

SUPPLEMENTAL BOARD BOOK OF SEPTEMBER 3, 2015

J. Paul Ozer, Chair



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HOUSING & COMMUNITY AFFAIRS**
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BOARD ACTION REQUEST
REAL ESTATE ANALYSIS DIVISION
SEPTEMBER 3, 2015

Presentation, Discussion, and Possible Action on appeal of the recommended HOME loan terms in connection with the application under the Multifamily Development Program 2015-1 Notice of Funding Availability (“NOFA”) for Westridge Villas, #15502

RECOMMENDED ACTION

WHEREAS, the Applicant for Westridge Villas applied for a \$4,000,000 HOME loan under the NOFA to construct 132 new multifamily units in McKinney;

WHEREAS, the Applicant requested an interest rate of 0% and an amortization period of 40-years both of which are inconsistent with terms required under the NOFA;

WHEREAS, in underwriting the Application the Real Estate Analysis (“REA”) Division followed the underwriting requirements in the NOFA and recommended a HOME loan in the amount of \$4,000,000 with a 3% interest rate and a 30-year amortization;

WHEREAS, the Applicant is now appealing the terms of the recommended HOME loan;

NOW, therefore, it is hereby

RESOLVED, because the loan amount, interest rate and amortization terms recommended in the Underwriting Report are consistent with the NOFA requirements and multifamily rules, the appeal is denied.

BACKGROUND

The Applicant requested \$4,000,000 of HOME funds out of the Multifamily Development Program 2015-1 Notice of Funding Availability (“NOFA”). While the NOFA stipulated an interest rate and amortization to be used by the REA Division in making recommendations, the Applicant applied for more favorable terms.

The NOFA states that all recommendations will be underwritten at a 3% interest rate and a 30-year amortization. The Applicant requested a 0% interest rate and a 40-year amortization. While REA underwrote the recommendation using the terms called for in the NOFA, and thereby increased the amount of debt service, the amount of the recommended loan remained equal to the Applicant’s request.

With the appeal the Applicant provided excerpts from the Multifamily Development Program 2015-1 Notice of Funding Availability (“NOFA”) and the HOME/TCAP Frequently Asked Questions (“FAQ”) materials. Additionally, references to §10.307, Direct Loan Requirements, and the Underwriting and Loan Policy rules were provided.

The Applicant is not asserting that the underwriting report itself is in error and has not identified a calculation error, misstatement of fact, or misapplication of rule.

As a basis for the appeal, the Applicant states that there are inconsistencies between staff's "recent interpretation of the language in the NOFA and the original staff guidance as memorialized in the FAQ". The Applicant also states that the recommended loan structure (particularly the must-pay debt provision) is in direct contradiction with "commonly known industry standards for FHA mortgages" due to FHA's surplus cash requirements on subordinate debt. Because of these issues, the Applicant is appealing the underwriting report and requests restoration of the 40-year amortization, the 0% interest rate and removal of the must-pay provision of the loan.

DISCUSSION

Section 4(a) of the Multifamily Development Program 2015-1 Notice of Funding Availability ("NOFA") states that funds will be structured in accordance with §10.307 of the Uniform Multifamily Rules, related to Direct Loan Requirements, except that all recommendations will be underwritten at a 3% interest rate and for a 30 year amortization period. §10.307(a)(1) states that an interest rate may be as low as zero percent provided all applicable program requirements are met. In this case, the program requirements call for staff to underwrite and recommend loans at a 3% interest rate and 30 year amortization.

The REA Division based the HOME loan recommendation consistent with the Uniform Multifamily Rules and the NOFA.

The primary debt on the property is proposed to be a first lien FHA mortgage. Applicant states that staff should have recommended a surplus cash flow loan repayment structure as required by FHA for subordinate debt. In support of this, the Applicant identified section 4 of the NOFA which states, "Staff will not recommend that the Board approve any cash flow structures (other than FHA surplus funds where hard debt is still underwritten) or balloon loan structures."

The recommended loan terms are consistent with this provision. Staff acknowledges that subordinate financing to a senior FHA lien requires a surplus cash mortgage. The TDHCA loan will contain a surplus cash provision that has historically been acceptable to HUD. The parenthetical language in the NOFA indicates that while repayment is to be surplus cash, staff will underwrite the repayment terms as must-pay debt for loan sizing and feasibility determination.

Additionally, the Applicant identified the last paragraph of section 1 of the NOFA which states "If HOME funds are used and Federal regulations or subsequent guidance imposes additional requirements, the Federal regulations shall govern." Staff presumes that the Applicant is claiming that the FHA rules and regulations should govern TDHCA's loan structuring. This sentence relates to the Federal regulations and guidance of the HOME funds and does not mean that the Federal regulations of the FHA loan program must dictate the structuring of the HOME loan.

The NOFA, the guidance in the FAQ, and §10.307(a) of the Direct Loan Requirements are consistent with FHA surplus cash repayment requirements.

