical boundaries; and proof that the boundaries described were in effect as of February 27, 2009. This request must be received no later than February 27, 2009. Acceptance of this documentation will be subject to Department approval. The Department is permitted to issue a deficiency notice for this registration process and if satisfied, the organization will still be deemed to be timely placed on record with the state;

(vi) Accurately certify that the Neighborhood Organization was not formed by any Applicant, Developer, or any employee or agent of any Applicant (the seller of land is not considered, with the exception of an identity of interest, to be an agent of the Application) in the 2009 Competitive Housing Tax Credit Application Round, that the organization and any member did not accept money or a gift to cause the Neighborhood Organization to take its position of support or opposition, and has not provided any assistance other than education and information sharing to the Neighborhood Organization to meet the requirements of this subparagraph for any Application in the Application Round (i.e. hosting a public meeting, providing the "TDHCA Information Packet for Neighborhoods" to the Neighborhood Organization, or referring the Neighborhood Organization to TDHCA staff for guidance). Applicants may not provide any "production" assistance to meet these requirements for any Application in the Application Round (i.e. use of fax machines owned by the Applicant, use of legal counsel related to the Applicant, or assistance drafting a letter for the purposes of this subparagraph). Any deficiency notices issued to the Neighborhood Organization will also be sent to the Applicant for information purposes only. Applicants may not provide delivery assistance of any communication between the Neighborhood Organization and the Department and Applicants may not assist the Neighborhood Organization in preparing its response to a deficiency notice. Applicants may provide information about the deficiency notice process or deadlines to a Neighborhood Organization;

(vii) While not required, the organization is encouraged to hold a meeting to which all the members of the organization are invited to consider whether the organization should support, oppose, or be neutral on the proposed Development, and to have the membership vote on whether the organization should support, oppose, or be neutral on the proposed Development. The organization is also encouraged to invite the Developer or Applicant to this meeting; and

(viii) Letters from Neighborhood Organizations, and subsequent correspondence from Neighborhood Organizations, may not be provided via the Applicant which includes facsimile and email communication.

(B) Scoring of Letters (and Enclosures). The input must clearly and concisely state each reason for the Neighborhood Organization's support for or opposition to the proposed Development.

(i) The score awarded for each letter for this exhibit will range from a maximum of +24 for the position support to +12 for the neutral position to 0 for a position of opposition. The number of points to be allocated to each organization's letter will be based on the organization's letter and evidence enclosed with the letter. The final score will be determined by the Executive Director. The Department may investigate a matter and contact the Applicant and Neighborhood Organizations for more information. The Department may consider any relevant information specified in letters from other Neighborhood Organizations regarding a Development in determining a score.

(ii) The Department highly values quality public input addressed to the merits of a Development. Input that points out matters that are specific to the neighborhood, the proposed site, the proposed Development, or Developer are valued. If a proposed Development is permitted by the existing or pending zoning or absence of zoning, concerns addressed by the allowable land use that are related to any multifamily development may generally be considered to have been addressed at the local level through the land use planning process. Input concerning positive efforts or the lack of efforts by the Applicant to inform and communicate with the neighborhood about the proposed Development is highly valued. If the Neighborhood Organization refuses to communicate with the Applicant the efforts of the Applicant will not be

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considered negative. 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.

(iii) In general, letters that meet the requirements of this paragraph and:

(I) Establish at least one reason for support or opposition will be scored the maximum points for either support (+24 points) or opposition (zero); or

(II) That do not establish a reason for support or opposition or that are unclear will be considered ineligible and scored as neutral (+12 points).

(iv) If an Application receives multiple eligible letters, the average score of all eligible letters will be applied to the Application.

(v) Applications for which no letters from Neighborhood Organizations are scored will receive a neutral score of +12 points.

(C) Basic Submission Deficiencies. The Department is authorized but not required to request that the Neighborhood Organization provide additional information or documentation the Department deems relevant to clarify information contained in the organization's letter (and enclosures). If the Department determines to request additional information from an organization, it will do so by e-mail or facsimile to the e-mail addresses or facsimile number provided with the organization's letter. If the deficiencies are not clarified or corrected in the Department's determination within five business days from the date the e-mail or facsimile is sent to the organization, the organization's letter will not be considered further for scoring and the organization will be so advised. This potential deficiency process does not extend any deadline required above for the "Quantifiable Community Participation" process. An organization may not submit additional information or documentation after the applicable deadlines except in response to an e-mail or facsimile from the Department specifically requesting additional information.

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(3) The Income Levels of Tenants of the Development. Applications may qualify to receive up to 22 points for qualifying under only one of subparagraphs (A) - (F) of this paragraph. To qualify for these points, the household incomes must not be higher than permitted by the AMGI level (must round to the next highest whole Unit, no less than one Unit). If a Development includes market rate or non-restricted Units, to qualify for these points at least 10% of all the Units that are not Low-Income Units (i.e. market rate or non-restricted Units) in the Development must be set-aside with incomes at or below 80% of AMGI. The Development Owner, upon making selections for this exhibit, will set aside Units at the levels of AMGI and will maintain the percentage of such Units continuously over the compliance and extended use period as specified in the LURA. These income levels require corresponding rent levels that do not exceed 30% of the income limitation in accordance with §42(g), Internal Revenue Code. (§2306.111(g)(3)(B); §2306.111(g)(3)(E); §2306.6710(b)(1)(C); §2306.6710(e); and §42(m)(1)(B)(ii)(I))

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(A) 22 points if at least 80% of the Low-Income Units in the Development are set-aside with incomes at or below 50% of AMGI; or

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(B) 22 points if at least 40% of the Low-Income Units in the Development are set-aside with incomes at or below a combination of 50% and 30% of AMGI in which at least 5% of the Low-Income Units are at or below 30% of AMGI; or

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(C) 20 points if at least 60% of the Low-Income Units in the Development are set-aside with incomes at or below 50% of AMGI; or

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(D) 18 points if at least 10% of the Low-Income Units in the Development are set-aside with incomes at or below 30% of AMGI; or

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(E) 16 points if at least 40% of the Low-Income Units in the Development are set-aside with incomes at or below 50% of AMGI; or

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(F) 14 points if at least 35% of the Low-Income Units in the Development are set-aside with incomes at or below 50% of AMGI.

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(4) The Size and Quality of the Units (Development Characteristics). Applications may qualify to receive up to 20 points. Applications may qualify for points under both subparagraphs (A) and (B) of this paragraph. (§2306.6710(b)(1)(D) and §42(m)(1)(C)(iii))

(A) Size of the Units. Applications may qualify to receive 6 points. The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Six points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), Developments receiving funding from TRDO-USDA, or Developments proposing Single Room Occupancy without meeting these square footage minimums if requested in the Self Scoring Form. The square feet of all of the Units in the

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Development, for each type of Unit, must be at least the minimum noted in clauses (i) - (v) of this subparagraph. Changes to an Application during any phase of the review process that decreases the square footage below the minimums noted in clauses (i) - (v) of this subparagraph, will be re-evaluated and may result in a reduction of the Application score.

- (i) ~~600~~ square feet for an efficiency Unit;
- (ii) ~~700~~ square feet for a non-elderly one Bedroom Unit; ~~600~~ square feet for an elderly one Bedroom Unit;
- (iii) ~~950~~ square feet for a non-elderly two Bedroom Unit; 750 square feet for an elderly two Bedroom Unit;
- (iv) ~~1,050~~ square feet for a three Bedroom Unit; and
- (v) ~~1,250~~ square feet for a four Bedroom Unit.

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(B) Quality of the Units. Applications may qualify to receive ~~14~~ points. Applications in which Developments 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 clauses (i) - (xix) of this subparagraph, not to exceed 14 points in total. Applications involving scattered site Developments must have all of the Units located with a specific amenity to count for points. Applications involving Rehabilitation (excluding reconstruction) or Single Room Occupancy may receive 1.5 points for each point item, not to exceed 14 points in total. (do not round).

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- (i) Covered entries (1 point);
- (ii) Nine foot ceilings in living room and all bedrooms (at minimum) (1 point);
- (iii) Microwave ovens (1 point);
- (iv) Self-cleaning or continuous cleaning ovens (1 point);
- (v) Ceiling fixtures in all rooms (light with ceiling fan in living area and all bedrooms) (1 point);
- (vi) Refrigerator with icemaker (1 point);
- (vii) Laundry connections (2 points);
- (viii) Storage room or closet, of approximately 9 square feet or greater, which does not include bedroom, entryway or linen closets - does not need to be in the Unit but must be on the property site (1 point);
- (ix) Laundry equipment (washers and dryers) for each individual unit including a front loading washer and dryer in required UFAS compliant Units (3 points);
- (x) Thirty year architectural shingle roofing (1 point);
- (xi) Covered patios or covered balconies (1 point);
- (xii) Covered parking (including garages) of at least one covered space per Unit (2 points);
- (xiii) 100% masonry on exterior, which can include stucco, cementitious board products, concrete brick and mortarless concrete masonry, but not EIFS synthetic stucco (3 points) (Applicants may not select this item if item (xiv) of this subclause is selected);
- (xiv) Greater than 75% masonry on exterior, which can include stucco and cementitious board products, concrete brick and mortarless concrete masonry, but not EIFS synthetic stucco (1 point) (Applicants may not select this item if item (xiii) of this subclause is selected);
- (xv) Use of energy efficient alternative construction materials (for example, Structural Insulated Panel construction) with wall insulation at a minimum of R-20 (3 points);
- (xvi) R-15 Walls / R-30 Ceilings (rating of wall system) (3 points);
- (xvii) 14 SEER HVAC or evaporative coolers in dry climates for New Construction, Adaptive Reuse, and reconstruction or radiant barrier in the attic for Rehabilitation (excluding reconstruction) (3 points);
- (xviii) High Speed Internet service to all Units at no cost to residents (2 points); or
- (xix) Fire sprinklers in all Units (2 points).

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(5) The Commitment of Development Funding by Local Political Subdivisions. Applications may qualify to receive up to 18 points for qualifying under this paragraph provided for under Development Funding. (§2306.6710(b)(1)(E))

(A) Basic Submission Requirements for Scoring. Evidence of the following must be submitted in accordance with the Application Submission Procedures Manual (ASPM).

(i) The loans, grant(s) or in-kind contribution(s) must be attributed to the Total Housing Development Costs, as defined in this chapter, unless otherwise stipulated in this section.

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(ii) An Applicant may submit enough sources to substantiate the point request, and all sources must be included in the Sources and Uses form. For example, if an Applicant is requesting 18 points, five sources may be submitted if each is for an amount equal to 1% of the Total Housing Development Cost.

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(iii) An Applicant may substitute any source in response to a Deficiency Notice or after the Application has been submitted to the Department.

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(iv) A loan does not qualify as an eligible source unless it has a minimum term of the later of 1-year or the Placed in Service date, and the interest rate must be at the Applicable Federal Rate (AFR) or below (at the time of loan closing).

(v) In-kind contributions such as donation of land, tax exemptions, or waivers of fees such as building permits, water and sewer tap fees, or similar contributions are only eligible for points if the in-kind contribution provides a tangible economic benefit that results in a quantifiable Total Housing Development Cost reduction to benefit the Development will be acceptable to qualify for these points. The quantified value of the Total Housing Development Cost reduction may only include the value during the period the contribution or waiver is received and/or assessed. Donations of land must be under the control of the Applicant, pursuant to subsection (h)(7) of this section to qualify. The value of in-kind contributions may only include the time period between award, or August 1, 2009 and the Development's Placed in Service date, with the exception of contributions of land. The full value of land contributions, as established by the appraisal required pursuant to clause (viii) of this subparagraph. Contributions in the form of tax exemptions or abatements may only count for points if the contribution is in addition to any tax exemption or abatement required under statute.

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(vi) To the extent that a Notice of Funding Availability (NOFA) is released and funds are available, funds from TDHCA's HOME Investment Partnerships (HOME) Program will qualify if a resolution, dated on or before the date the Application Acceptance Period ends, is submitted with the Application from the Local Political Subdivision authorizing the Applicant to act on behalf of the Local Political Subdivision in applying for HOME Funds from TDHCA for the particular Application. TDHCA's HOME funds may be substituted for a source originally submitted with the Application, provided the HOME funds substituted are from a NOFA released after the Application Acceptance Period ends and a resolution is submitted with the substitution documentation from the Local Political Subdivision authorizing the Applicant to act on behalf of the Local Political Subdivision in applying for HOME Funds from TDHCA for the particular Application.

(vii) Development based rental subsidies may qualify under this section if evidence of the remaining value of the contract is submitted from the Local Political Subdivision. The value of the contract does not include past subsidies.

(viii) Evidence to be submitted with the Application must include a copy of the commitment of funds; a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received; or a certification of intent to apply for funding that indicates the funding entity and program to which the application will be submitted, the loan amount to be applied for and the specific proposed terms. For in-kind contributions, evidence must be submitted in the Application from Local Political Subdivision substantiating the value of the in-kind contributions. For in-kind contributions of land, evidence of the value of the contribution must be in the form of an appraisal.

(ix) If not already provided, at the time the executed Commitment Notice is required to be submitted, the Applicant or Development Owner must provide evidence of a commitment approved by the Governing Body of the Local Political Subdivision for the Development Funding to the Department. If the funding commitment from the Local Political Subdivision has not been received by the date the Department's Commitment Notice is to be submitted, the Application will be evaluated to determine if the loss of these points would have resulted in the Department's not committing the tax credits. If the loss of points would have made the Application noncompetitive, the Commitment Notice will be rescinded and the credits reallocated. If the Application would still be competitive even with the loss of points and the loss would not have impacted the recommendation for an award, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the Local Political Subdivision's Development Funding, the Commitment Notice will be rescinded and the credits reallocated.

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(x) Funding commitments from a Local Political Subdivision will not be considered final unless the Local Political Subdivision attests to the fact that any funds committed were not first provided to the Local Political Subdivision by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application, unless the Applicant itself is a Local Political Subdivision or subsidiary.

(B) Scoring. Points will be determined on a sliding scale based on the percentage of the Total Housing Development Costs of the Development, as reflected in the Development Cost Schedule. If a revised Development Cost Schedule is submitted to the Department in response to a deficiency notice at anytime during the review process, the Revised Development Cost Schedule will be utilized for this calculation, and Applicants will be notified of the revised score, consistent with subsection (e) of this section. Do not round for the following calculations. The "total contribution" is the total combined value of qualifying loan(s), grants or in-kind contributions from a Local Political Subdivision pursuant to subparagraph (A) of this paragraph.

- (i) A total contribution equal to or greater than 1% (for Urban Developments) and 0.5% (for Rural Developments) of the Total Housing Development Cost of the Development receives 6 points; or
- (ii) A total contribution equal to or greater than 2.5% (for Urban Developments) and 1.5% (for Rural Developments) of the Total Housing Development Cost of the Development receives 12 points; or
- (iii) A total contribution equal to or greater than 5% (for Urban Developments) and 3% (for Rural Developments) of the Total Housing Development Cost of the Development receives 18 points.

(6) The Level of Community Support from State Representative or State Senator. The level of community support for the Application, evaluated on the basis of written statements received from the State Representative or State Senator that represents the district containing the proposed Development Site. (§2306.6710(b)(1)(F) and §2306.6725(a)(2)). Applications may qualify to receive 14 points for this item. Letters must identify the specific Development and must clearly state support for or opposition to the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative or Senator on or before 5:00 p.m. (CDT) April 1, 2009. A State Representative or State Senator may withdraw (in writing) a letter that is submitted by the April 1st deadline on or before June 15, 2009 but may not submit a new letter. The previous position of support or opposition that is withdrawn will be scored as neutral (0 points). State Representatives or Senators to be considered are those State Representatives or Senators in office at the time the Application is submitted. Letters of support from State Representatives or Senators that do not represent the district containing the proposed Development Site will not qualify for points under this Exhibit. Neutral letters, or letters that do not specifically refer to the Development, will receive neither positive nor negative points. Letters from State of Texas Representative or Senator: support letters are +14 points; opposition letters are -14 points for a maximum of either 14 or -14 points. If one letter is received in support and one letter is received in opposition the score would be 0 points.

(7) The Rent Levels of the Units. Applications may qualify to receive up to 12 points for qualifying under this exhibit. (§2306.6710(b)(1)(G)). Provided the Application has qualified for points under paragraph (i)(3) of this subsection, Income Levels of Tenants of the Development, an Application may qualify for points under this subsection by providing additional Low-Income Units at 50% of AMGI (must round up to the next whole Unit, not less than one Unit), as follows:

- (A) An Application may receive 12 points if the Development provides an additional 10% of all Low-Income Units in excess of those committed in subsection (i)(3) of this section at rents and incomes at or below 50% of AMGI; or
- (B) An Application may receive 6 points if the Development provides an additional 5% of all Low-Income Units in excess of those committed in paragraph (3) of this subsection at rents and incomes at or below 50% of AMGI.

(8) The Cost of the Development by Square Foot (Development Characteristics). Applications may qualify to receive 10 points for this item. (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)). For this exhibit, costs shall be defined as construction costs, including site work, direct hard costs, contingency, contractor profit, overhead and general requirements, as represented in the Development Cost Schedule. This calculation does not include indirect construction costs. The calculation will be costs per square foot of net rentable area (NRA). For the purposes of this paragraph only, if a building is in a Qualified Elderly Development or is an age restricted building in an Intergenerational Housing Development with an elevator, or a high rise building with four or more stories serving any population, the NRA may include elevator served interior corridors. If the proposed Development is a Single Room Occupancy Development, the NRA may include elevator served interior corridors and may include up to 50 square feet of common area per Unit. As it relates to this paragraph, an interior corridor is a corridor that is enclosed, heated and/or cooled and otherwise finished space. The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule of the Application. Developments qualify for 10 points if their costs do not exceed \$95 per square foot for Qualified Elderly, single family design, transitional, and Single Room Occupancy Developments (transitional housing for the homeless and Single Room Occupancy units as provided in the Code,

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§42(i)(3)(B)(iii) and (iv)), unless located in a "First Tier County" in which case their costs do not exceed \$97 per square foot; and \$85 for all other Developments, unless designated as "First Tier" by the Texas Department of Insurance, in which case their costs do not exceed \$87 per square foot. For 2008, the First Tier counties are Aransas, Brazoria, Calhoun, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, San Patricio, and Willacy. There are also specifically designated First Tier communities in Harris County that are east of State Highway 146, and evidence in the Application must include a map with the Development Site designated clearly within the community. These communities are Pasadena, Morgan's Point, Shoreacres, Seabrook and La Porte. Intergenerational Housing Developments will receive 10 points if costs described above do not exceed the square footage limit for elderly and non-elderly Units as determined by using the NRA attributable to the respective elderly and non-elderly Units. The Department will determine if points will be awarded by multiplying the NRA for elderly Units by the applicable square footage limit for the elderly Units and adding that total to the result of the multiplication of the NRA for family Units by the applicable non-elderly square footage limit. If this maximum cost amount is equal to, or greater than the total of the costs identified above for the Application, points will be awarded (10 points).

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(9) The Services to be Provided to Tenants of the Development. Applications may qualify to receive up to 8 points. (§2306.6710(b)(1)(I) and §2306.6725(a)(1))

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(A) The Applicant must certify that the Development will provide a combination of special supportive services appropriate for the proposed tenants. The provision of supportive services will be included in the LURA as selected from the list of services identified in this paragraph. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to off-site services must be provided (maximum of 7 points).

(i) Applications will be awarded points for selecting services listed in clause (ii) of this subparagraph based on the following scoring range:

- (I) Two points will be awarded for providing two of the services; or
- (II) Four points will be awarded for providing four of the services; or
- (III) Seven points will be awarded for providing six of the services.

(ii) Service options include child care; transportation; basic adult education; legal assistance; counseling services; GED preparation; English as a second language classes; vocational training; home buyer education; credit counseling; financial planning assistance or courses; health screening services; health and nutritional courses; organized team sports programs or youth programs; scholastic tutoring; any other 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 out-of wedlock pregnancies; and encourages the formation and maintenance of two-parent families; or any other services approved in writing by the Department.

(B) In addition, Applications will receive 1 point for providing Notary Public Services to tenants at no cost to the tenant. This will be included in the LURA.

(10) Declared Disaster Areas (§2306.6710(b)(1)). Applications may receive 7 points, if at time the complete Application is submitted or at any time within the two-year period preceding the date of submission, the proposed Development site is located in a Disaster Area as defined in §49.3 of this chapter.

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(11) Rehabilitation, (which includes reconstruction) or Adaptive Reuse. Applications may qualify to receive 6 points. Applications proposing to build solely Rehabilitation (excluding New Construction of non-residential buildings), solely reconstruction (excluding New Construction of non-residential buildings), or solely Adaptive Reuse qualify for points.

(12) Housing Needs Characteristics. (§42(m)(1)(C)(ii)). Applications may qualify to receive up to 6 points (if the Development Site is located in an Area with a certain Affordable Housing Need Score). Each Application may receive a score if correctly requested in the self score form based on objective measures of housing need in the Area where the Development is located. This Affordable Housing Need Score for each Area will be published in a Site Demographic Characteristics table in the Reference Manual.

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(13) Community Revitalization (Development Characteristics) (§42(m)(1)(C)(iii)) or Historic Preservation. Applications may qualify to receive 6 points for either subparagraph (A) or (B) of this paragraph.

(A) The Development includes the use of an Existing Residential Development and proposes any Rehabilitation or any Reconstruction that is part of a Community Revitalization Plan. Evidence of the Community Revitalization Plan (such evidence must include an ordinance, resolution, or otherwise recorded documentation of a vote taken by the local elected Governing Body specifically adopting the Community

Revitalization Plan) and a letter from the chief executive officer or other local official with appropriate jurisdiction of local Governing Body stating that the Development Site is located within the targeted development areas outlined in the Community Revitalization Plan must be submitted; or,

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(B) The Development includes the use of an existing building that is designated as historic by a federal or state Entity and proposes Rehabilitation (including reconstruction) or Adaptive Reuse. The Development itself must have the designation; points in this subparagraph are not available for Developments simply located within historic districts or areas that do not have a designation on the building. The Development must include the historic building. Evidence will include proof of the historic designation from the appropriate Governmental Entity.

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(14) Pre-Application Participation Incentive Points. (§2306.6704) Applications that submitted a Pre-Application during the Pre-Application Acceptance Period and meet the requirements of this paragraph will qualify to receive 6 points for this item. To be eligible for these points, the Application must:

(A) Be for the identical Development Site, or reduced portion of the Development Site as the proposed Development Site under control in the Pre-Application;

(B) Have met the Pre-Application Threshold Criteria;

(C) Be serving the same target population (family, Intergenerational Housing, or elderly) as in the Pre-Application;

(D) Be applying for the same Set-Asides as indicated in the Pre-Application (Set-Asides can be dropped between Pre-Application and Application, but no Set-Asides can be added); and

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(E) Be awarded by the Department an Application score that is not more than 5% greater or less than the number of points awarded by the Department at Pre-Application, with the exclusion of points for support and opposition under paragraphs (2), (6), and (18) of this subsection. The Application score used to determine whether the Application score is 5% greater or less than the number of points awarded at Pre-Application will also include all point losses under subsection (d)(4) of this section. An Applicant must choose, at the time of Application either clause (i) or (ii) of this subparagraph:

(i) To request the Pre-Application points and have the Department cap the Application score at no greater than the 5% increase regardless of the total points accumulated in the scoring evaluation. This allows an Applicant to avoid penalty for increasing the point structure outside the 5% range from Pre-Application to Application; or

(ii) To request that the Pre-Application points be forfeited and that the Department evaluate the Application as requested in the self-scoring sheet.

(15) Economic Development Initiatives. A Development that is located in one of the following two areas may qualify to receive 4 points. For the purpose of this paragraph, "area" shall mean the boundaries of any zone or community in subparagraph (A) of this paragraph or the area in which funds in subparagraph (B) of this paragraph must be used:

(A) a Designated State or Federal Empowerment/Enterprise Zone, Urban Enterprise Community, or Urban Enhanced Enterprise Community. To be eligible for these points, Applicants must submit a letter and a map of the zoned area from a city/county official stating that the proposed Development is located within such a designated zone or area; is eligible to receive the state or federal economic development grants or loans associated with such designations; and the city/county still has available funds in such program. The letter should be no older than 6 months from the first day of the Application Acceptance Period. (General Appropriation Act, Article VII, Rider 3; §2306.127); or

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(B) an area that has received an award within the three year period prior to November 1, 2008, from the Texas Capital Fund, Texas or Federal Enterprise Zone Fund, Texas Leverage Fund, Industrial Revenue Bond Program, Emerging Technologies, Skills Development, Rural Business Enterprise Grants, Certified Development Company Loans, or Micro Loan Program or other state or federally funded economic development initiatives (This excludes limited highway improvement and roadwork projects, but does include broader regional transportation initiatives targeted to expanding economic development). Grants that qualify in these areas are included in the Application Reference Manual.

(C) Points under subparagraphs (A) and (B) of this paragraph will not be granted if more than 3 Developments received and award of Housing Tax Credits in the applicable area in the 7 years prior to the Application Acceptance Period. The Applicant must provide evidence of the boundaries of the area, as required in the Application and Application Submission Procedures Manual.

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(16) Development Location. (§2306.6725(a)(4)); §42(m)(1)(C)(i)). Applications may qualify to receive 4 points. Evidence, not more than 6 months old from the first day of the Application Acceptance

Period, that the Development Site is located within one of the geographical areas described in subparagraphs (A)-(E) of this paragraph. Areas qualifying under any one of the subparagraphs (A)-(E) of this paragraph will receive 4 points. An Application may only receive points under one of the subparagraphs (A)-(E) of this paragraph.

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(A) A geographical Area which is an Economically Distressed Area; a Colonia; or a Difficult Development Area (DDA) as specifically designated by the Secretary of HUD at the time of Application submission (these census tracts are designated in the 2009 Housing Tax Credit Site Demographic Characteristics included in the application materials). (§2306.127)

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(B) The Development is located in a county that has received an award within the three years prior to November 1, 2008, within the past three years, from the Texas Department of Agriculture's Rural Municipal Finance Program or Real Estate Development and Infrastructure Program. Cities which have received one of these awards are categorized as awards to the county as a whole so Developments located in a different city than the city awarded, but in the same county, will still be eligible for these points.

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(C) The Development is located in a census tract which has a median family income (MFI), as published by the United States Bureau of the Census (U.S. Census), that is higher than the median family income for the county in which the census tract is located. This comparison shall be made using the most recent data available as of the date the Application Round opens the year preceding the applicable program year. Developments eligible for these points must submit evidence documenting the median income for both the census tract and the county. These Census Tracts are outlined in the 2008 Housing Tax Credit Site Demographic Characteristics Report.

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(D) The proposed Development will serve families with children (at least 70% of the Units must have an eligible bedroom mix of two bedrooms or more) and is proposed to be located in an elementary school attendance zone of an elementary school that has an academic rating of "Exemplary" or "Recognized," or comparable rating if the rating system changes. The date for consideration of the attendance zone is that in existence as of the opening date of the Application Round and the academic rating is the most current rating determined by the Texas Education Agency as of that same date. (§42(m)(1)(C)(vii))

(E) The proposed Development will expand affordable housing opportunities for low-income families with children outside of poverty areas. This must be demonstrated by showing that the Development will serve families with children (at least 70% of the Units must have an eligible bedroom mix of two bedrooms or more) and that the census tract in which the Development is proposed to be located has no greater than 10% poverty population according to the most recent census data. Intergenerational Developments may qualify for points if 70% of the non-elderly Units in the Development have an eligible bedroom mix of two bedrooms or more. (§42(m)(1)(C)(vii)). These Census Tracts are outlined in the 2009 Housing Tax Credit Site Demographic Characteristics Report.

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(F) The proposed Development is located in an Urban Core, on a site that is properly zoned for the intended use, (17) Green Building Initiatives. Application may qualify to receive up to 6 points for providing green building amenities (points under this paragraph may not be requested for the same items utilized for points under subsection (h)(4)(A)(ii)(XXV), Threshold Amenities) (Rehabilitation Developments will receive 1.5 points for each point requested for the green building amenities):

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(-a-) evaporative coolers (for use in designated counties listed in the Application Materials, 2009 Housing Tax Credit Site Demographics Information) (1 point);

(-b-) passive solar heating/cooling (3 points maximum)
(-1-)Two points if the glazing area on the north- and south-facing walls of the building is at least 50% greater than the sum of the glazing area on the east- and west- facing walls; and the east-west axis of the building is within 15 degrees of due east-west.

Deleted: Development Location in non-urban Areas. §42(m)(1)(C)(i). Applications may qualify to receive 6 points if the Development is not located in a Rural Area and has a population less than 100,000 based on the most current Decennial Census.

(-2-)One point if in addition to the east-west axis of the building oriented within 15 degrees of due east-west, utilize a narrow floor plate (less than 40 feet), single loaded corridors and open floor plan to optimize daylight penetration and passive ventilation (note: to qualify for this particular point, application must also implement the 15 degree building orientation option above); and 100% of HVAC condenser units are shaded so they are fully shaded 75% of the time during summer months (May through August); and solar screens or solar film on all East, West, and South Windows with building oriented to east-west axis within 15 degrees of due east-west, west-south axis within 15 degrees of due west-south, and south-east axis within 15 degrees of due south-east.

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(-c-) water conserving features (2 points maximum, 1 point for each):

(-1-) Install low-flow toilets using less than or equal to 1.6 gallons per flush, or high efficiency toilets using less than or equal to 1.28 gallons/flush.

(-2-) Install bathroom lavatory faucets and showerheads that do not exceed 2.0 gallons/minute and kitchen faucets that do not exceed 1.5 gallons/minute. Applies to all fixtures throughout development. Rehab projects may choose to install compliant faucet aerators instead of replacing entire faucets.

(-d-) solar water heaters (Solar water heaters designed to provide at least 25% of the average energy used to heat domestic water throughout the entire development.) (2 points);

(-e-) irrigation and landscaping (must implement both of the following) (2 points)

(-1-) collected water (at least 50%) for irrigation purposes;

(-2-) selection of native trees and plants that are appropriate to the site's soils and microclimate and locate them to allow for shading in the summer and allow for heat gain in the winter

(-f-) sub-metered utility meters (2 points maximum);

(-1-) Sub-metered utility meters on rehab project without existing sub-meters or new construction senior project (2 points); or

(-2-) Sub-metered utility meters on new construction project (excluding new construction senior project) (1 point)

(-g-) energy efficiency (4 points maximum);

(-1-) Three points if Energy Elements include Energy-Star qualified windows and glass doors; and Exterior envelope insulation, vapor barriers and air barriers greater than or equal to Energy Star air barrier and insulation criteria; and HVAC, domestic hot water heater, or insulation that exceeds Energy Star standards or exceeds the IRC 2006;

OR

(-2-) Four points if the project promotes energy efficiency by meeting the requirements of Energy Star for Homes by either complying with the appropriate builder option package or a HERS score of 85.

(-h-) thermally and draft efficient doors (SHGC of 0.40 or lower and U-value specified by climate zone according to the 2006 IECC) (2 points);

(-i-) photovoltaic panels for electricity and design and wiring for the use of such panels (3 points maximum);

(-1-) Photovoltaic panels that total 10 kW (1 point);

(-2-) Photovoltaic panels that total 20 kW (2 points);

(-3-) Photovoltaic panels that total 30 kW (3 points)

(-j-) construction waste management and implementation of EPA's Best Management Practices for erosion and sedimentation control during construction (1 point);

(-k-) recycling service provided throughout the compliance period (1 point);

(-l-) water permeable walkways (at least 20% of walkways and parking) (1 point).