With respect to the amortization and interest rate, the recommendation is consistent with the NOFA and the Direct Loan Requirements as addressed above.

Staff recommends denial of the appeal.



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August 28, 2015

Writer's direct phone # (512)475-3296
Email: tim.irvine@mail.tdhca.state.tx.us

Terri L. Anderson
Anderson Development & Construction, LLC
347 Walnut Grove Lane
Coppell, Texas 75019

RE: WEST RIDGE VILLAS, TDHCA #15502
APPEAL RESPONSE

Dear Ms. Anderson:

I have reviewed your appeal letter dated August 20, 2015, regarding the underwriting report published August 19, 2015, for the above application. With the appeal you provided excerpts from the Multifamily Development Program 2015-1 Notice of Funding Availability ("NOFA") and the HOME/TCAP Frequently Asked Questions ("FAQ") materials. Additionally you reference §10.307, Direct Loan Requirements, from the Underwriting and Loan Policy rules.

You are not asserting that the underwriting report itself is in error. You have not identified a calculation error, misstatement of fact, or misapplication of rule.

Your appeal relates to the loan terms used by the Real Estate Analysis Division ("REA") in underwriting your Application that resulted in a recommendation of terms that are inconsistent with those you applied for in your Application.

You state that there are inconsistencies between staff's recent interpretation of the language in the NOFA and the original staff guidance as memorialized in the FAQ. You also state that the recommended loan structure is in direct contradiction to "...commonly known industry standards for FHA mortgages."

Discussion:

Section 4(a) of the Multifamily Development Program 2015-1 Notice of Funding Availability ("NOFA") states that funds will be structured in accordance with §10.307 of the Uniform Multifamily Rules, related to Direct Loan Requirements, except that all recommendations will be underwritten at a 3% interest rate and for a 30 year amortization period. §10.307(a)(1) states that an interest rate may be as low as zero percent provided all applicable program requirements are met. In this case, the program



requirements call for staff to underwrite and recommend loans at a 3% interest rate and 30 year amortization. Staff based the loan recommendation consistent with rule and the NOFA and has not deviated from any general principle.

You state that staff should have recommended a cash flow loan structure for properties financed with FHA first liens as required by HUD. In support of this, you identify section 4 of the NOFA which states, "Staff will not recommend that the Board approve any cash flow structures (other than FHA surplus funds where hard debt is still underwritten) or balloon loan structures."

The recommended loan terms are consistent with this provision. Staff acknowledges that subordinate financing to a senior FHA lien requires a surplus cash mortgage. The TDHCA loan will contain a surplus cash provision that has historically been acceptable to HUD. The parenthetical language indicates that while repayment is to be surplus cash, staff will underwrite the repayment terms as must-pay debt for loan sizing and feasibility determination.

You also identify the last paragraph of section 1 of the NOFA which states "If HOME funds are used and Federal regulations or subsequent guidance imposes additional requirements, the Federal regulations shall govern." This sentence relates to the Federal regulations and guidance of the HOME funds and does not mean that the Federal regulations of the FHA loan program must dictate the structuring of the HOME loan.

You state that the loan terms recommended are in direct contradiction to commonly known industry standards for FHA mortgages. Staff disagrees that there are industry standards for subordinate debt financing provided by a housing finance agency other than possibly the surplus cash provision on FHA senior debt. As previously indicated the structure of the loan will contain a surplus cash provision that has historically been acceptable to HUD.

The NOFA, the guidance in the FAQ, §10.307(A)(3) of the Direct Loan Requirements are consistent with FHA surplus cash repayment requirements.

With respect to the amortization and interest rate, the recommendation is consistent with the NOFA and the Direct Loan Requirements as addressed above.

Appeal Determination

With respect to FHA's surplus cash requirement, our recommendation is consistent with that requirement.

Because the interest rate and amortization term recommended in the Underwriting Report are consistent with the NOFA and multifamily rules, your appeal is denied.

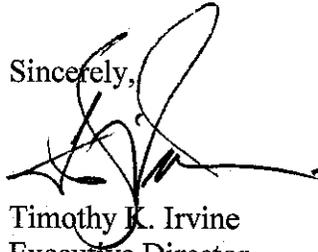
Pursuant to 10 TAC, Chapter 10, Subchapter G, §10.902(d) and (e), you have requested that your appeal, if denied by me, be filed with the Board and heard at its next regularly scheduled meeting. Thus, your appeal has been placed on the September 3, 2015, meeting agenda, and you need to submit any additional information with your appeal to the Board prior to 5:00 p.m. Austin local time on Monday, August 31, 2015.

August 28, 2015

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If you have questions or comments, please call me or Brent Stewart, Director of our Real Estate Analysis Division at (512) 475-2973.

Sincerely,

A handwritten signature in black ink, appearing to read 'TKI', with a long horizontal flourish extending to the right.

Timothy K. Irvine
Executive Director

TKI: RBS



August 27, 2015

Chairman Oxer and Board of Directors
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

Re: TDHCA Application #15502, West Ridge Villas
Appeal of Underwriting Report

Dear Chairman Oxer and Board Members,

West Ridge Villas is a proposed new construction multifamily property with 132 family units, of which 42% or 56 units are affordable HOME units.

The Total Development Costs are approximately \$22,500,000, of which 21% is funded by the \$4,000,000 HOME Loan.

The site is located in Region 3 in the Frisco ETJ, and offers maximum point scoring according to the Department's Opportunity Index and Educational Excellence criteria. While there is demonstrated market demand for affordable housing, creation of such affordability is otherwise unattainable at this location without the HOME loan.

Please accept this letter as evidence of the merit of an appeal of the proposed HOME Loan terms. The Real Estate Analysis Underwriting Report recommends *loan terms* with a 30 year amortization and 3% interest rate. It is reported the cash flow only structure will be implemented. However, the proposed 30 year amortization structure creates obstacles to maximize the proposed 40 year FHA 221d4 financing. It is important to solidify the \$4,000,000 HOME Loan at the requested a 40 year loan term and amortization repayable annually from surplus cash flow as defined by HUD to ensure the maximum success of the development.

Chapter 10 Subchapter D §10.307 (a)(3) of the Department's rules recognizes "If the first lien mortgage is a federally insured HUD or FHA mortgage, the Department may approve a loan structure with annual payments payable from surplus cash flow provided that the debt coverage ratio, inclusive of the loan, continues to meet the requirements in this subchapter. The Board may also approve, on a case-by-case basis, a cash flow loan structure provided it determines that the financial risk is outweighed by the need for the proposed housing."

Anderson Development & Construction, LLC

347 Walnut Grove Lane
Coppell, TX 75019
Phone: (972) 567-4630 Fax: (972) 462-8715

Additionally, Chapter 10 Subchapter D §10.307 (a)(2) states, “The Department’s debt will match within six (6) months of the shortest term or amortization of any senior debt so long as neither exceeds forty (40) years.” The senior debt is a 40 year amortization and a 40 year term. Suggesting a 30 year amortization on a 40 year loan term is an ineffective lending tool and is inconsistent with annual payments from surplus cash flow.

As mentioned above, the HOME Loan represents only 21% of the total funding, while 42% of the units are required to be affordable based on the \$75,000/unit loan cap on HOME assisted units. Because the cap does not fully subsidize the low HOME unit rents, other funding is necessary to provide the capital required to develop each affordable unit. The project based vouchers on 13 units and higher rents on market rate units effectively subsidize the funding shortfall, because this development is HOME only and does not have tax credits. Including an interest rate of 3% on the HOME Loan further burdens the market rate rental units that are already providing the additional subsidy necessary to development the HOME units. As such, the requested zero percent (0%) interest rate is fair and reasonable.

Furthermore, HOME restricted rents are not guaranteed to increase at all or near the rate of inflation. Additionally, in an uncertain interest rate environment, it is expected interest rates will increase and reduce the amount of senior debt supportable by the property’s net operating income. Further requiring loan terms of a 30 year amortization and 3% interest rate is excessively burdensome.

As quoted in the July 30, 2015 Board Meeting transcript, Mr. Gouris stated, “I think we want to create a structure that allows the ability for the Board and the Department to approve something that might provide a zero percent 40-year loan, but we certainly don't want everyone to say, well, that minimum is our maximum and that's all we're going to ask for. So we attempted to do that by putting something in the NOFA that said we would underwrite and recommend at 3 percent, 30-year amortization.”

The NOFA actually states the following:

“4) Multifamily Development Program (MFD) requirements

a) MFD funds will be *structured* in accordance with §10.307 of the 2015 Uniform Multifamily Rules, related to Direct Loan Requirements except that all recommendations will be *underwritten* at a 3% interest rate and for a 30 year amortization period. *Staff will not recommend that the Board approve any cash flow structures (other than FHA surplus funds where hard debt is still underwritten) or balloon loan structures.”*

Again, this is a HOME only development and there is no other form of tax credit equity provided to cover the cost of this development. The only other source of capital is a 40 year FHA 221d4 mortgage, which provides for approximately 82% of the Total Development Costs. The applicant requests a 40 year amortization consistent with Chapter 10 Subchapter D §10.307 (a) (2), which states the structure of “The

Department's debt will match within six (6) months of the shortest term or amortization of any senior debt so long as neither exceeds forty (40) years.”

There is a distinct difference between underwriting for loan sizing purposes, and the structure of loan terms. The NOFA states the structure will be in accordance with the rule. The senior debt loan term and amortization are 40 years, and the rule requires the HOME Loan to match it within six months. The HOME Loan represents only 21% of the total funding sources, while creating 42% affordability and should not be the leading factor in financing the Total Development Costs. Additionally, the 3% interest rate is unreasonable and unfair to the already burdened market rate units.

As such, we respectfully request the term of the \$4,000,000 HOME Loan be for 40 years at a zero percent (0%) interest rate as requested, and repayable from Surplus Cash Flow as defined in the FHA Regulatory Agreement in order to ensure maximum development success.