(-m-) bamboo flooring, wool carpet, linoleum flooring, straw board, poplar OSB, or cotton batt insulation (50% of flooring on the ground floor of the development must be finished concrete and/or ceramic tile. 50% of the flooring on upper floors must be ceramic tile and/or a flooring material that is Floor Score Certified (developed by the Resilient Floor Covering Institute), applied with a Floor Score Certified adhesive and comes with a minimum 7-year wear through warranty. (2 points);

(18) Demonstration of Community Input other than Quantifiable Community Participation: 49 if an Application was awarded 12 points under paragraph (2) of this subsection, then that Application may receive up to 6 points for letters that qualify for points under subparagraphs (A), (B) or (C) of this paragraph. An Application may not receive points under more than one of the subparagraphs (A) - (C). All letters must be received by February 27, 2009 for the Application to receive these points. At no time will the Application receive a score lower than zero for this item

(A) An Application may receive two points (maximum of 6 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. The community or civic organization must provide some documentation of its existence in the community in which the Development is located to include, but not be limited to, listing

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- (B) passive solar heating/cooling (3 points); 1
- (C) water conservation fixtures (toilets using less than or equal to 1.6 gallons per flush, showerheads, kitchen faucets or bathroom faucets using less than or equal to 2.0 gallons per minute) (1 point for each); 1
- (D) solar water heaters (2 points); 1
- (D) water collection (at least 50%) for irrigation purposes (2 points); 1
- (E) sub-metered utility meters (3 points); 1
- (F) Energy-Star qualified windows and glass doors (2 points); 1
- (G) thermally and draft efficient doors (SHGC of 0.40 and U-value specified by climate zone according to the 2006 IECC) (2 points); 1
- (H) photovoltaic panels for electricity and design and wiring for use of such panels (4 points); 1
- (I) construction waste management and implementation of EPA's Best Management Practices for erosion and sedimentation control during construction (2 points); 1
- (J) recycle service provided throughout the compliance period (1 point); 1
- (K) water permeable walkways (1 point); 1
- (L) selection of native trees and plants that are appropriate to the site's soils and microclimate ... [29]

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 (L) selection of native trees and plants that are appropriate to the site's soils and microclimate ... [30]

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of services and/or members, brochures, annual reports, etc. Letters of support from organizations that are not active in the area that includes the location of the Development will not be counted. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), taxing entities or educational activities. Organizations that were created by a governmental entity or derive their source of creation from a governmental entity do not qualify under this item. For purposes of this item, educational activities include school districts, trade and vocational schools, charter schools and depending on how characterized could include day care centers; it would not include a PTA or PTO as that is a service organization even though it supports an educational activity. Should an Applicant elect this option and the Application receives letters in opposition by February 27, 2009, then two points will be subtracted from the score for each letter in opposition, provided that the letter is from an organization serving the community.

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(B) An Application may receive 6 points for a letter of support, from a property owners association created for a master planned community whose boundaries include the development site, that does not meet the requirements of a Neighborhood Organization for points under paragraph (2) of this subsection.

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(C) An Application may receive 6 points for a letter of support from a Special Management District, whose boundaries, as of February 27, 2009, include the Development Site and for which there is not a Neighborhood Organization on record with the county or state.

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(19) Developments in Census Tracts with No Other Existing Same Type Developments Supported by Tax Credits: The Application may receive 6 points if the proposed Development is located in a census tract in which there are no other existing Developments supported by Housing Tax Credits that serve the same type of household, regardless of whether the development serves families, or elderly individuals (Intergenerational Housing is not a type of household as it relates to this paragraph). Applicant must provide evidence of the census tract in which the Development is located. (§2306.6725(b)(2)). These Census Tracts are outlined in the 2009 Housing Tax Credit Site Demographic Characteristics Report.

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(20) Tenant Populations with Special Housing Needs. Applications may qualify to receive 4 points for this item. (§42(m)(1)(C)(v)). The Department will award these points to Applications in which at least 10% of the Units are set aside for Persons with Special Needs. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require a minimum 12 month period during which Units must either be occupied by Persons with Special Needs or held vacant. The 12 month period will begin on the date each building receives its certificate of occupancy. For buildings that do not receive a Certificate of Occupancy, the 12 month period will begin on the placed in service date as provided in the Cost Certification manual. After the 12 month period, the Development Owner will no longer be required to hold Units vacant for households with special needs, but will be required to continue to affirmatively market Units to household with special needs.

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(21) Length of Affordability Period. Applications may qualify to receive up to 4 points. (§2306.6725(a)(5); §2306.111(g)(3)(C); §2306.185(a)(1) and (c); §2306.6710(e)(2); and §42(m)(1)(B)(ii)(II)). In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Development Owners that are willing to extend the affordability period for a Development beyond the 30 years required in the Code may receive points as follows:

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(A) Add 5 years of affordability after the extended use period for a total affordability period of 35 years (2 points); or

(B) Add 10 years of affordability after the extended use period for a total affordability period of 40 years. (4 points)

(22) Site Characteristics. Development Sites, including scattered sites, will be evaluated based on proximity to amenities, the presence of positive site features and the absence of negative site features. Sites will be rated based on the criteria in subparagraphs (A) and (B) of this paragraph.

(A) Proximity of site to amenities. Developments Sites located within a one mile radius (two-mile radius for Developments competing for a Rural Regional Allocation) of at least three services appropriate to the target population will receive four points. A site located within one-quarter mile of public transportation that is accessible to all residents including Persons With Disabilities and/or located within a community that has "on demand" transportation, special transit service, or specialized elderly transportation for Qualified Elderly Developments, will receive full points regardless of the proximity to amenities, as long as the Applicant provides appropriate evidence of the transportation services used to satisfy this requirement. If a Development

is providing its own specialized van or on demand service, then this will be a requirement of the LURA. Only one service of each type listed in clauses (i) - (xiv) of this subparagraph will count towards the points. A map must be included identifying the Development Site and the location of the services. The services must be identified by name on the map. If the services are not identified by name, points will not be awarded. All services must exist or, if under construction, must be at least 50% complete by the date the Application is submitted. (4 points)

- (i) Full service grocery store or supermarket.
- (ii) Pharmacy.
- (iii) Convenience Store/Mini-market.
- (iv) Department or Retail Merchandise Store.
- (v) Bank/Credit Union.
- (vi) Restaurant (including fast food).
- (vii) Indoor public recreation facilities, such as civic centers, community centers, and

libraries.

- (viii) Outdoor public recreation facilities such as parks, golf courses, and swimming pools.
- (ix) Hospital/medical clinic.
- (x) Medical offices (physician, dentistry, optometry).
- (xi) Public Schools (only eligible for Developments that are not Qualified Elderly

Developments).

- (xii) Senior Center.
- (xiii) Dry cleaners.
- (xiv) Family video rental (Blockbuster, Hollywood Video, Movie Gallery).

(B) Negative Site Features. Development Sites with the following negative characteristics will have points deducted from their score. For purpose of this exhibit, the term 'adjacent' is interpreted as sharing a boundary with the Development Site. The distances are to be measured from all boundaries of the Development Site to all boundaries of the property containing the negative site feature. If an Applicant negligently fails to note a negative feature, double points will be deducted from the score or the Application may be terminated. If none of these negative features exist, the Applicant must sign a certification to that effect. (6 points)

(i) Developments located adjacent to or within 300 feet of junkyards will have 1 point deducted from their score.

(ii) Developments located adjacent to or within 300 feet of active railroad tracks will have 1 point deducted from their score, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail. Rural Developments funded through TRDO-USDA are exempt from this point deduction.

(iii) Developments located adjacent to or within 300 feet of heavy industrial uses such as manufacturing plants will have 1 point deducted from their score.

(iv) Developments located adjacent to or within 300 feet of a solid waste or sanitary landfills will have 1 point deducted from their score.

(v) Developments where the buildings are located within the "fall line" of high voltage transmission power lines will have 1 point deducted from their score.

(vi) Developments where the buildings are located within the accident zones or clear zones for commercial or military airports will have 1 point deducted from their score.

(23) Development Size. The Development consists of not more than 36 Units (3 points).

(24) Qualified Census Tracts with Revitalization. Applications may qualify to receive 1 point for this item. (§42(m)(1)(B)(ii)(III)). Applications will receive the points for this item if the Development is located within a Qualified Census Tract and contributes to a concerted Community Revitalization Plan. Evidence of the Community Revitalization Plan such evidence must include an ordinance, resolution, or otherwise recorded documentation of a vote taken by the local elected Governing Body specifically adopting the Community Revitalization Plan and a letter from the chief executive officer or other local official with appropriate jurisdiction of the local Governing Body stating that the Development Site is located within the targeted development areas outlined in the Community Revitalization Plan must be submitted.

(25) Sponsor Characteristics. Applications may qualify to receive a maximum of 2 points for this item for qualifying under either subparagraph (A) or (B) of this paragraph. (§42(m)(1)(C)(iv))

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Deleted: (vi) Developments where the buildings are located adjacent to or within 300 feet of a sexually oriented business will have 1 point deducted from their score. For the purpose of this clause, sexually oriented business shall be defined as stated in §243.002 of the Texas Government Code.

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(A) An Application will receive these two points for submitting 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 Applicant 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.

(B) An Application will receive these points if there is evidence that a HUB that does not meet the experience requirements under subsection (g) of this section, as certified by the Texas Comptroller of Public Accounts, has at least 51% ownership interest in the General Partner and materially participates in the Development and operation of the Development throughout the Compliance Period. To qualify for these points, the Applicant must submit a certification from the Texas Comptroller of Public Accounts that the Person is a HUB at the close of the Application Acceptance Period. The HUB will be disqualified from receiving these points if any Principal of the HUB has developed, and received 8609's for, more than two Developments involving tax credits. Additionally, to qualify for these points, the HUB must partner with an experienced Developer (as defined by subsection (g) of this section); the experienced Developer, as an Affiliate, will not be subject to the credit limit described under §49.6(d) of this chapter for one Application per Application Round. For purposes of this section the experienced Developer may not be a Related Party to the HUB.

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(26) Developments Intended for Eventual Tenant Ownership - Right of First Refusal. Applications may qualify to receive 1 point for this item. (§2306.6725(b)(1)); (§42(m)(1)(C)(viii)). Evidence that Development Owner agrees to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period for the minimum purchase price provided in, and in accordance with the requirements of, §42(i)(7) of the Code (the "Minimum Purchase Price"), to a Qualified Nonprofit Organization, the Department, or either an individual tenant with respect to a single family building, or a tenant cooperative, a resident management corporation in the Development or other association of tenants in the Development with respect to multifamily developments (together, in all such cases, including the tenants of a single family building, a "Tenant Organization"). Development Owner may qualify for these points by providing the right of first refusal in the following terms.

(A) Upon the earlier to occur of:

(i) The Development Owner's determination to sell the Development; or

(ii) The Development Owner's request to the Department, pursuant to §42(h)(6)(E)(II) of the Code, to find a buyer who will purchase the Development pursuant to a "qualified contract" within the meaning of §42(h)(6)(F) of the Code, the Development Owner shall provide a notice of intent to sell the Development ("Notice of Intent") to the Department and to such other parties as the Department may direct at that time. If the Development Owner determines that it will sell the Development at the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to expiration of the Compliance Period. If the Development Owner determines that it will sell the Development at some point later than the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to date upon which the Development Owner intends to sell the Development.

(B) During the two years following the giving of Notice of Intent, the Sponsor may enter into an agreement to sell the Development only in accordance with a right of first refusal for sale at the Minimum Purchase Price with parties in the following order of priority:

(i) During the first six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization that is also a community housing development organization, as defined for purposes of the federal HOME Investment Partnerships Program at 24 C.F.R. §92.1 (a "CHDO") and is approved by the Department;

(ii) During the second six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization or a Tenant Organization; and

(iii) During the second year after the Notice of Intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a Tenant Organization approved by the Department.

(iv) If, during such two-year period, the Development Owner shall receive an offer to purchase the Development at the Minimum Purchase Price from one of the organizations designated in clauses (i) - (iii) of this subparagraph (within the period(s) appropriate to such organization), the Development Owner shall sell the Development at the Minimum Purchase Price to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at the Minimum Purchase Price from one or more of the organizations designated in clauses (i) - (iii) of this subparagraph (within the

period(s) appropriate to such organizations), the Development Owner shall sell the Development at the Minimum Purchase Price to whichever of such organizations it shall choose.

(C) After whichever occurs the later of:

(i) The end of the Compliance Period; or

(ii) Two years from delivery of a Notice of Intent, the Development Owner may sell the Development without regard to any right of first refusal established by the LURA if no offer to purchase the Development at or above the Minimum Purchase Price has been made by a Qualified Nonprofit Organization, a Tenant Organization or the Department, or a period of 120 days has expired from the date of acceptance of all such offers as shall have been received without the sale having occurred, provided that the failure(s) to close within any such 120-day period shall not have been caused by the Development Owner or matters related to the title for the Development.

(D) At any time prior to the giving of the Notice of Intent, the Development Owner may enter into an agreement with one or more specific Qualified Nonprofit Organizations and/or Tenant Organizations to provide a right of first refusal to purchase the Development for the Minimum Purchase Price, but any such agreement shall only permit purchase of the Development by such organization in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(E) The Department shall, at the request of the Development Owner, identify in the LURA a Qualified Nonprofit Organization or Tenant Organization which shall hold a limited priority in exercising a right of first refusal to purchase the Development at the Minimum Purchase Price, in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(F) The Department shall have the right to enforce the Development Owner's obligation to sell the Development as herein contemplated by obtaining a power-of-attorney from the Development Owner to execute such a sale or by obtaining an order for specific performance of such obligation or by such other means or remedy as shall be, in the Department's discretion, appropriate.

(27) Leveraging of Private, State, and Federal Resources. Applications may qualify to receive 1 point for this item. (§2306.6725(a)(3)). Funding sources used for points under paragraph (5) of this subsection, may not be used for this point item.

(A) Evidence must be submitted in the Application that the proposed Development has received or will receive loan(s), grant(s) or in-kind contributions from a private, state or federal resource, which include Capital Grant Funds and HOPE VI funds, that is equal to or greater than 2% (do not round) of the Total Housing Development Costs reflected in the Application.

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(B) For in-kind contributions, evidence must be submitted in the Application from a private, state or federal resource which substantiates the value of the in-kind contributions. Development based rental subsidies from private, state or federal resource may qualify under this section if evidence of the remaining value of the contract is submitted from the source. The value of the contract does not include past subsidies.

(C) Qualifying funds awarded through local entities may qualify for points if the original source of the funds is from a private, state or federal source. If qualifying funds awarded through local entities are used for this item, a statement from the local entity must be provided that identifies the original source of funds.

(D) Applicants may only submit enough sources to substantiate the point request, and all sources must be included in the Sources and Uses form. For example, two sources may be submitted if each is for an amount equal to 1% of the Total Housing Development Cost. However, two sources may not be submitted if each source is for an amount equal to 2% of the Total Housing Development Cost.

(E) The funding must be in addition to the primary funding (construction and permanent loans) that is proposed to be utilized and cannot be issued from the same primary funding source or an affiliated source. The provider of the funds must attest to the fact that they are not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and attest that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application, unless the Applicant itself is a Local Political Subdivision.

(F) The Development must have already applied for funding from the funding entity. Evidence to be submitted with the Application must include a copy of the commitment of funds or a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received. At the time the executed Commitment Notice is required to be submitted, the Applicant or Development Owner must provide evidence of a commitment approved by the governing entity of the entity for

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the sufficient financing to the Department. If the funding commitment from the private, state or federal source, identified in the Application, or qualifying substitute source, has not been received by the date the Department's Commitment Notice is to be submitted, the Application will be evaluated to determine if the loss of these points would have resulted in the Department's not committing the tax credits. If the loss of points would have made the Application noncompetitive, the Commitment Notice will be rescinded and the credits reallocated. If the Application would still be competitive even with the loss of points and the loss would not have impacted the recommendation for an award, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the commitment from the private, state or federal source, the Commitment Notice will be rescinded and the credits reallocated. Funds from the Department's HOME and Housing Trust Fund sources will only qualify under this category if there is a Notice of Funding Availability (NOFA) out for available funds and the Applicant is eligible under that NOFA.

(G) To qualify for this point, the Rent Schedule must show that at least 3% (not using normal rounding) of all Low-Income Units are designated to serve individuals or families with incomes at or below 30% of AMGI.

(28) Third-Party Funding Commitment Outside of Qualified Census Tracts. Applications may qualify to receive 1 point for this item. (§2306.6710(e)(1)). Evidence that the proposed Development has documented and committed Third-Party funding sources and the Development is located outside of a Qualified Census Tract. The provider of the funds must attest to the fact that they are not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and attest that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application. The commitment of funds (an application alone will not suffice) must already have been received from the Third-Party funding source and must be equal to or greater than 2% (do not round) of the Total Development Costs reflected in the Application. Funds from the Department's HOME and Housing Trust Fund sources will not qualify under this category. The Third-Party funding source cannot be a loan from a commercial lender.