We believe this appeal soundly based in merit according to the rules and fits squarely within the Departments published rules and guidelines. Please contact me at (972) 567-4630 should you have any additional questions or concerns.

Respectfully submitted,



Terri L. Anderson
President

NOFA Language:

1) Summary

Applicants applying for funds outside Participating Jurisdictions should assume that HOME funds will be awarded and should likewise be prepared to comply with the applicable regulations. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program. If HOME funds are used and Federal regulations or subsequent guidance imposes additional requirements, the Federal regulations shall govern

2) Allocation of MFD Program Funds.

(a) (i.) CHDO Set-Aside.

Applicants may apply for up to \$4 million regardless of whether or not the Application is layered with Housing Tax Credits Page 1 of 7 (“HTCs”). Applications will be considered on a first-come, first-serve basis.

4) Multifamily Development Program (MFD) requirements

a) MFD funds will be structured in accordance with §10.307 of the 2015 Uniform Multifamily Rules, related to Direct Loan Requirements except that all recommendations will be underwritten at a 3% interest rate and for a 30 year amortization period. Staff will not recommend that the Board approve any cash flow structures (other than FHA surplus funds where hard debt is still underwritten) or balloon loan structures.

1) This NOFA does not include text of the various applicable regulatory provisions pertinent to the HOME Program. For proper completion of the application, the Department strongly encourages potential applicants to review the State and Federal regulations, and contact the HOME Division for guidance and assistance

7) **Application and Threshold Criteria.** An Application must be compliant with all applicable requirements in 10 TAC §10, Subchapter C. Each Application will be evaluated by the Real Estate Analysis division in accordance with 10 TAC §10, Subchapter D. In addition, an Application must comply with the Direct Loan requirements in 10 TAC §10.307.

9) Application Submission

a)...For questions regarding this NOFA, please contact Eric Weiner, Multifamily Loan Program Administrator, at eric.weiner@tdhca.state.tx.us.

e) All Application materials including manuals, NOFAs, program guidelines, and HOME rules, will be available on the Department’s website at www.tdhca.state.tx.us. Applications will be required to adhere to the requirements in effect at the time of the Application submission including any requirements of the HOME Final Rule and subsequent guidance provided by HUD. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

Published FAQ's:

What is the Department's position on structuring multifamily loans as soft debt?

As specified in 10.307, if the first lien mortgage is a federally insured HUD or FHA mortgage, the Department may approve a loan structure with annual payments payable from surplus cash provided that the debt coverage ratio, inclusive of the loan, continues to meet Department requirements as outlined in Chapter 10 Subchapter D. Any other transaction requesting this type of structure must request the cash flow loan structure before the Board, which will determine whether the financial risk is outweighed by the need for the proposed multifamily housing.

What is the lowest interest rate that can be requested?

For multifamily HOME loans, the interest rate may be as low as 0%.

What are the minimum and maximum terms allowable on the HOME Loan?

The Department requires that the loan term be no less than 15 years and no greater than 40 years; the amortization schedule shall be no less than 30 years and no greater than 40 years.

§10.307. Direct Loan Requirements.

(a) Direct Loans through the Department must be structured according to the criteria as identified in paragraphs (1) - (5) of this subsection:

(1) the interest rate may be as low as zero percent provided all applicable program requirements are met as well as requirements in this subchapter;

(2) unless structured only as an interim construction or bridge loan, the loan term shall be no less than fifteen (15) years and no greater than forty (40) years and the amortization schedule shall be no less than thirty (30) years and no greater than forty (40) years. The Department's debt will match within six (6) months of the shortest term or amortization of any senior debt so long as neither exceeds forty (40) years.

(3) the loan shall be structured with a regular monthly payment beginning on the first day of the 25th full month following the actual date of loan closing and continuing for the loan term. If the first lien mortgage is a federally insured HUD or FHA mortgage, the Department may approve a loan structure with annual payments payable from surplus cash flow provided that the debt coverage ratio, inclusive of the loan, continues to meet the requirements in this subchapter. The Board may also approve, on a case-by-case basis, a cash flow loan structure provided it determines that the financial risk is outweighed by the need for the proposed housing;

(4) the loan shall have a deed of trust with a permanent lien position that is superior to any other sources for financing including hard repayment debt that is less than or equal to the Direct Loan amount and for any other sources that have soft repayment structures, non-amortizing balloon notes, have deferred forgivable provisions or in which the lender has an identity of interest with any member of the Development Team. The Board may also approve, on a case-by-case basis, an alternative lien priority provided it determines that the financial risk is outweighed by the need for the proposed housing; and,

(5) If the Direct Loan amounts to more than 50 percent of the Total Housing Development Cost, except for Developments also financed through the USDA §515 program, the Application must include the documents as identified in subparagraphs (A) - (B) of this paragraph:

(A) a letter from a Third Party CPA verifying the capacity of the Applicant, Developer or Development Owner to provide at least 10 percent of the Total Housing Development Cost as a short term loan for the Development; or

(B) evidence of a line of credit or equivalent tool equal to at least 10 percent of the Total Housing Development Cost from a financial institution that is available for use during the proposed Development activities.