(29) Scoring Criteria Imposing Penalties. (§2306.6710(b)(2))

(A) Penalties will be imposed on an Application if the Applicant has requested an extension of the Carryover or 10% Test deadline, and did not meet the original submission deadline, relating to Developments receiving a Housing Tax Credit commitment made in the Application Round preceding the current round. For each extension request made, the Applicant will receive a 5 point deduction. No penalty points or fees will be deducted for extensions that were requested on Developments that involved Rehabilitation when the Department is the primary lender, or for Developments that involve TRDO-USDA as a lender if TRDO-USDA or the Department is the cause for the Applicant not meeting the deadline.

(B) Penalties will be imposed on an Application if the Developer or Principal of the Applicant has been removed by the lender, equity provider, or limited partners in the past five years for failure to perform its obligations under the loan documents or limited partnership agreement. An affidavit will be provided by the Applicant and the Developer certifying that they have not been removed as described, or requiring that they disclose each instance of removal with a detailed description of the situation. If an Applicant or Developer submits the affidavit, and the Department learns at a later date that a removal did take place as described, then the Application will be terminated and any Allocation made will be rescinded. The Applicant, Developers or Principals of the Applicant that are in court proceedings at the time of Application must disclose this information and the situation will be evaluated on a case-by-case basis. 3 points will be deducted for each instance of removal.

(C) Penalties will be imposed on an Application if Developer or Principal of the Applicant violates the Adherence to Obligations pursuant to subsection (c) of this section.

(j) Tie Breaker Factors.

(1) In the event that two or more Applications receive the same number of points in any given Set-Aside category, Rural Regional Allocation or Urban Regional Allocation, or Uniform State Service Region, and are both practicable and economically feasible, the Department will utilize the factors in this paragraph, in the order they are presented, to determine which Development will receive a preference in consideration for a tax credit commitment.

(A) Applications involving any Rehabilitation or Reconstruction of existing Units will win this first tier tie breaker over Applications involving solely New Construction or Adaptive Reuse.

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Applications may qualify to receive up to 6 points for this item.¶

(A) An Application may receive 2 points if the Applicant had submitted acceptable proof of site control at the time of Carryover (November 1, 2008) for Applications that received a Housing Tax Credit commitment made in the Application Round preceding the current round. For purposes of this subparagraph, evidence of site control will consist of an executed deed for the subject property bearing the marks of receipt for filing by the county clerk and confirming the Development Owner as the grantee;¶

(B) An Application may receive 2 points if the Applicant has submitted the complete, acceptable, required documentation for the 10% Test, on or before June 1 for Applications that received a Housing Tax Credit commitment made in the Application Round preceding the current round (Applications that request extensions of the June 1 date, are not eligible for these bonus points);¶

(C) An Application may receive 2 points for having 5 or less aggregate deficiencies through the combined Eligibility, Selection and Threshold reviews;¶

(D) An Application may receive 1 point for having 10 or less aggregate deficiencies through the combined Eligibility, Selection and Threshold reviews; and/or¶

(D) An Application may receive 1 point if an Applicant satisfies deficiencies, to the satisfaction of the Department, on or before the third business day following the date of the deficiency notice. ¶

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Applications may qualify to receive up to 6 points for this item.¶

(A) An Application may receive 2 points if the Applicant had submitted acceptable proof of site control at the time of Carryover (November 1, 2008) for Applications that re... [32]

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(B) The Application located in the municipality or, if located outside a municipality, the county that has the lowest state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins as reflected in the Reference Manual will win this second tier tie breaker.

(C) The amount of requested tax credits per square foot of Net Rentable Area (the lower credits per square foot has preference).

(D) Developments that are intended for eventual tenant ownership. Such Developments must utilize a detached single family site plan and building design and have a business plan describing how the Development is intended to convert to tenant ownership at the end of the 15-year compliance period.

(2) This paragraph identifies how ties will be handled when dealing with the restrictions on location identified in §49.5(a)(8) of this chapter, and in dealing with any issues relating to capture rate calculation. When two Tax-Exempt Bond Developments would violate one of these restrictions, and only one Development can be selected, the Department will utilize the reservation docket number issued by the Texas Bond Review Board in making its determination. When two Competitive Housing Tax Credits Applications in the Application Round would violate one of these restrictions, and only one Development can be selected, the Department will utilize the tie breakers identified in paragraph (1) of this subsection. When a Tax-Exempt Bond Development and a Competitive Housing Tax Credit Application in the Application Round would both violate a restriction, the following determination will be used:

(A) Tax-Exempt Bond Developments that receive their reservation from the Bond Review Board on or before April 30, 2009 will take precedence over the Housing Tax Credit Applications in the 2009 Application Round;

(B) Housing Tax Credit Applications approved by the Board for tax credits in July 2009 will take precedence over the Tax-Exempt Bond Developments that received their reservation from the Bond Review Board on or between May 1, 2009 and July 31, 2009; and

(C) After July 31, 2009, a Tax-Exempt Bond Development with a reservation from the Bond Review Board will take precedence over any Housing Tax Credit Application from the 2009 Application Round on the Waiting List. However, if no reservation has been issued by the date the Board approves an allocation to a Development from the Waiting List of Applications in the 2009 Application Round or a forward commitment, then the Waiting List Application or forward commitment will be eligible for its allocation.

(k) **Staff Recommendations.** (§2306.1112 and §2306.6731) After eligible Applications have been evaluated, ranked and underwritten in accordance with the QAP and the Rules, the Department staff shall make its recommendations to the Executive Award and Review Advisory Committee. The Committee will develop funding priorities and shall make commitment recommendations to the Board. Such recommendations and supporting documentation shall be made in advance of the meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed. The Committee will provide written, documented recommendations to the Board which will address at a minimum the financial or programmatic viability of each Application and a list of all submitted Applications which enumerates the reason(s) for the Development's proposed selection or denial, including all factors provided in §49.10(a) of this chapter that were used in making this determination.

§49.10. Board Decisions; Waiting List; Forward Commitments.

(a) **Board Decisions.** The Board's decisions shall be based upon the Department's and the Board's evaluation of the proposed Developments' consistency with the criteria and requirements set forth in this QAP and Rules.

(1) On awarding tax credits, the Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, and the reasons for any decision that conflicts with the recommendations made by Department staff. The Board may not make, without good cause, a commitment decision that conflicts with the recommendations of Department staff. Good cause includes the Board's decision to apply discretionary factors. (§2306.6725(c); §2306.6731; and §42(m)(1)(A)(iv))

(2) In making a determination to allocate tax credits, the Board shall be authorized to not rely solely on the number of points scored by an Application. It shall in addition, be entitled to take into account, as it deems appropriate, the discretionary factors listed in this paragraph. The Board may also apply these discretionary factors to its consideration of Tax-Exempt Bond Developments. If the Board disapproves or fails to

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act upon an Application, the Department shall issue to the Applicant a written notice stating the reason(s) for the Board's disapproval or failure to act. In making tax credit decisions (including those related to Tax-Exempt Bond Developments), the Board, in its discretion, may evaluate, consider and apply any one or more of the following discretionary factors: (§2306.111(g)(3))

- (A) The Developer market study;
- (B) The location;
- (C) The compliance history of the Developer;
- (D) The financial feasibility;
- (E) The appropriateness of the Development's size and configuration in relation to the housing needs of the community in which the Development is located;
- (F) The Development's proximity to other low-income housing Developments;
- (G) The availability of adequate public facilities and services;
- (H) The anticipated impact on local school districts;
- (I) Zoning and other land use considerations;
- (J) Any matter considered by the Board to be relevant to the approval decision and in furtherance of the Department's purposes; and
- (K) Other good cause as determined by the Board.

(3) Before the Board approves any Application, the Department shall assess the compliance history of the Applicant with respect to all applicable requirements; and the compliance issues associated with the proposed Development, including compliance information provided by the Texas State Affordable Housing Corporation. The Committee shall provide to the Board a written report regarding the results of the assessments. The written report will be included in the appropriate Development file for Board and Department review. The Board shall fully document and disclose any instances in which the Board approves a Development Application despite any noncompliance associated with the Development or Applicant. (§2306.057)

(b) **Waiting List.** (§2306.6711(c) and (d)). If the entire State Housing Credit Ceiling for the applicable calendar year has been committed or allocated in accordance with this chapter, the Board shall generate, concurrently with the issuance of commitments, a waiting list of additional Applications ranked by score in descending order of priority based on Set-Aside categories and regional allocation goals. The Board may also apply discretionary factors in determining the Waiting List. If at any time prior to the end of the Application Round, one or more Commitment Notices expire or a sufficient amount of the State Housing Credit Ceiling becomes available, the Board shall issue a Commitment Notice to Applications on the waiting list subject to the amount of returned credits, the regional allocation goals and the Set-Aside categories, including the 10% Nonprofit Set-Aside allocation and 15% At-Risk Set-Aside allocation and 5% TRDO-USDA Set-Aside required under the Code, §42(h)(5). At the end of each calendar year, all Applications which have not received a Commitment Notice shall be deemed terminated. The Applicant may re-apply to the Department during the next Application Acceptance Period.

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(c) **Forward Commitments.** The Board may determine to issue commitments of tax credit authority with respect to Applications from the State Housing Credit Ceiling for the calendar year following the year of issuance (each a "forward commitment") to Applications submitted in accordance with the rules and timelines required under this rule and the Application Submission Procedures Manual. The Board will utilize its discretion in determining the amount of credits to be allocated as forward commitments and the reasons for those commitments considering score and discretionary factors. The Board may utilize the forward commitment authority to allocate credits to TRDO-USDA Developments which are experiencing foreclosure or loan acceleration at any time during the 2009 calendar year, also referred to as Rural Rescue Developments. Applications that are submitted under the 2009 QAP and granted a Forward Commitment of 2010 Housing Tax Credits are considered by the Board to comply with the 2010 QAP by having satisfied the requirements of this 2009 QAP, except for statutorily required QAP changes.

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(1) Unless otherwise provided in the Commitment Notice with respect to a Development selected to receive a forward commitment, actions which are required to be performed under this chapter by a particular date within a calendar year shall be performed by such date in the calendar year of the State Housing Credit Ceiling from which the credits are allocated.

(2) Any forward commitment made pursuant to this section shall be made subject to the availability of State Housing Credit Ceiling in the calendar year with respect to which the forward commitment

is made. If a forward commitment shall be made with respect to a Development placed in service in the year of such commitment, the forward commitment shall be a "binding commitment" to allocate the applicable credit dollar amount within the meaning of the Code, §42(h)(1)(C).

(3) If tax credit authority shall become available to the Department in a calendar year in which forward commitments have been awarded, the Department may allocate such tax credit authority to any eligible Development which received a forward commitment, in which event the forward commitment shall be canceled with respect to such Development.

§49.11. Required Application Notifications, Receipt of Public Comment, and Meetings with Applicants; Viewing of Pre-Applications and Applications; Confidential Information.

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(a) Required Application Notifications, Receipt of Public Comment, and Meetings with Applicants.

(1) Within approximately 14 days after the close of the Pre-Application Acceptance Period, the Department shall publish a Pre-Application Submission Log on its web site. Such log shall contain the Development name, address, Set-Aside, number of Units, requested credits, owner contact name and phone number. (§2306.6717(a)(1))

(2) Approximately 30 days before the close of the Application Acceptance Period, the Department will release the evaluation and assessment of the Pre-Applications on its web site.

(3) Not later than 14 days after the close of the Pre-Application Acceptance Period, or Application Acceptance Period for Applications for which no Pre-Application was submitted, the Department shall: (§2306.1114)

(A) Publish an Application submission log on its web site.

(B) Give notice of a proposed Development in writing that provides the information required under clause (i) of this subparagraph to all of the individuals and entities described in clauses (ii) - (x) of this subparagraph. (§2306.6718(a)-(c))

(i) The following information will be provided in these notifications:

(I) The relevant dates affecting the Application including the date on which the Application was filed, the date or dates on which any hearings on the Application will be held and the date by which a decision on the Application will be made;

(II) A summary of relevant facts associated with the Development;

(III) A summary of any public benefits provided as a result of the Development, including rent subsidies and tenant services; and

(IV) The name and contact information of the employee of the Department designated by the director to act as the information officer and liaison with the public regarding the Application.

(ii) Presiding officer of the Governing Body of the political subdivision containing the Development (mayor or county judge) to advise such individual that the Development, or a part thereof, will be located in his/her jurisdiction and request any comments which such individual may have concerning such Development.

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(iii) If the Department receives a letter from the mayor or county judge of an affected city or county that expresses opposition to the Development, the Department will give consideration to the objections raised and will offer to visit the proposed site or Development with the mayor or county judge or their designated representative within 30 days of notification. The site visit must occur before the Housing Tax Credit can be approved by the Board. The Department will obtain reimbursement from the Applicant for the necessary travel and expenses at rates consistent with the state authorized rate: (General Appropriation Act, Article VII, Rider 5) (§42(m)(1)).

(iv) Any member of the Governing Body of a political subdivision who represents the Area containing the Development. If the Governing Body has single-member districts, then only that member of the Governing Body for that district will be notified, however if the Governing Body has at-large districts, then all members of the Governing Body will be notified;

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(v) State representative and state senator who represent the community where the Development is proposed to be located. If the state representative or senator host a community meeting, the Department, if timely notified, will ensure staff are in attendance to provide information regarding the Housing Tax Credit Program; (General Appropriation Act, Article VII, Rider 8(d))

(vi) United States representative who represents the community containing the Development;

- (vii) Superintendent of the school district containing the Development;
- (viii) Presiding officer of the board of trustees of the school district containing the

Development;

(ix) Any Neighborhood Organizations on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development site or otherwise known to the Applicant or Department and on record with the state or county; and

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(x) Advocacy organizations, social service agencies, civil rights organizations, tenant organizations, or others who may have an interest in securing the development of affordable housing that are registered on the Department's email list service.

(C) The Department shall maintain an electronic mail notification service that will notify a subscriber, by zip code, of: (§2306.67171)

(i) The receipt of a Pre-Application or Application for a Development Site within such zip code within 14 days of receipt;

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(ii) The publication of materials to be presented to the Board for the Pre-Application or Application referred to in clause (i) of this subparagraph; and

(iii) Any public hearing for the Pre-Application or Application referred to in clause (i) of this subparagraph.

(D) The elected officials identified in subparagraph (B) of this paragraph will be provided an opportunity to comment on the Application during the Application evaluation process. (§42(m)(1))

(4) The Department shall hold at least three public hearings in different Uniform State Service Regions of the state to receive comment on the submitted Applications and on other issues relating to the Housing Tax Credit Program for Competitive Housing Tax Credit Applications under the State Housing Credit Ceiling. (§2306.6717(c))

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(5) The Department shall make available on the Department's website information regarding the Housing Tax Credit Program including notice of public hearings, meetings, Application Round opening and closing dates, submitted Applications, and Applications approved for underwriting and recommended to the Board, and shall provide that information to locally affected community groups, local and state elected officials, local housing departments, any appropriate newspapers of general or limited circulation that serve the community in which a proposed Development is to be located, nonprofit and for-profit organizations, on-site property managers of occupied Developments that are the subject of Applications for posting in prominent locations at those Developments, and any other interested persons including community groups, who request the information. (§2306.6717(b))

(6) Approximately forty days prior to the date of the July Board meeting at which the issuance of Commitment Notices shall be discussed, the Department will notify each Applicant of the receipt of any opposition received by the Department relating to his or her Development at that time.

(7) Not later than the third working day after the date of completion of each stage of the Application process, including the results of the Application scoring and underwriting phases and the commitment phase, the results will be posted to the Department's web site. (§2306.6717(a)(3))

(8) At least thirty days prior to the date of the July Board meeting at which the issuance of Commitment Notices shall be discussed, the Department will:

(A) Provide the Application scores to the Board; (§2306.6711(a)) and

(B) If feasible, post to the Department's web site the entire Application, including all supporting documents and exhibits, the Application Log as further described in §49.19(b) of this chapter, a scoring sheet providing details of the Application score, and any other documents relating to the processing of the Application. (§2306.6717(a)(1) and (2))

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(9) A summary of comments received by the Department on specific Applications shall be part of the documents required to be reviewed by the Board under this subsection if such comments are received 30 business days prior to the date of the Board Meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed. Comments received after this deadline will not be part of the documentation submitted to the Board. However, a public comment period will be available prior to the Board's decision, at the Board meeting where tax credit commitment decisions will be made.

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(10) Not later than the 120th day after the date of the initial issuance of Commitment Notices for Housing Tax Credits, the Department shall provide an Applicant who did not receive a commitment for Housing Tax Credits with an opportunity to meet and discuss with the Department the Application's deficiencies, scoring and underwriting. (§2306.6711(e))

(b) **Viewing of Pre-Applications and Applications.** Pre-Applications and Applications for tax credits are public information and are available upon request after the Pre-Application and Application Acceptance Periods close, respectively. All Pre-Applications and Applications, including all exhibits and other supporting materials, except Personal Financial Statements and Social Security numbers, will be made available for public disclosure after the Pre-Application and Application periods close, respectively. The content of Personal Financial Statements may still be made available for public disclosure upon request if the Attorney General's office deems it is not protected from disclosure by the Texas Public Information Act.

(c) **Confidential Information.** The Department may treat the financial statements of any Applicant as confidential and may elect not to disclose those statements to the public. A request for such information shall be processed in accordance with §552.305 of the [Texas](#) Government Code. (§2306.6717(d))

§49.12. Tax-Exempt Bond Developments: Filing of Applications; Applicability of Rules; Supportive Services; Financial Feasibility Evaluation; Satisfaction of Requirements.

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(a) **Filing of Applications for Tax-Exempt Bond Developments.** Applications for a Tax-Exempt Bond Development may be submitted to the Department as described in paragraphs (1) and (2) of this subsection:

(1) Applicants which receive advance notice of a Program Year 2009 reservation as a result of the Texas Bond Review Board's (TBRB) lottery for the private activity volume cap must file a complete Application not later than 12:00 p.m. on December 29, 2008. Such filing must be accompanied by the Application fee described in §49.20 of this chapter.

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(2) Applicants which receive advance notice of a Program Year 2009 reservation after being placed on the waiting list as a result of the TBRB lottery for private activity volume cap must submit Volume 1 and Volume 2 of the Application and the Application fee described in §49.20 of this chapter prior to the Applicant's bond reservation date as assigned by the TBRB. Those Applications designated as Priority 3 by the TBRB must submit Volumes I and II within 14 days of the bond reservation date if the Applicant intends to apply for tax credits regardless of the Issuer. Any outstanding documentation required under this section regardless of Priority must be submitted to the Department at least 60 days prior to the Board meeting at which the decision to issue a Determination Notice would be made unless a waiver is requested by the Applicant. The Department staff will have limited discretion to recommend an Application with appropriate justification of the late submission.

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(3) Applications involving multiple sites must submit the required information as outlined in the Application Submission Procedures Manual. The Application will be considered to be one Application as identified in Chapter 1372, Texas Government Code.

(b) **Applicability of Rules for Tax-Exempt Bond Developments.** Tax-Exempt Bond Development Applications are subject to all rules in this chapter, with the only exceptions being the following sections: §49.4 of this chapter (regarding State Housing Credit Ceiling), §49.7 of this chapter (regarding Regional Allocation and Set-Asides), §49.8 of this chapter (regarding Pre-Application), §49.9(d) and (f) of this chapter (regarding Evaluation Processes for Competitive Applications and Rural Rescue Applications), §49.9(i) of this chapter (regarding Selection Criteria), §49.10(b) and (c) of this chapter (regarding Waiting List and Forward Commitments), and §49.14(a) and (b) of this chapter (regarding Carryover and 10% Test). Such Developments requesting a Determination Notice in the current calendar year must meet all Threshold Criteria requirements stipulated in §49.9(h) of this chapter. Such Developments which received a Determination Notice in a prior calendar year must meet all Threshold Criteria requirements stipulated in the OAP and Rules in effect for the calendar year in which the Determination Notice was issued; provided, however, that such Developments shall comply with all procedural requirements for obtaining Department action in the current OAP and Rules; and such other requirements of the OAP and Rules as the Department determines applicable. Applicants will be required to meet all conditions of the Determination Notice by the time the construction loan is closed unless otherwise specified in the Determination Notice. Applicants must meet the requirements identified in §49.15 of this chapter. No later than 60 days following closing of the bonds, the Development Owner must also submit a Management Plan and an Affirmative Marketing Plan (as further described in the Carryover Allocation Procedures Manual), and evidence must be provided at this time of attendance of the Development Owner or management company at Department-approved Fair Housing training relating to leasing and management issues

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for at least five hours and the Development architect and engineer at Department-approved Fair Housing training relating to design issues for at least five hours. Certifications must not be older than two years. Applications that receive a reservation from the Bond Review Board on or before December 31, ~~2008~~ will be required to satisfy the requirements of the ~~2008~~ QAP; Applications that receive a reservation from the Bond Review Board on or after January 1, ~~2009~~ will be required to satisfy the requirements of the ~~2009~~ QAP.

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(c) **Supportive Services for Tax-Exempt Bond Developments.** Tax-Exempt Bond Development Applications must provide an executed agreement with a qualified service provider for the provision of special supportive services that would otherwise not be available for the tenants. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to off-site services must be provided. The provision of these services will be included in the LURA. Acceptable services as described in paragraphs (1) - (3) of this subsection include:

(1) The services must be in at least one of the following categories: child care, transportation, notary public service, basic adult education, legal assistance, counseling services, GED preparation, English as a second language classes, vocational training, home buyer education, credit counseling, financial planning assistance or courses, health screening services, health and nutritional courses, organized team sports programs, youth programs, scholastic tutoring, social events and activities, community gardens or computer facilities;

(2) Any other program 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 out-of wedlock pregnancies; and encourages the formation and maintenance of two-parent families; or

(3) Any other services approved in writing by the Issuer. The plan for tenant supportive services submitted for review and approval of the Issuer must contain a plan for coordination of services with state workforce development and welfare programs. The coordinated effort will vary depending upon the needs of the tenant profile at any given time as outlined in the plan.

(d) **Financial Feasibility Evaluation for Tax-Exempt Bond Developments.** Code §42(m)(2)(D) requires the bond issuer (if other than the Department) to ensure that a Tax-Exempt Bond Development does not receive more tax credits than the amount needed for the financial feasibility and viability of a Development throughout the Compliance Period. Treasury Regulations prescribe the occasions upon which this determination must be made. In light of the requirement, issuers may either elect to underwrite the Development for this purpose in accordance with the QAP and the Underwriting Rules and Guidelines, §1.32 of this title or request that the Department perform the function. If the issuer underwrites the Development, the Department will, nonetheless, review the underwriting report and may make such changes in the amount of credits which the Development may be allowed as are appropriate under the Department's guidelines. The Determination Notice issued by the Department and any subsequent IRS Form(s) 8609 will reflect the amount of tax credits for which the Development is determined to be eligible in accordance with this subsection, and the amount of tax credits reflected in the IRS Form 8609 may be greater or less than the amount set forth in the Determination Notice, based upon the Department's and the bond issuer's determination as of each building's placement in service. Any increase of tax credits, from the amount specified in the Determination Notice, at the time of each building's placement in service will only be permitted if it is determined by the Department, as required by Code §42(m)(2)(D), that the Tax-Exempt Bond Development does not receive more tax credits than the amount needed for the financial feasibility and viability of a Development throughout the Compliance Period. Increases to the amount of tax credits that exceed 110% of the amount of credits reflected in the Determination Notice are contingent upon approval by the Board. Increases to the amount of tax credits that do not exceed 110% of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director.

(e) **Satisfaction of Requirements for Tax-Exempt Bond Developments.** If the Department staff determines that all requirements of this QAP and Rules have been met, the Department will recommend that the Board authorize the issuance of a Determination Notice. The Board, however, may utilize the discretionary factors identified in ~~§49.10(a)~~ of this chapter in determining if they will authorize the Department to issue a Determination Notice to the Development Owner. The Determination Notice, if authorized by the Board, will

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confirm that the Development satisfies the requirements of the QAP and Rules in accordance with the Code, §42(m)(1)(D).

(f) **Certification of Tax Exempt Applications with New Docket Numbers.** Applications that are processed through the Department review and evaluation process and receive an affirmative Board Determination, but do not close the bonds prior to the bond reservation expiration date, and subsequently have that docket number withdrawn from the Bond Review Board, may have their Determination Notice reinstated. The Applicant would need to receive a new docket number from the Texas Bond Review Board. One of the following must apply:

(1) The new docket number must be issued in the same program year as the original docket number and must not be more than four months from the date the original application was withdrawn from the BRB. The application must remain unchanged. This means that at a minimum, the following can not have changed: site control, total number of units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, target population, scoring criteria (TDHCA issues) or BRB priority status including the effect on the inclusive capture rate. Note that the entities involved in the Applicant entity and Developer can not change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as long as the financing structure and terms remain unchanged. Notifications under §49.9(h)(8) of this chapter are not required to be reissued. In the event that the Department's Board has already approved the Application for tax credits, the Application is not required to be presented to the Board again (unless there is public opposition) and a revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty days after the date the Bond Review Board issues the new docket number and no later than thirty days before the anticipated closing. In the event that the Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately provided to the Board for consideration. This certification must be submitted no later than thirty days after the date the Bond Review Board issues the new docket number and no later than forty-five days before the anticipated Department's Board meeting date.

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(2) If there are changing to the Application as referenced in paragraph (1) of this subsection, the Application will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new determination notice to be issued.

§49.13. Commitment and Determination Notices; Agreement and Election Statement; Documentation Submission Requirements.

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(a) **Commitment and Determination Notices.** If the Board approves an Application for a Housing Tax Credit Allocation, the Department will:

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(1) If the Application is for a commitment from the State Housing Credit Ceiling, issue a Commitment Notice to the Development Owner which shall:

(A) Confirm that the Board has approved the Application; and

(B) 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 §49.16 of this chapter, and compliance by the Development Owner with the remaining requirements of this chapter and any other terms and conditions set forth therein by the Department. This commitment shall expire on the date specified therein unless the Development Owner indicates acceptance of the commitment by executing the Commitment Notice, pays the required fee specified in §49.20 of this chapter, and satisfies any other conditions set forth therein by the Department. The Commitment Notice expiration date may not be extended.

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(2) If the Application regards a Tax-Exempt Bond Development, issue a Determination Notice to the Development Owner which shall:

(A) Confirm the Board's determination that the Development satisfies the requirements of this QAP; and

(B) State the Department's commitment to issue IRS Form(s) 8609 to the Development Owner in a specified amount, subject to the requirements set forth in §49.12 of this chapter and compliance by the Development Owner with all applicable requirements of this chapter and any other terms and conditions set

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forth therein by the Department. The Determination Notice shall expire on the date specified therein unless the Development Owner indicates acceptance by executing the Determination Notice and paying the required fee specified in §49.20 of this chapter. The Determination Notice shall also expire unless the Development Owner satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended.

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(3) Notify, in writing, the mayor or other equivalent chief executive officer of the municipality in which the Property is located informing him/her of the Board's issuance of a Commitment Notice or Determination Notice, as applicable.

(4) A Commitment or Determination Notice shall not be issued with respect to any Development for an unnecessary amount or where the cost for the total development, acquisition, construction or Rehabilitation exceeds the limitations established from time to time by the Department and the Board, unless the Department staff make a recommendation to the Board based on the need to fulfill the goals of the Housing Tax Credit Program as expressed in this QAP and Rules, and the Board accepts the recommendation. The Department's recommendation to the Board shall be clearly documented.

(5) A Commitment or Determination Notice shall not be issued with respect to the Applicant, the Development Owner, the General Contractor, or any Affiliate of the General Contractor that is active in the ownership or Control of one or more other low-income rental housing properties in the state of Texas administered by the Department that is in Material Noncompliance with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for such property, as described in Chapter 60 of this title.

(6) The executed Commitment or Determination Notice must be returned to the Department on the date specified with in the Commitment Notice or Determination Notice, which shall be no earlier than ten days after the effective date of the Notice.

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(b) **Agreement and Election Statement.** Together with the Development Owner's acceptance of the Carryover Allocation, the Development Owner may execute an Agreement and Election Statement, in the form prescribed by the Department, for the purpose of fixing the Applicable Percentage for the Development as that for the month in which the Carryover Allocation was accepted (or the month the bonds were closed for Tax-Exempt Bond Developments), as provided in the Code, §42(b)(2). Current Treasury Regulations, §1.42-8(a)(1)(v), suggest that in order to permit a Development Owner to make an effective election to fix the Applicable Percentage for a Development (receiveng credits from the State Housing Credit Ceiling), the Carryover Allocation Document must be executed by the Department and the Development Owner within the same month. The Department staff will cooperate with a Development Owner, as possible or reasonable; to assure that the Carryover Allocation Document can be so executed.

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(c) **Documentation Submission Requirements at Commitment of Funds.** No later than the date the Commitment Notice or Determination Notice is executed by the Applicant and returned to the Department with the appropriate Commitment or Determination Fee as further described in §49.20(f) of this chapter, the following documents must also be provided to the Department. Failure to provide these documents may cause the Commitment or Determination to be rescinded. For each Applicant all of the following must be provided:

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(1) Evidence that the entity has the authority to do business in Texas in the form of a Certificate of Filing from the Texas Secretary of State;

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(2) A Certificate of Account Status from the Texas Comptroller of Public Accounts or, if such a Certificate is not available because the entity is newly formed, a statement to such effect; and a Certificate of Organization from the Secretary of State;

(3) Copies of the entity's governing documents, including, but not limited to, its Articles of Incorporation, Articles of Organization, Certificate of Limited Partnership, Bylaws, Regulations and/or Partnership Agreement; and

(4) Evidence that the signer(s) of the Application have the authority to sign on behalf of the Applicant in the form of a corporate resolution or by-laws which indicate same from the sub-entity in Control and that those Persons signing the Application constitute all Persons required to sign or submit such documents.

§49.14. Carryover; 10% Test; Commencement of Substantial Construction.

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(a) Carryover. All Developments which received a Commitment Notice, and will not be placed in service and receive IRS Form 8609 in the year the Commitment Notice was issued, must submit the Carryover documentation to the Department no later than November 2 of the year in which the Commitment Notice is issued pursuant to §42(h)(1)(c) IRC.

(1) Commitments for credits will be terminated if the Carryover documentation, or an approved extension, has not been received by this deadline. In the event that a Development Owner intends to submit the Carryover documentation in any month preceding November of the year in which the Commitment Notice is issued, in order to fix the Applicable Percentage for the Development in that month, it must be submitted no later than the first Friday in the preceding month.

(2) If the financing structure, syndication rate, amount of debt or syndication proceeds are revised 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 reevaluated by the Department.

(3) The Carryover Allocation format must be properly completed and delivered to the Department as prescribed by the Carryover Allocation Procedures Manual.

(4) All Carryover Allocations will be contingent upon the Development Owner providing evidence that the Development site is still under control of the Development Owner. For purposes of this paragraph, site control must be identical to the same Development Site that was submitted at the time of Application Submission.

(5) The Department will not execute a Carryover Allocation Agreement with any Owner in Material Noncompliance on October 1, 2009.

(6) The Development Owner may receive bonus points, as referenced in §49.9(i)(29) of this chapter, in the Application Round following the execution of the Carryover Allocation Agreement, if the Development Owner provides evidence of the purchase, transfer, lease or otherwise has ownership, of the Development Site, at the time of submission of the Carryover documentation.