1 So appreciate their help, but if we could
2 prevent people having to come back before the Board to
3 deal with this, I think we would all appreciate that.

4 MR. OXER: And boy, wouldn't we too.

5 (General laughter.)

6 MR. OXER: Appreciate your comments, Sarah.

7 Do you have a comment on that, Tom?

8 MR. GOURIS: Tom Gouris, deputy executive
9 director.

10 I think that's a fair criticism. This is
11 something we're doing a little bit new in that I think we
12 want to create a structure that allows the ability for
13 the Board and the Department to approve something that
14 might provide a zero percent 40-year loan, but we
15 certainly don't want everyone to say, well, that minimum
16 is our maximum and that's all we're going to ask for. So
17 we attempted to do that by putting something in the NOFA
18 that said we would underwrite and recommend at 3 percent,
19 30-year amortization.

20 I think as we go forward we might clarify that
21 in how we approach that situation with a draft term sheet
22 or something to that extent to share how we're
23 anticipating these loans will be made. But we wanted to
24 provide the ability for the Board, where necessary, to do
25 something more specific to a particular need that

2015 HOME/TCAP Unit Calculator

*Instructions: This form can be used to determine the required amount of HOME or TCAP units when completing the Rent Schedule tab of your application. Enter information only into the highlighted cells as indicated below. **NOTE: This form is not required to be submitted with the application.***

Step 1: Enter the total number of units (including Market Rate units) in the left column of the Unit Mix Information table.

Step 2: Enter the total number of HOME or TCAP units for the development for each rent/income restriction in the right column. Please note that a minimum of 20% of the HOME or TCAP units must be available for very low-income households (50% AMI or below) per 24 CFR §92.252.

Unit Mix Information

Total Units	Max Subsidy/Unit	Income/Rent Rest.	HOME/TCAP Units
132	\$75,000	30% / 30% HOME	
		50% / Low HOME	11
		60% / High HOME	42
		80% / High HOME	3
Total HOME/TCAP Units	56		
Total Units	132		

Step 3: Enter the total development cost.

Step 4: Enter Ineligible and Offsite costs as described.

Step 5: Enter the total HOME request.

HOME/TCAP Eligible Development Costs

Total Development Cost:	\$ 22,375,000
Less Ineligible Costs	
Detached Community Facilities:	\$ 375,000
Existing Financing to Remain:	
Offsite Costs:	\$ -
Other Ineligible Costs:	\$ 2,000,000
Total Eligible Cost:	\$ 20,000,000
Total HOME/TCAP Request:	
	\$ 4,000,000
Total Match Pledged:	\$200,000

TYPICAL INELIGIBLE COSTS

- *Detached Community Facilities
- *Garages and/or Carports
- *Swimming Pool
- *ALL Offsite Costs

The HOME/TCAP request (INCLUSIVE OF MATCH) MUST not exceed \$75,000 per HOME/TCAP unit.

Request	<	\$75,000 per HOME/TCAP unit limit
\$ 4,200,000		\$ 4,200,000

The percentage of HOME/TCAP funds INCLUSIVE OF MATCH to total HOME/TCAP eligible cost MUST be less than or equal to the percentage

HOME funds/Eligible Cost	<	HOME Units/Total Units
21.00%		42.42%

Matching Funds (HOME Applications Only)

To the extent that Match in the amount of 5% of the HOME award is provided, the interest rate may be adjusted to as low as 0%; otherwise, the interest rate will be as low as 2% and 2% match must be provided.

Indicate the amount and source of Match funds in the appropriate spaces in the table below. Provide supporting documentation in the form of firm commitments from the match source. If a property tax abatement is pledged as Match, include a letter from the appropriate appraisal district documenting a specific cash value and duration for the abatement.

Generally, a Related Party contribution to the Development is not considered eligible Match. Please contact the Department for specific examples that are not provided in the Match Guidance below.

Type of Match Pledged	Pledged Amount	Source of Funds
Non-Federal Grants		
Waived, foregone or deferred fees and charges (ex: debris removal and container fees, tap fees, building permits, other mandatory fees charged by the local municipality) **CANNOT INCLUDE DEVELOPER FEES**		
Below Market Financing		
Property Tax Abatement		
Donated Non-Professional Labor		
Non-Federally Funded Infrastructure	\$ 200,000	Loan Proceeds
Rental Value of Donated Use of Site Preparation or Construction Equipment		
Donated Construction Materials		
Donated Site Preparation		
Donated Demolition Services		
Donated Real Property		
Total Value of Match Pledged	\$ 200,000	
Total Amount of HOME funds Requested	\$ 4,000,000	TDHCA HOME
Percentage of Project Funds to be Matched (Total Value of Match /Project Funds Requested)	0.05	