(b) 10% Test. No later than eleven months from the date the Carryover Allocation Document is executed by the Department and the Development Owner, more than 10% of the Development Owner's reasonably expected basis must have been incurred pursuant to §42(h)(1)(E)(i) and (ii) of the Internal Revenue Code (as amended by The Housing and Economic Recovery Act of 2008) and Treasury Regulations, §1.42-6. The evidence to support the satisfaction of this requirement must be submitted to the Department no later than December 1 of the year following the execution of the Carryover Allocation Document in a format prescribed by the Department. At the time of submission of the documentation, the Development Owner must also submit a Management Plan and an Affirmative Marketing Plan as further described in the Carryover Allocation Procedures Manual. Evidence must be provided at this time of attendance of the Development Owner or management company at Department-approved Fair Housing training relating to leasing and management issues for at least five hours and the Development architect and engineer at Department-approved Fair Housing training relating to design issues for at least five hours on or before the time the 10% Test Documentation is submitted. Certifications must not be older than two years from the date of submission of the 10% Test Documentation. The 10% Test Documentation will be contingent upon the following, in addition to all other conditions placed upon the Application in the Commitment Notice:

(1) Evidence that the Development Owner has purchased, transferred, leased or otherwise has ownership of, the Development Site.

(2) A current original plat or survey of the land, prepared by a duly licensed Texas Registered Professional Land Surveyor. Such survey shall conform to standards prescribed in the Manual of Practice for Land Surveying in Texas as promulgated and amended from time to time by the Texas Surveyors Association as more fully described in the Carryover Procedures Manual.

(3) For all Developments involving New Construction or Adaptive Reuse, evidence of the availability of all necessary utilities/services to the Development site must be provided. Necessary utilities include natural gas (if applicable), electric, trash, water, and sewer. Such evidence must be a letter or a monthly utility bill from the appropriate municipal/local service provider. If utilities are not already accessible, then the letter must clearly state: an estimated time frame for provision of the utilities, an estimate of the infrastructure cost necessary to obtain service, and an estimate of any portion of that cost that will be borne by the Development Owner. Letters must be from an authorized individual representing the organization which actually provides the services. Such documentation should clearly indicate the Development Site. If utilities are not already

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(2) A current original plat or survey of the land, prepared by a duly licensed Texas Registered Professional Land Surveyor. Such survey shall conform to standards prescribed in the Manual of Practice for Land Surveying in Texas as promulgated and amended from time to time by the Texas Surveyors Association as more fully described in the Carryover Procedures Manual. ¶

(3) For all Developments involving New Construction or Adaptive Reuse, evidence of the availability of all necessary utilities/services to the Development site must be provided. Necessary utilities include natural gas (if applicable), electric, trash, water, and sewer. Such evidence must be a letter or a monthly utility bill from the appropriate municipal/local service provider. If utilities are not already accessible, then the letter must clearly state: an estimated time frame for provision of the utilities, an estimate of the infrastructure cost, and an estimate of any portion of that cost that will be borne by the Development Owner. Letters must be from an authorized individual representing the organization which actually provides the services. Such documentation should clearly indicate the Development property. If utilities are not already accessible (undeveloped areas), then the letter should not be older than three ... [33]

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accessible (undeveloped areas), then the letter should not be older than three months from the first day of the Application Acceptance Period.

(4) The Development Owner must submit evidence of having commenced and continued substantial construction activities as defined in Chapter 60 of this title.

~~(5) The Development Owner may receive bonus points, as referenced in section 49.9(i)(29) of this chapter, in the Application Round following the execution of the Carryover Allocation Agreement, if the Development Owner provides evidence that the requirements of the 10% Test were met, on or before June 1 in the year following the execution of the Carryover Allocation Agreement, (with the exception of the documentation required in paragraph (4) of this subsection), and submits the complete documentation, to the Department, on or before June 1 in the year following the execution of the same Carryover Allocation Agreement. The submission of the commencement of substantial construction documentation, as referenced in paragraph (4) of this subsection, will be required on or before December 1 of the year following the Carryover Allocation Agreement.~~

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Deleted: (c) Commencement of Substantial Construction. The Development Owner must submit evidence of having commenced and continued substantial construction activities as defined in Chapter 60 of this title. The evidence must be submitted not later than December 1 of the year after the execution of the Carryover Allocation Document with the possibility of an extension as described in §50.20 of this chapter.

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§49.15. LURA, Cost Certification.

(a) Land Use Restriction Agreement (LURA). The Development Owner must request a LURA from the Department no later than the date specified in Chapter 60 of this title, the Department's Compliance Rules. The Development Owner must complete date, sign and acknowledge before a notary public the LURA and send the original to the Department for execution. The initial compliance and monitoring fee must be included, accompanied by a statement, signed by the Owner, indicating the start of the Development's Credit Period and the earliest placed in service date for the Development buildings. After receipt of the signed LURA from the Department, the Development Owner shall then record the LURA, along with any and all exhibits attached thereto, in the real property records of the county where the Development is located and return the original document, duly certified as to recordation by the appropriate county official, to the Department no later than the date that the Cost Certification Documentation is submitted to the Department. If any liens (other than mechanics' or materialmen's liens) shall have been recorded against the Development and/or the Property prior to the recording of the LURA, the Development Owner shall obtain the subordination of the rights of any such lienholder, or other effective consent, to the survival of certain obligations contained in the LURA, which are required by §42(h)(6)(E)(ii) of the Code to remain in effect following the foreclosure of any such lien. Receipt of such certified recorded original LURA by the Department is required prior to issuance of IRS Form 8609. A representative of the Department, or assigns, shall physically inspect the Development for compliance with the Application and the representations, warranties, covenants, agreements and undertakings contained therein. Such inspection will be conducted before the IRS Form 8609 is issued for a building, but it shall be conducted in no event later than the end of the second calendar year following the year the last building in the Development is placed in service. The Development Owner for Tax-Exempt Bond Developments shall obtain a subordination agreement wherein the lien of the mortgage is subordinated to the LURA. The LURA shall contain any provision which requires the Development Owner to restrict rents and incomes at any AMGI level, as approved by the Board. The restricted gross rents for any AMGI level outlined in the LURA will be calculated in accordance with §42(g)(2)(A), Internal Revenue Code.

(b) Cost Certification. The Cost Certification Procedures Manual sets forth the documentation required for the Department to perform a feasibility analysis in accordance with §42(m)(2)(C)(i)(II), Internal Revenue Code, and determine the final Credit to be allocated to the Development.

(1) To request IRS Forms 8609, Developments must have:

(A) Placed in Service by December 31 of the year the Commitment Notice was issued if a Carryover Allocation was not requested and received; or December 31 of the second year following the year the Carryover Allocation Agreement was executed;

(B) Scheduled a final construction inspection in accordance with Chapter 60 of this title, the Department's Compliance Monitoring Policies and Procedures;

(C) Informed the Department of and received written approval for all Development amendments in accordance with §49.17(c) of this chapter;

(D) Submitted to the Department the LURA in accordance with subsection (a) of this section;

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(E) Paid all applicable Department fees; and
(F) Prepared all Cost Certification documentation as more fully described in the Cost Certification Procedures Manual including:

- (i) Carryover Allocation Agreement/Determination Notice and Election Statement;
- (ii) Owner's Statement of Certification;
- (iii) Owner Summary;
- (iv) Evidence of Nonprofit and CHDO Participation;
- (v) Evidence of Historically Underutilized Business (HUB) Participation;
- (vi) Development Summary;
- (vii) As-Built Survey;
- (viii) Closing Statement;
- (ix) Title Policy;
- (x) Evidence of Placement in Service;
- (xi) Independent Auditor's Reports;
- (xii) Total Development Cost Schedule;
- (xiii) AIA Form G702 and G703, Application and Certificate for Payment;
- (xiv) Rent Schedule;
- (xv) Utility Allowance;
- (xvi) Annual Estimated Operating Expenses and 15-Year Proforma;
- (xvii) Current Annual Operating Statement and Rent Roll;
- (xviii) Final Sources of Funds;
- (xix) Executed Limited Partnership Agreement;
- (xx) Loan Agreement or Firm Commitment;
- (xxi) Architect's Certification of Fair Housing Requirements; and
- (xxii) TDHCA Compliance Workshop Certificate.

(2) Required Cost Certification documentation must be received by the Department no later than January 15 following the year the Credit Period begins. Any Developments issued a Commitment Notice or Determination Notice that fails to submit its Cost Certification documentation by this deadline will be reported to the IRS and the Owner will be required to submit a request for extension consistent with §49.20(l) of this chapter.

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(3) The Department will perform an initial evaluation of the Cost Certification documentation within 45 days from the date of receipt and notify the Development Owner in a deficiency letter of all additional required documentation. Any deficiency letters issued to the Development Owner pertaining to the Cost Certification documentation will also be copied to the syndicator. The Department will issue IRS Forms 8609 no later than 90 days from the date that all required documents have been received.

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(4) The Department will perform an evaluation to determine if the Applicant is in Material Noncompliance with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject property, as described in Chapter 60 of this title, prior to issuance of IRS Forms 8609.

§49.16. Housing Credit Allocations.

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(a) In making a commitment of a Housing Credit Allocation under this chapter, the Department shall rely upon information contained in the Application to determine whether a building is eligible for the credit under the Code, §42. The Development Owner shall bear full responsibility for claiming the credit and assuring that the Development complies with the requirements of the Code, §42. The Department shall have no responsibility for ensuring that a Development Owner who receives a Housing Credit Allocation from the Department will qualify for the tax credit.

(b) The Housing Credit Allocation Amount shall not exceed the dollar amount the Department determines is necessary for the financial feasibility and the long term viability of the Development throughout the affordability period. (§2306.6711(b)). Such determination shall be made by the Department at the time of issuance of the Commitment Notice or Determination Notice; at the time the Department makes a Housing Credit Allocation; and as of the date each building in a Development is placed in service. Any Housing Credit Allocation Amount specified in a Commitment Notice, Determination Notice or Carryover Allocation Document

is subject to change by the Department based upon such determination. Such a determination shall be made by the Department based on its evaluation and procedures, considering the items specified in the Code, §42(m)(2)(B), and the Department in no way or manner represents or warrants to any Applicant, sponsor, investor, lender or other entity that the Development is, in fact, feasible or viable.

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(c) The General Contractor hired by the Development Owner must meet specific criteria as defined by the General Appropriation Act, Article VII, Rider 8(c). A General Contractor hired by a Development Owner or a Development Owner, if the Development Owner serves as General Contractor must demonstrate a history of constructing similar types of housing without the use of federal tax credits. Evidence must be submitted to the Department, in accordance with §49.9(h)(4)(I) of this chapter, which sufficiently documents that the General Contractor has constructed some housing without the use of Housing Tax Credits. This documentation will be required as a condition of the Commitment Notice or Carryover Allocation Agreement, and must be complied with prior to commencement of construction and at cost certification and final allocation of credits.

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(d) An allocation will be made in the name of the Development Owner identified in the related Commitment Notice or Determination Notice. If an allocation is made to a member or Affiliate of the ownership entity proposed at the time of Application, the Department will transfer the allocation to the ownership entity as consistent with the intention of the Board when the Development was selected for an award of tax credits. Any other transfer of an allocation will be subject to review and approval by the Department consistent with §49.17(c) of this chapter. The approval of any such transfer does not constitute a representation to the effect that such transfer is permissible under §42 of the Code or without adverse consequences thereunder, and the Department may condition its approval upon receipt and approval of complete current documentation regarding the owner including documentation to show consistency with all the criteria for scoring, evaluation and underwriting, among others, which were applicable to the original Applicant.

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(e) The Department shall make a Housing Credit Allocation, either in the form of IRS Form 8609, with respect to current year allocations for buildings placed in service, or in the Carryover Allocation Document, for buildings not yet placed in service, to any Development Owner who holds a Commitment Notice which has not expired, and for which all fees as specified in §49.20 of this chapter have been received by the Department and with respect to which all applicable requirements, terms and conditions have been met. For Tax-Exempt Bond Developments, the Housing Credit Allocation shall be made in the form of a Determination Notice. For an IRS Form 8609 to be issued with respect to a building in a Development with a Housing Credit Allocation, satisfactory evidence must be received by the Department that such building is completed and has been placed in service in accordance with the provisions of the Department's Cost Certification Procedures Manual. The Cost Certification documentation requirements will include a certification and inspection report prepared by a Third-Party accessibility specialist to certify that the Development meets all required accessibility standards. IRS Form 8609 will not be issued until the certifications are received by the Department. The Department shall mail or deliver IRS Form 8609 (or any successor form adopted by the Internal Revenue Service) to the Development Owner, with Part I thereof completed in all respects and signed by an authorized official of the Department. The delivery of the IRS Form 8609 will occur only after the Development Owner has complied with all procedures and requirements listed within the Cost Certification Procedures Manual. Regardless of the year of Application to the Department for Housing Tax Credits, the current year's Cost Certification Procedures Manual must be utilized when filing all cost certification materials. A separate Housing Credit Allocation shall be made with respect to each building within a Development which is eligible for a tax credit; provided, however, that where an allocation is made pursuant to a Carryover Allocation Document on a Development basis in accordance with the Code, §42(h)(1)(F), a housing credit dollar amount shall not be assigned to particular buildings in the Development until the issuance of IRS Form 8609s with respect to such buildings. The Department may delay the issuance of IRS Form 8609 if any Development violates the representations of the Application.

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(f) In making a Housing Credit Allocation, the Department shall specify a maximum Applicable Percentage, not to exceed the Applicable Percentage for the building permitted by the Code, §42(b), and a maximum Qualified Basis amount. In specifying the maximum Applicable Percentage and the maximum Qualified Basis amount, the Department shall disregard the first-year conventions described in the Code,

§42(f)(2)(A) and §42(f)(3)(B). The Housing Credit Allocation made by the Department shall not exceed the amount necessary to support the extended low-income housing commitment as required by the Code, §42(h)(6)(C)(i).

(g) Development inspections shall be required to show that the Development is built or rehabilitated according to construction ~~Threshold~~ ~~Criteria~~ and Development characteristics identified at application. At a minimum, all Development inspections must meet Uniform Physical Condition Standards (UPCS) as referenced in Treasury Regulation §1.42-5(d)(2)(ii) and include an inspection for quality during the construction process while defects can reasonably be corrected and a final inspection at the time the Development is placed in service. All such Development inspections shall be performed by the Department or by an independent Third Party inspector acceptable to the Department. The Development Owner shall pay all fees and costs of said inspections as described in ~~§49.20 of this chapter~~. Details regarding the construction inspection process are set forth in the Department Rule Chapter 60 of this title, the Department's Compliance Monitoring Policies and Procedures (§2306.081; General Appropriation Act, Article VII, Rider 8(b)).

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(h) After the entire Development is placed in service, which must occur prior to the deadline specified in the Carryover Allocation Document and as further outlined in ~~§49.15 of this chapter~~, the Development Owner shall be responsible for furnishing the Department with documentation which satisfies the requirements set forth in the Cost Certification Procedures Manual. For purposes of this title, and consistent with IRS Notice 88-116, the placed in service date for a new or existing building used as residential rental property is the date on which the building is ready and available for its specifically assigned function and more specifically when the first Unit in the building is certified as being suitable for occupancy in accordance with state and local law and as certified by the appropriate local authority or registered architect as ready for occupancy. The Cost Certification must be submitted for the entire Development; therefore partial Cost Certifications are not allowed. The Department may require copies of invoices and receipts and statements for materials and labor utilized for the New Construction or Rehabilitation and, if applicable, a closing statement for the acquisition of the Development as well as for the closing of all interim and permanent financing for the Development. If the Development Owner does not fulfill all representations and commitments made in the Application, the Department may make reasonable reductions to the tax credit amount allocated via the IRS Form 8609, may withhold issuance of the IRS Form 8609s until these representations and commitments are met, and/or may terminate the allocation, if appropriate corrective action is not taken by the Development Owner.

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(i) The Board at its sole discretion may allocate credits to a Development Owner in addition to those awarded at the time of the initial Carryover Allocation in instances where there is bona fide substantiation of cost overruns and the Department has made a determination that the allocation is needed to maintain the Development's financial viability.

(j) The Department may, at any time and without additional administrative process, determine to award credits to Developments previously evaluated and awarded credits if it determines that such previously awarded credits are or may be invalid and the owner was not responsible for such invalidity.

(k) If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Department will impose a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate of that Applicant for any Application in an Application Round occurring concurrent to the return of credits or if no Application Round is pending the Round immediately following the return of credits unless otherwise exempted in accordance with the Board's policy pursuant to the implementation of The Housing and Economic Recovery Act of 2008, H.R. 3221, in September 2008. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20%.

~~§49.17. Board Reevaluation, Appeals Process; Provision of Information or Challenges Regarding Applications; Amendments; Housing Tax Credit and Ownership Transfers; Sale of Tax Credit Properties; Withdrawals; Cancellations; Alternative Dispute Resolution.~~

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(a) **Board Reevaluation.** (§2306.6731(b)). Regardless of development stage, the Board shall reevaluate a Development that undergoes a substantial change between the time of initial Board approval of the Development and the time of issuance of a Commitment Notice or Determination Notice for the Development. For the purposes of this subsection, substantial change shall be those items identified in subsection (d)(4) of this section. The Board may revoke any Commitment Notice or Determination Notice issued for a Development that has been unfavorably reevaluated by the Board.

(b) **Appeals Process.** (§2306.6715) An Applicant may appeal decisions made by the Department as follows.

(1) The decisions that may be appealed are identified in subparagraphs (A)-(D) of this paragraph.

(A) A determination regarding the Application's satisfaction of:

- (i) Eligibility Requirements;
- (ii) Disqualification or debarment criteria;
- (iii) Pre-Application or Application Threshold Criteria;
- (iv) Underwriting Criteria;

(B) The scoring of the Application under the Application Selection Criteria; and

(C) A recommendation as to the amount of Housing Tax Credits to be allocated to the

Application.

(D) Any Department decision that results in termination of an Application.

(2) An Applicant may not appeal a decision made regarding an Application filed by another Applicant.

(3) An Applicant must file its appeal in writing with the Department not later than the seventh day after the date the Department publishes the results of any stage of the Application evaluation process identified in §49.9 of this chapter. In the appeal, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application. If the appeal relates to the amount of Housing Tax Credits recommended to be allocated, the Department will provide the Applicant with the underwriting report upon request.

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(4) The Executive Director of the Department shall respond in writing to the appeal not later than the 14th day after the date of receipt of the appeal. If the Applicant is not satisfied with the Executive Director's response to the appeal, the Applicant may appeal directly in writing to the Board, provided that an appeal filed with the Board under this subsection must be received by the Board before:

(A) The seventh day preceding the date of the Board meeting at which the relevant commitment decision is expected to be made; or

(B) The third day preceding the date of the Board meeting described by subparagraph (A) of this paragraph, if the Executive Director does not respond to the appeal before the date described by subparagraph (A) of this paragraph.

(5) Board review of an appeal under paragraph (4) of this subsection is based on the original Application and additional documentation filed with the original Application. The Board may not review any information not contained in or filed with the original Application. The decision of the Board regarding the appeal is final.

(6) The Department will post to its web site an appeal filed with the Department or Board and any other document relating to the processing of the appeal. (§2306.6717(a)(5))

(c) **Provision of Information or Challenges Regarding Applications from Unrelated Entities to the Application.** The Department will address information or challenges received from unrelated entities to a specific ~~2009~~ active Application, utilizing a preponderance of the evidence standard, as stated in paragraphs (1) - (3) of this subsection, provided the information or challenge includes a contact name, telephone number, fax number and e-mail address of the person providing the information or challenge and must be received by the Department no later than June 15, ~~2009~~:

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(1) Within 14 business days of the receipt of the information or challenge, the Department will post all information and challenges received (including any identifying information) to the Department's website;

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(2) Within seven business days of the receipt of the information or challenge, the Department will notify the Applicant related to the information or challenge. The Applicant will then have seven business days to respond to all information and challenges provided to the Department; ~~and~~

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(3) Within 14 business days of the receipt of the response from the Applicant, the Department will evaluate all information submitted and other relevant documentation related to the investigation. This information may include information requested by the Department relating to this evaluation. The Department will post its determination summary to its website. Any determinations made by the Department cannot be appealed by any party unrelated to the Applicant.

(d) Amendment of Application Subsequent to Allocation by Board. (§2306.6712 and §2306.6717(a)(4))

(1) If a proposed modification would materially alter a Development approved for an allocation of a Housing Tax Credit, or if the Applicant has altered any selection criteria item for which it received points, the Department shall require the Applicant to file a formal, written request for an amendment to the Application.

(2) The Executive Director of the Department shall require the Department staff assigned to underwrite Applications to evaluate the amendment and provide an analysis and written recommendation to the Board. The appropriate party monitoring compliance during construction in accordance with §49.18 of this chapter shall also provide to the Board an analysis and written recommendation regarding the amendment. For amendments which require Board approval, the amendment request must be received by the Department at least 30 days prior to the Board meeting where the amendment will be considered.

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(3) The Board must vote on whether to approve an amendment. The Board by vote may reject an amendment and, if appropriate, rescind a Commitment Notice or terminate the allocation of Housing Tax Credits and reallocate the credits to other Applicants on the Waiting List if the Board determines that the modification proposed in the amendment:

- (A) would materially alter the Development in a negative manner; or
- (B) would have adversely affected the selection of the Application in the Application Round.

(4) Material alteration of a Development includes, but is not limited to:

- (A) a significant modification of the site plan;
- (B) a modification of the number of units or bedroom mix of units;
- (C) a substantive modification of the scope of tenant services;
- (D) a reduction of 3% or more in the square footage of the units or common areas;
- (E) a significant modification of the architectural design of the Development;
- (F) a modification of the residential density of the Development of at least 5%;
- (G) an increase or decrease in the site acreage of greater than 10% from the original site under control and proposed in the Application; and
- (H) any other modification considered significant by the Board.

(5) In evaluating the amendment under this subsection, the Department staff shall consider whether the need for the modification proposed in the amendment was:

- (A) Reasonably foreseeable by the Applicant at the time the Application was submitted; or
- (B) Preventable by the Applicant.

(6) This section shall be administered in a manner that is consistent with the Code, §42.

(7) Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and monitor regarding the amendment will be posted to the Department's web site.

(8) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants targeted in the Real Estate Analysis Report at the time of the Commitment Notice issuance, as approved by the Board, the following procedure will apply. For amendments that involve a reduction in the total number of Low-Income Units being served, or a reduction in the number of Low-Income Units at any level of AMGI, as approved by the Board, evidence must be presented to the Department that includes written confirmation from the lender and syndicator that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request, however, any affirmative recommendation to the Board is contingent upon concurrence from the Real Estate Analysis Division that the Unit adjustment (or an alternative Unit adjustment) is necessary for the continued feasibility of the Development. Additionally, if it is determined by the Department that the allocation of credits would not have been made in the year of allocation because the loss of low-income targeting points would have resulted in the Application not receiving an allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing

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Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for 24 months from the time that the amendment is approved.

(e) **Housing Tax Credit and Ownership Transfers.** (§2306.6713) A Development Owner may not transfer an allocation of Housing Tax Credits or ownership of a Development supported with an allocation of Housing Tax Credits to any Person including an Affiliate of the Development Owner unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer.

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(1) Transfers other than an Affiliate included in the ownership structure will not be approved prior to the issuance of IRS Forms 8609 unless the Development Owner can provide evidence that a hardship is creating the need for the transfer (potential bankruptcy, removal by a partner, etc.). A Development Owner seeking Executive Director approval of a transfer and the proposed transferee must provide to the Department a copy of any applicable agreement between the parties to the transfer, including any third-party agreement with the Department.

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(2) A Development Owner seeking Executive Director approval of a transfer must provide the Department with documentation requested by the Department, including but not limited to, a list of the names of transferees and Related Parties; and detailed information describing the experience and financial capacity of transferees and related parties. All transfer requests must disclose the reason for the request. The Development Owner shall certify to the Executive Director that the tenants in the Development have been notified in writing of the transfer before the 30th day preceding the date of submission of the transfer request to the Department. Not later than the fifth working day after the date the Department receives all necessary information under this section, the Department shall conduct a qualifications review of a transferee to determine the transferee's past compliance with all aspects of the Housing Tax Credit Program, LURAs; and the sufficiency of the transferee's experience with Developments supported with Housing Credit Allocations. If the viable operation of the Development is deemed to be in jeopardy by the Department, the Department may authorize changes that were not contemplated in the Application.

(3) As it relates to the Credit Cap further described in ~~§49.6(d)~~ of this chapter, the credit cap will not be applied in the following circumstances:

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(A) In cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(B) In cases where the General Partner is being replaced if the award of credits was made at least five years prior to the transfer request date.

(f) **Sale of Certain Tax Credit Properties.** Consistent with §2306.6726, Texas Government Code, not later than two years before the expiration of the Compliance Period, a Development Owner who agreed to provide a right of first refusal under §2306.6725(b)(1), Texas Government Code and who intends to sell the property shall notify the Department of its intent to sell.

(1) The Development Owner shall notify Qualified Nonprofit Organizations and tenant organizations of the opportunity to purchase the Development. The Development Owner may:

(A) During the first six-month period after notifying the Department, negotiate or enter into a purchase agreement only with a Qualified Nonprofit Organization that is also a community housing development organization as defined by the Federal Home Investment Partnership Program (HOME);

(B) During the second six-month period after notifying the Department, negotiate or enter into a purchase agreement with any Qualified Nonprofit Organization or tenant organization; and

(C) During the year before the expiration of the compliance period, negotiate or enter into a purchase agreement with the Department or any Qualified Nonprofit Organization or tenant organization approved by the Department.

(2) Notwithstanding items for which points were received consistent with ~~§49.9(i)~~ of this chapter, a Development Owner may sell the Development to any purchaser after the expiration of the compliance period if a Qualified Nonprofit Organization or tenant organization does not offer to purchase the Development at the minimum price provided by §42(i)(7), Internal Revenue Code of 1986 (26 U.S.C. §42(i)(7)), and the Department declines to purchase the Development.

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(g) **Withdrawals.** An Applicant may withdraw an Application prior to receiving a Commitment Notice, Determination Notice, Carryover Allocation Document or Housing Credit Allocation, or may cancel a

Commitment Notice or Determination Notice by submitting to the Department a notice, as applicable, of withdrawal or cancellation, and making any required statements as to the return of any tax credits allocated to the Development at issue.

(h) **Cancellations.** The Department may cancel a Commitment Notice, Determination Notice or Carryover Allocation prior to the issuance of IRS Form 8609 with respect to a Development if:

(1) The Applicant or the Development Owner, or the Development, as applicable, fails to meet any of the conditions of such Commitment Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Applications process for the Development;

(2) Any 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 Development's Application ineligible for funding pursuant to §49.5 of this chapter if such event had occurred prior to issuance of the Commitment Notice or Carryover Allocation; or

(4) The Applicant or the Development Owner or the Development, as applicable, fails to comply with these Rules or the procedures or requirements of the Department.

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(i) **Alternative Dispute Resolution Policy.** In accordance with §2306.082, Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title.

§49.18. Compliance Monitoring and Material Noncompliance.

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The Code, §42(m)(1)(B)(iii), requires the Department as the housing credit agency to include in its QAP a procedure that the Department will follow in monitoring Developments for compliance with the provisions of the Code, §42 and in notifying the IRS of any noncompliance of which the Department becomes aware. Detailed compliance rules and procedures for monitoring are set forth in Chapter 60 of this title.

§49.19. Department Records; Application Log; IRS Filings.

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(a) **Department Records.** At all times during each calendar year the Department shall maintain a record of the following:

(1) The cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Commitment Notices during such calendar year;

(2) The cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Carryover Allocation Documents during such calendar year;

(3) The cumulative amount of Housing Credit Allocations made during such calendar year; and

(4) The remaining unused portion of the State Housing Credit Ceiling for such calendar year.

(b) **Application Log.** (§2306.6702(a)(3) and §2306.6709) The Department shall maintain for each Application an Application Log that tracks the Application from the date of its submission. The Application Log will contain, at a minimum, the information identified in paragraphs (1) - (9) of this subsection.

(1) The names of the Applicant and all General Partners of the Development Owner, the owner contact name and phone number, and full contact information for all members of the Development Team;

(2) The name, physical location, and address of the Development, including the relevant Uniform State Service Region of the state;

- (3) The number of Units and the amount of Housing Tax Credits requested for allocation by the Department to the Applicant;
- (4) Any Set-Aside category under which the Application is filed;
- (5) The requested and awarded score of the Application in each scoring category adopted by the Department under the Qualified Allocation Plan;
- (6) Any decision made by the Department or Board regarding the Application, including the Department's decision regarding whether to underwrite the Application and the Board's decision regarding whether to allocate Housing Tax Credits to the Development;
- (7) The names of individuals making the decisions described by paragraph (6) of this subsection, including the names of Department staff scoring and underwriting the Application, to be recorded next to the description of the applicable decision;
- (8) The amount of Housing Tax Credits allocated to the Development; and
- (9) A dated record and summary of any contact between the Department staff, the Board, and the Applicant or any Related Parties.

(c) **IRS Filings.** The Department shall mail to the Internal Revenue Service, not later than the 28th day of the second calendar month after the close of each calendar year during which the Department makes Housing Credit Allocations, a copy of each completed (as to Part I) IRS Form 8609, the original of which was mailed or delivered by the Department to a Development Owner during such calendar year, along with a single completed IRS Form 8610, Annual Low-income Housing Credit Agencies Report. When a Carryover Allocation is made by the Department, a copy of the Carryover Allocation Agreement will be mailed or faxed to the Development Owner by the Department. The original of the Carryover Allocation Document will be retained by the Department and IRS Form 8610 Schedule A will be filed by the Department with IRS Form 8610 for the year in which the allocation is made. The Department shall be authorized to vary from the requirements of this section to the extent required to adapt to changes in IRS requirements.

~~§49.20. Program Fees; Refunds; Public Information Requests; Adjustments of Fees and Notification of Fees; Extensions; Penalties.~~

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(a) **Timely Payment of Fees.** All fees must be paid as stated in this section, unless the Executive Director has granted a waiver for specific extenuating and extraordinary circumstances. To be eligible for a waiver, the Applicant must submit a request for a waiver no later than 10 business days prior to the deadlines as stated in this section. Any fees, as further described in this section, that are not timely paid will cause an Applicant to be ineligible to apply for tax credits and additional tax credits and ineligible to submit extension requests, ownership changes and Application amendments. Payments made by check, for which insufficient funds are available, may cause the Application, ~~Commitment or Allocation~~ to be terminated.

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(b) **Pre-Application Fee.** Each Applicant that submits a Pre-Application shall submit to the Department, along with such Pre-Application, a non refundable Pre-Application fee, in the amount of \$10 per Unit. Units for the calculation of the Pre-Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Pre-Applications without the specified Pre-Application Fee in the form of a check will not be accepted. Pre-Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the managing General Partner of the Development Owner, or Control the managing General Partner of the Development Owner, will receive a discount of 10% off the calculated Pre-Application fee. (General Appropriation Act, Article VII, Rider 7; §2306.6716(d)). For Tax Exempt Bond Developments with the Department as the issuer, the Applicant shall submit the following fees: \$1,000 (payable to TDHCA), ~~\$2,000~~ (payable to Vinson & Elkins, Bond Counsel), and \$5,000 (payable to the Texas Bond Review Board).

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(c) **Application Fee.** Each Applicant that submits an Application shall submit to the Department, along with such Application, an Application fee. For Applicants having submitted a Pre-Application which met Pre-Application Threshold and for which a Pre-Application fee was paid, the Application fee will be \$20 per Unit. For Applicants not having submitted a Pre-Application, the Application fee will be \$30 per Unit. Units for the calculation of the Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Applications without the specified Application Fee in the form of a check will not be

accepted. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the managing General Partner of the Development Owner, or Control the managing General Partner of the Development Owner, will receive a discount of 10% off the calculated Application fee. (General Appropriation Act, Article VII, Rider 7; §2306.6716(d)). For Tax Exempt Bond Developments with the Department as the Issuer the Applicant shall submit a tax credit application fee of \$30 per unit and bond application fee of \$10,000. For Tax-Exempt Bond Development refunding Applications, with the Department as the issuer, the Application Fee will be \$10,000 unless the refunding is not required to have a TEFRA public hearing, in which case the fee will be \$5,000. Those Applications utilizing a local issuer only need to submit the tax credit application fee.