Multifamily Finance Program FAQs

www.tdhca.state.tx.us/multifamily/faqs.htm

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4% Housing Tax Credits

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Section 811 Project Rental Assistance Program

Multifamily Finance Program FAQs

Housing Tax Credits

- 2015 Competitive HTC Application Cycle FAQ (PDF)
- Housing Tax Credit Basics
- Housing Tax Credit Application & Review Process

Multifamily Bonds

4% Housing Tax Credit and Private Activity Bond Programs

Multifamily HOME

Multifamily Direct Loan

Multifamily Programs Introduction Packet

- Housing Tax Credits Backgrounder (PDF)
- Housing Tax Credit Basics (PDF)
- Housing Tax Credits 9% HTC Pre-Application Basics (PDF)
- Texas HOME Program Multifamily (Rental Housing) Development Program Basics (PDF)

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Multifamily Direct Loan FAQs

www.tdhca.state.tx.us/multifamily/home/faqs.htm

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Multifamily Direct Loan Frequently Asked Questions (FAQs)

[Expand All](#) | [Collapse All](#)

Where can I find the Multifamily Direct Loan guidelines?

Guidance affecting the Multifamily Direct Loan program can be found in the Uniform Multifamily Rules in Sections 10.307 and 10.403.

What is the Department's position on structuring multifamily loans as soft debt?

As specified in 10.307, if the first lien mortgage is a federally insured HUD or FHA mortgage, the Department may approve a loan structure with annual payments payable from surplus cash provided that the debt coverage ratio, inclusive of the loan, continues to meet Department requirements as outlined in Chapter 10 Subchapter D. Any other transaction requesting this type of structure must request the cash flow loan structure before the Board, which will determine whether the financial risk is outweighed by the need for the proposed multifamily housing.

How does the Department determine lien position?

Can the loan be structured as a grant?

What is the lowest interest rate that can be requested?

For multifamily HOME loans, the interest rate may be as low as 0%.

How soon can I close on my multifamily loan?

How much of my HOME award can I draw at loan closing?

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Multifamily Direct Loan F... x

www.tdhca.state.tx.us/multifamily/home/faqs.htm

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▼ What is the lowest interest rate that can be requested?

For multifamily HOME loans, the interest rate may be as low as 0%.

▶ How soon can I close on my multifamily loan?

▶ How much of my HOME award can I draw at loan closing?

▶ Do I have to close on all of my financing at the same time?

▶ If my costs change, will my deal have to be re-underwritten?

▶ The Limited Partnership Agreement (LPA) will not be fully executed until the day of closing, can this document be provided concurrently with closing?

▶ Our closing date has changed. How do I amend the closing date in my Loan Commitment?

▶ If I requested an amendment and returned the signature page electronically, do I also have to submit a hard copy?

▶ When will my permanent loan repayment period begin?

▶ Are there benchmarks or timing restrictions related to drawing HOME funds?

▶ Our HOME development also received tax credits. Can I still draw developer fee?

▶ Is it possible to obtain draft loan documents prior to moving to closing?

▶ Can my file be transferred for legal review prior to receipt of HUD Environmental Clearance?

▼ What are the minimum and maximum terms allowable for the HOME loan?

The Department requires that the loan term be no less than 15 years and no greater than 40 years; the amortization schedule shall be no less than 30 years and no greater than 40 years.

15-HOME-TCAP-FAQs.pdf | 15-MF-HOME-TCAP-...sts

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FAQs about CHDOs?
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www.tdhca.state.tx.us/pdf/chdoinfo.pdf

Frequently Asked Questions: SOLs
Effective September 1, 2003, all outstanding documents of title are considered to be Statements of Ownership and Location (SOLs). All mobile or manufactured ...
https://www.tdhca.state.tx.us/mh/faqs-sol.htm

2014 HTC Competitive (9%) Application Cycle FAQ (PDF)
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Jan 10, 2014 ... The FAQ is an opportunity to provide all Applicants and the public the same information that was relayed to the individuals who asked the ...
www.tdhca.state.tx.us/multifamily/housing-tax...9pct/.../14-FAQ.pdf

ESG FAQs
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Texas Department of Housing and Community Affairs. Emergency Solutions Grants. Frequently Answered Questions (Rev. 12/01/2014). Answers to our most ...
www.tdhca.state.tx.us/community-affairs/esgp/docs/FAQ-ESG.pdf

2015 MF HOME and TCAP FAQ
File Format: PDF/Adobe Acrobat
Feb 19, 2015 ... Q: Is the Department requiring applicants for HOME/TCAP funds to indicate a 3% interest rate and 30 year amortization period for the HOME or ...
www.tdhca.state.tx.us/multifamily/docs/15-HOME-TCAP-FAQs.pdf

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TEXAS DEPARTMENT OF
HOUSING & COMMUNITY AFFAIRS
Building Homes. Strengthening Communities.