(d) **Refunds of Pre-Application or Application Fees.** (§2306.6716(c)). Upon written request from the Applicant, the Department shall refund the balance of any fees collected for a Pre-Application or Application that is withdrawn by the Applicant or that is not fully processed by the Department. The amount of refund on Pre-Applications not fully processed by the Department will be commensurate with the level of review completed. Intake and data entry will constitute 50% of the review, and Threshold review prior to a deficiency issued will constitute 30% of the review. Deficiencies submitted and reviewed constitute 20% of the review. The amount of refund on Applications not fully processed by the Department will be commensurate with the level of review completed. Intake and data entry will constitute 20% of the review, the site visit will constitute 20% of the review, Eligibility and Selection review will constitute 20%, and Threshold review will constitute 20% of the review, and underwriting review will constitute 20%. The Department must provide the refund to the Applicant not later than the 30th day after the date of request.

(e) **Third Party Underwriting Fee.** Applicants will be notified in writing prior to the evaluation of a Development by an independent external underwriter in accordance with ~~§49.9(d)(6), (e)(3), and (f)(6)~~ of this chapter 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 fee established in subsection (f) of this section, in the event that a Commitment Notice or Determination Notice is issued by the Department to the Development Owner.

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(f) **Commitment or Determination Notice Fee.** Each Development Owner that receives a Commitment Notice or Determination Notice shall submit to the Department, not later than the expiration date on the Commitment or Determination notice, a Commitment or Determination fee equal to 5% of the annual Housing Credit Allocation amount. The Commitment or Determination fee shall be paid by check. If a Development Owner of an Application awarded Competitive Housing Tax Credits has paid a Commitment Fee and returns the credits by November 1, 2009, the Development Owner may receive a refund of 50% of the Commitment Fee. If a Development Owner of an Application awarded Housing Tax Credits associated with Tax-Exempt Bonds has paid a Determination Fee and is not able close on the bond transaction within 90 days of the issuance date of the Determination Notice, the Development Owner may receive a refund of 50% of the Determination Fee. The Determination Fee will not be refundable after 90 days of the issuance date of the Determination Notice.

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(g) **Compliance Monitoring Fee.** Upon receipt of the cost certification, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal \$40 per tax credit unit. The fee will be collected, retroactively if applicable, beginning with the first year of the credit period. The invoice must be paid prior to the issuance of form 8609. 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. For Tax-Exempt Bond Developments with the Department as the issuer, the annual tax credit compliance fee will be paid annually in advance (for the duration of the compliance or affordability period) and is equal to \$40/Unit beginning two years from the first payment date of the bonds; the asset management fee is paid in advance and is equal to \$25/Unit beginning two years from the first payment date. Compliance fees may be adjusted from time to time by the Department.

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(h) **Building Inspection Fee.** The Building Inspection Fee must be paid at the time the Commitment Fee is paid. The Building Inspection Fee for all Developments is \$750. Inspection fees in excess of \$750 may be charged to the Development Owner not to exceed an additional \$250 per Development.

(i) **Tax-Exempt Bond Credit Increase Request Fee.** As further described in §49.12 of this chapter, requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to 5% of the amount of the credit increase for one year.

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(j) **Public Information Requests.** Public information requests are processed by the Department in accordance with the provisions of the Government Code, Chapter 552. The Department uses the guidelines promulgated by The Texas Facilities Commission to determine the cost of copying, and other costs of production.

(k) **Periodic Adjustment of Fees by the Department and Notification of Fees.** (§2306.6716(b)). All fees charged by the Department in the administration of the tax credit program will be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. The Department shall publish each year an updated schedule of Application fees that specifies the amount to be charged at each stage of the Application process. 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.

(l) **Extension and Amendment Requests.**

(1) All extension requests relating to the Carryover, Documentation for 10% Test, Substantial Construction Commencement, Placed in Service or Cost Certification requirements shall be submitted to the Department in writing and be accompanied by a mandatory non-refundable extension fee in the form of a check in the amount of \$2,500. Such requests must be submitted to the Department no later than the date for which an extension is being requested. All requests for extensions totaling less than 6 months may be approved by the Executive Director and are not required to have Board approval. For extensions that require Board approval, the extension request must be received by the Department at least 15 business days prior to the Board meeting where the extension will be considered. The extension request shall specify a requested extension date and the reason why such an extension is required. Carryover extension requests shall not request an extended deadline later than December 1st of the year the Commitment Notice was issued. The Department, in its sole discretion, may consider and grant such extension requests for all items. If an extension is required at Cost Certification, the fee of \$2,500 must be received by the Department to qualify for issuance of Forms 8609.

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(2) Amendment requests must be submitted consistent with §49.17(d) of this chapter. Amendment requests shall be submitted to the Department in writing and be accompanied by a mandatory non-refundable amendment fee in the form of a check in the amount of \$2,500. The amendment request will not be considered received until the corresponding fee is received.

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(3) The Board may waive extension or amendment fees for good cause.

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(m) **Penalties.** 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 8609's. For Competitive Housing Tax Credit Developments, 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 form 8609's 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 §42, Internal Revenue Code.

§49. 21. Manner and Place of Filing All Required Documentation.

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(a) All Applications, letters, documents, or other papers filed with the Department must be received only between the hours of 8:00 a.m. and 5:00 p.m. on any day which is not a Saturday, Sunday or a holiday established by law for state employees.

(b) All notices, information, correspondence and other communications under this chapter shall be deemed to be duly given if delivered or sent and effective in accordance with this subsection. Such correspondence must reference that the subject matter is pursuant to the Tax Credit Program and must be addressed to the Housing Tax Credit Program, Texas Department of Housing and Community Affairs, P.O. Box

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13941, Austin, TX 78711-3941 or for hand delivery or courier to 221 East 11th Street, Austin, Texas 78701 or more current address of the Department as released on the Department's website. Every such correspondence required or contemplated by this [chapter](#) to be given, delivered or sent by any party may be delivered in person or may be sent by courier, telecopy, express mail, telex, telegraph or postage prepaid certified or registered air mail (or its equivalent under the laws of the country where mailed), addressed to the party for whom it is intended, at the address specified in this subsection. Regardless of method of delivery, documents must be received by the Department no later than 5:00 p.m. for the given deadline date. Notice by courier, express mail, certified mail, or registered mail will be considered received on the date it is officially recorded as delivered by return receipt or equivalent. Notice by telex or telegraph will be deemed given at the time it is recorded by the carrier in the ordinary course of business as having been delivered, but in any event not later than one business day after dispatch. Notice not given in writing will be effective only if acknowledged in writing by a duly authorized officer of the Department.

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(c) If required by the Department, Development Owners must comply with all requirements to use the Department's web site to provide necessary data to the Department.

§49.22. Waiver and Amendment of Rules.

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(a) The Board, in its discretion, may waive any one or more of these Rules if the Board finds that waiver is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code, or for other good cause, as determined by the Board.

(b) Section 1.13 of this title may be waived for any person seeking any action by filing a request with the Board.

(c) The Department may amend this chapter and the Rules contained herein at any time in accordance with the Government Code, Chapter 2001.

§49.23. Deadlines for Allocation of Housing Tax Credits. (§2306.6724)

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(a) Not later than September 30 of each year, the Department shall prepare and submit to the Board for adoption the draft QAP required by federal law for use by the Department in setting criteria and priorities for the allocation of tax credits under the Housing Tax Credit program.

(b) The Board shall adopt and submit to the Governor the QAP not later than November 15 of each year.

(c) The Governor shall approve, reject, or modify and approve the QAP not later than December 1 of each year. (§2306.67022) (§42(m)(1))

(d) The Board shall annually adopt a manual, corresponding to the QAP, to provide information on how to apply for Housing Tax Credits.

(e) Applications for Housing Tax Credits to be issued a Commitment Notice during the Application Round in a calendar year must be submitted to the Department not later than March 1.

(f) The Board shall review the recommendations of Department staff regarding Applications and shall issue a list of approved Applications each year in accordance with the Qualified Allocation Plan not later than June 30.

(g) The Board shall approve final commitments for allocations of Housing Tax Credits each year in accordance with the Qualified Allocation Plan not later than July 31, unless unforeseen circumstances prohibit action by that date. In any event, the Board shall approve final commitments for allocations of Housing Tax Credits each year in accordance with the Qualified Allocation Plan not later than September 30. Department

staff will subsequently issue Commitment Notices based on the Board's approval. Final commitments may be conditioned on various factors approved by the Board, including resolution of contested matters in litigation.

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take actions on behalf of the entity that are binding on the other owners of such entity.		
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that are binding on the other		
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partners and, who is liable for all debts and other obligations of the venture as well as for the management and operation of the partnership.		
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(27) Controlling or Managing General Partner		
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an entity who (i) owns, controls, or holds with power to vote, 10% or more of the voting stock of a corporation; (ii) is the "Manager" or "Managing Member" of a limited liability company, or (iii) is the general partner of a limited partnership; provided that such a co-owner is empowered, acting alone to		
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owns, controls, or holds with power to vote, 10% or more of the voting stock		
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(ii) is the "Manager" or "Managing Member" of a limited liability company, or (iii) is the general partner of a limited partnership; provided that such a co-owner is empowered, acting alone to		
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partners and, who is liable for all debts and other obligations of the venture as well as for the management and operation of the partnership.		
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For purposes of completing the Rent Schedule for loft or studio type Units (which still must meet the definition of Bedroom), a Unit with 649 square feet or less is considered an efficiency Unit, a Unit with 650 to 899 square feet is considered not more than a one-bedroom Unit, a Unit with 900 to 999 square feet is considered not more than a two-bedroom Unit, a Unit with 1000 to 1199 square feet is considered not more than a three-bedroom Unit, and a Unit with 1200 square feet or more is considered a four bedroom Unit.		

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census tracts of a municipality		
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census tracts of a municipality in which at least 90 percent of the land		
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purposes and that has historically been the primary location in the municipality where business has been transacted, as well as those census tracts that are contiguous to such areas.		
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purposes and that has historically been the primary location in the municipality where business has been transacted, as well as those census tracts that are contiguous to such areas.		
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(-a-) evaporative coolers (for use in designated counties listed in the Application Materials, 2009 Housing Tax Credit Site Demographics Information) (1 point);		
(-b-) passive solar heating/cooling (3 points);		
(-c-) water conserving features (toilets using less than or equal to 1.6 gallons per flush, showerheads, kitchen faucets or bathroom faucets using less than or equal to 2.0 gallons per minute) (1 point for each);		
(-d-) solar water heaters (2 points);		
(-e-) collected water (at least 50%) for irrigation purposes (2 points);		
(-f-) sub-metered utility meters (3 points);		

- (-g-) Energy Star qualified windows and glass doors (2 points);
- (-h-) thermally and draft efficient doors (SHGC of 0.40 and U-value specified by climate zone according to the 2006 IECC)(2 points);
- (-i-) photovoltaic panels for electricity and design and wiring for the use of such panels (3 points);
- (-j-) construction waste management and implementation of EPA's Best Management Practices for erosion and sedimentation control during construction (1 point);
- (-k-) exterior envelope insulation, vapor barriers and air barriers greater than or equal to Energy Star air barrier and insulation criteria (2 points);
- (-l-) HVAC, windows, domestic hot water heater or insulation that exceeds Energy Star standards or exceeds the IRC 2006 (2 points);
- (-m-) bamboo flooring, wool carpet, linoleum flooring, straw board, poplar OSB, or cotton batt insulation (2 points);
- (-n-) recycling service provided throughout the compliance period (1 point); or
- (-o-) water permeable walkways (1 point).

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6 pair CAT5e wiring or better to provide phone and data service to each unit and wired with COAX cable to provide TV and high speed internet data service to each unit

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;
(ix) Emergency 911 or public telephone accessible and available to tenants 24 hours a day

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If 80% or fewer of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 7 points. If between 81% and 85% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 8 points. If between 86% and 90% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 9 points. If between 91% and 95% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 10 points. If greater than 95% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 12 points.

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- (A) evaporative coolers (for use in designated counties listed in the Application Materials, 2009 Housing Tax Credit Site Demographics Information)(1 point);
- (B) passive solar heating/cooling (3 points);
- (C) water conservation fixtures (toilets using less than or equal to 1.6 gallons per flush, showerheads, kitchen faucets or bathroom faucets using less than or equal to 2.0 gallons per minute)(1 point for each);
- (D) solar water heaters (2 points);
- (D) water collection (at least 50%) for irrigation purposes (2 points);
- (E) sub-metered utility meters (3 points);
- (F) Energy-Star qualified windows and glass doors (2 points);
- (G) thermally and draft efficient doors (SHGC of 0.40 and U-value specified by climate zone according to the 2006 IECC)(2 points);

(H) photovoltaic panels for electricity and design and wiring for use of such panels (4 points);

(I) construction waste management and implementation of EPA's Best Management Practices for erosion and sedimentation control during construction (2 points);

(J) recycle service provided throughout the compliance period (1 point);

(K) water permeable walkways (1 point);

(L) selection of native trees and plants that are appropriate to the site's soils and microclimate and locate them to provide shading in the summer and allow for heat gain in the winter (2 points);

(M) exterior envelope insulation, vapor barriers and air barriers greater than or equal to Energy Star air barrier and insulation criteria (2 points);

(N) HVAC, windows, domestic hot water heater or insulation that exceeds Energy Star standards or exceeds the IRC 2006 (2 points); or

(O) bamboo flooring, wool carpet, linoleum flooring, straw board, poplar OSB, or cotton batt insulation (2 points).

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point);

(L) selection of native trees and plants that are appropriate to the site's soils and microclimate and locate them to provide shading in the summer and allow for heat gain in the winter (2 points);

(M) exterior envelope insulation, vapor barriers and air barriers greater than or equal to Energy Star air barrier and insulation criteria (2 points);

(N) HVAC, windows, domestic hot water heater or insulation that exceeds Energy Star standards or exceeds the IRC 2006 (2 points); or

(O) bamboo flooring, wool carpet, linoleum flooring, straw board, poplar OSB, or cotton batt insulation (2 points).

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If an Applicant requests these points on the self scoring form and correctly certifies to the Department that there are no Neighborhood Organizations that meet the Department's definition of Neighborhood Organization pursuant to §50

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(29) Bonus Points. Applications may qualify to receive up to 6 points for this item.

(A) An Application may receive 2 points if the Applicant had submitted acceptable proof of site control at the time of Carryover (November 1, 2008) for Applications that received a Housing Tax Credit commitment made in the Application Round preceding the current round. For purposes of this subparagraph, evidence of site control will consist of an executed deed for the subject property bearing the marks of receipt for filing by the county clerk and confirming the Development Owner as the grantee;

(B) An Application may receive 2 points if the Applicant has submitted the complete, acceptable, required documentation for the 10% Test, on or before June 1 for Applications that received a Housing Tax Credit commitment made in the Application Round preceding the current round (Applications that request extensions of the June 1 date, are not eligible for these bonus points);

(C) An Application may receive 2 points for having 5 or less aggregate deficiencies through the combined Eligibility, Selection and Threshold reviews;

(D) An Application may receive 1 point for having 10 or less aggregate deficiencies through the combined Eligibility, Selection and Threshold reviews; and/or

(D) An Application may receive 1 point if an Applicant satisfies deficiencies, to the satisfaction of the Department, on or before the third business day following the date of the deficiency notice.

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(1) The Development Owner for all New Construction and Adaptive Reuse Developments must have purchased the Development Site.

(2) A current original plat or survey of the land, prepared by a duly licensed Texas Registered Professional Land Surveyor. Such survey shall conform to standards prescribed in the Manual of Practice for Land Surveying in Texas as promulgated and amended from time to time by the Texas Surveyors Association as more fully described in the Carryover Procedures Manual.

(3) For all Developments involving New Construction or Adaptive Reuse, evidence of the availability of all necessary utilities/services to the Development site must be provided. Necessary utilities include natural gas (if applicable), electric, trash, water, and sewer. Such evidence must be a letter or a monthly utility bill from the appropriate municipal/local service provider. If utilities are not already accessible, then the letter must clearly state: an estimated time frame for provision of the utilities, an estimate of the infrastructure cost, and an estimate of any portion of that cost that will be borne by the Development Owner. Letters must be from an authorized individual representing the organization which actually provides the services. Such documentation should clearly indicate the Development property. If utilities are not already accessible (undeveloped areas), then the letter should not be older than three months from the first day of the Application Acceptance Period.

(4) The Department will not execute a Carryover Allocation Agreement with any Owner in Material Noncompliance on October 1, 2008.