Posted:
2/19/2015
Updated:

2015 HOME/TCAP Frequently Asked Questions (FAQs)

Q: Is the Department requiring applicants for HOME/TCAP funds to indicate a 3% interest rate and 30 year amortization period for the HOME or TCAP loan in the Sources & Uses tab?

A: No. An interest rate less than 3% and amortization period greater than 30 years may be requested by the applicant for the HOME or TCAP loan in the Sources & Uses tab in accordance with 10 TAC §10.307(a)(1) and (2). However, Real Estate Analysis (REA) staff will underwrite the HOME or TCAP loan with a 3% interest rate and 30 year amortization period to determine whether or not the transaction may support a higher interest rate and/or shorter amortization period than what was requested by the applicant, giving REA staff the ability to increase the interest rate and/or reduce the amortization period on the HOME or TCAP loan as necessary.

Q: Do 9%-layered HOME/TCAP applicants gain an advantage in terms of "date received" for HOME/TCAP purposes by submitting their Market Analysis earlier than April 1?

A: No. All 9%-layered HOME/TCAP applicants will be considered to have been received on April 1 regardless of whether or not the Market Analysis is submitted before that date. The prioritization of awards for 9%-layered HOME/TCAP applications is detailed in section 3 of the 2015-1 Multifamily Development Program Notice of Funding Availability (NOFA).

Q: How are TCAP units designated on the Rent Schedule tab?

A: The "HOME Units (Rent/Inc)" column can be used to designate the TCAP units on the Rent Schedule.

15-HOME-TCAP-FAQs.pdf | 15-MF-HOME-TCAP-...ts | Show all downloads...

7:32 PM 8/26/2015



August 20, 2015

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, TX 78711-3941

Re: TDHCA Application #15502, West Ridge Villas
Appeal of Underwriting Report

Dear Mr. Irvine,

Please accept this letter as a formal appeal of the 30 year loan term and 3% interest rate recommended in the Underwriting Report for the \$4,000,000 HOME Loan awarded for West Ridge Villas instead of the requested 40 year term at a zero percent interest rate. While the applicant disputes that the NOFA requires the Department to underwrite properties financed with FHA loan proceeds with the more stringent underwriting terms, there is further evidence staff would recommend a cash flow loan structure for properties financed with FHA first liens as required by HUD. Please see the specific NOFA excerpt as highlighted below:

“4) Multifamily Development Program (MFD) requirements

a) MFD funds will be structured in accordance with §10.307 of the 2015 Uniform Multifamily Rules, related to Direct Loan Requirements except that all recommendations will be underwritten at a 3% interest rate and for a 30 year amortization period. Staff will not recommend that the Board approve any cash flow structures (other than FHA surplus funds where hard debt is still underwritten) or balloon loan structures.”

Further, there is a distinct difference between underwriting (for loan sizing purposes), and required actual loan terms. The NOFA does not address terms except for acknowledgment of staff recommendations related to cash flow structures. It is also interesting to note a required 3% interest rate is above the current Applicable Federal Rate of 2.64%, at or near conventional construction loan interest rates of approximately 3%, and only 20% less than 40 year FHA non-recourse rates ranging from 3.5% and 3.75%.

Anderson Development & Construction, LLC

347 Walnut Grove Lane

Coppell, TX 75019

Phone: (972) 567-4630 Fax: (972) 462-8715

This recent interpretation of the NOFA language by staff is an about face from the original staff guidance provided and memorialized in the FAQ's at the time the NOFA was issued and applications were submitted for consideration. The original guidance more effectively complies with Affirmatively Furthering Fair Housing. Additionally, the loan terms recommended are in direct contradiction to commonly known industry standards for FHA mortgages. The second sentence of the excerpt above as well as the following excerpt below clearly addresses cash flow structures and FHA surplus funds, as well as Federal regulations which govern FHA loans:

“1) Summary

Applicants applying for funds outside Participating Jurisdictions should assume that HOME funds will be awarded and should likewise be prepared to comply with the applicable regulations. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program. If HOME funds are used and Federal regulations or subsequent guidance imposes additional requirements, the Federal regulations shall govern”

Even though West Ridge Villas was able to meet the Department's underwriting criteria for loan sizing purposes to achieve the requested \$4,000,000 loan amount, HUD's Regulatory Agreement does not allow for the recommended loan terms. While the NOFA language could be written more clearly, §10.307 of the 2015 Uniform Multifamily Rules further addresses surplus cash loan terms for FHA mortgages based on published HUD Guidelines for second liens. All second liens must be from a governmental entity, should be coterminous (or 40 years in this case), and are only repayable from surplus cash flow as defined by HUD.

As such, we respectfully request the term of the \$4,000,000 HOME Loan be for 40 years at a zero percent interest rate as requested, and repayable from Surplus Cash Flow as defined in the FHA Regulatory Agreement in order to ensure maximum development success.

We greatly appreciate your consideration. If you are not able to approve our requested appeal at this time, we respectfully request to appeal to the Board of Directors at the September 3, 2015 Board Meeting. Please contact me at (972) 567-4630 should you have any additional questions.

Respectfully submitted,



Terri L. Anderson
President



REAL ESTATE ANALYSIS
Appeal Election Form

Date Sent To TDHCA: August 20, 2015

15502 Westridge Villas

I am in receipt of my 2015 Underwriting Report Notice and have reviewed the Appeal Policy at 10TAC Chapter 10. I recognize that should I choose to file an appeal, I must file a formal appeal to the Executive Director within seven days from the date this Notice was issued and the Underwriting report was posted to the Department's website. I understand that my appeal documentation must identify my specific grounds for appeal.

- No appeal to the recommendations of the Department's underwriting report as published on the Department's website.
- Appeal to the Executive Director.

If my appeal is denied by the Executive Director:

- Appeal to the Board of Directors and request that the appeal is added to the next available Board of Directors' meeting agenda. I understand that my Board appeal documentation must still be submitted by 5:00 p.m., seven days prior to the next board meeting or three days prior if the Executive Director has not responded to my appeal in order to be included in the board book. I understand that if no documentation is submitted, the appeal documentation submitted to the Executive Director will be utilized.
- Wait to hear the Executive Director's response before deciding whether to appeal to the Board of Directors or not.

Signed: *Debra J. Anderson*

Title: *Center For Housing Resources, Inc. Chairperson*

Date: *August 20, 2015*

Please email to:
Pam Cloyde
pamela.cloyde@tdhca.state.tx.us

NOFA Language:

1) Summary

Applicants applying for funds outside Participating Jurisdictions should assume that HOME funds will be awarded and should likewise be prepared to comply with the applicable regulations. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program. If HOME funds are used and Federal regulations or subsequent guidance imposes additional requirements, the Federal regulations shall govern

2) Allocation of MFD Program Funds.

(a) (i.) CHDO Set-Aside.

Applicants may apply for up to \$4 million regardless of whether or not the Application is layered with Housing Tax Credits Page 1 of 7 (“HTCs”). Applications will be considered on a first-come, first-serve basis.

4) Multifamily Development Program (MFD) requirements

a) MFD funds will be structured in accordance with §10.307 of the 2015 Uniform Multifamily Rules, related to Direct Loan Requirements except that all recommendations will be underwritten at a 3% interest rate and for a 30 year amortization period. Staff will not recommend that the Board approve any cash flow structures (other than FHA surplus funds where hard debt is still underwritten) or balloon loan structures.

1) This NOFA does not include text of the various applicable regulatory provisions pertinent to the HOME Program. For proper completion of the application, the Department strongly encourages potential applicants to review the State and Federal regulations, and contact the HOME Division for guidance and assistance

7) **Application and Threshold Criteria.** An Application must be compliant with all applicable requirements in 10 TAC §10, Subchapter C. Each Application will be evaluated by the Real Estate Analysis division in accordance with 10 TAC §10, Subchapter D. In addition, an Application must comply with the Direct Loan requirements in 10 TAC §10.307.

9) Application Submission

a)...For questions regarding this NOFA, please contact Eric Weiner, Multifamily Loan Program Administrator, at eric.weiner@tdhca.state.tx.us.

e) All Application materials including manuals, NOFAs, program guidelines, and HOME rules, will be available on the Department’s website at www.tdhca.state.tx.us. Applications will be required to adhere to the requirements in effect at the time of the Application submission including any requirements of the HOME Final Rule and subsequent guidance provided by HUD. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

Published FAQ's:

What is the Department's position on structuring multifamily loans as soft debt?

As specified in 10.307, if the first lien mortgage is a federally insured HUD or FHA mortgage, the Department may approve a loan structure with annual payments payable from surplus cash provided that the debt coverage ratio, inclusive of the loan, continues to meet Department requirements as outlined in Chapter 10 Subchapter D. Any other transaction requesting this type of structure must request the cash flow loan structure before the Board, which will determine whether the financial risk is outweighed by the need for the proposed multifamily housing.

What is the lowest interest rate that can be requested?

For multifamily HOME loans, the interest rate may be as low as 0%.

What are the minimum and maximum terms allowable on the HOME Loan?

The Department requires that the loan term be no less than 15 years and no greater than 40 years; the amortization schedule shall be no less than 30 years and no greater than 40 years.

Section 1274.--Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Rev. Rul. 2015-19

This revenue ruling provides various prescribed rates for federal income tax purposes for September 2015 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, with respect to housing credit dollar amount allocations made before January 1, 2015, shall not be less than 9%. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2015-19 TABLE 1

Applicable Federal Rates (AFR) for September 2015

	<u>Annual</u>	<u>Period for Compounding</u>		<u>Monthly</u>
		<u>Semiannual</u>	<u>Quarterly</u>	
<u>Short-term</u>				
AFR	.54%	.54%	.54%	.54%
110% AFR	.59%	.59%	.59%	.59%
120% AFR	.65%	.65%	.65%	.65%
130% AFR	.70%	.70%	.70%	.70%
<u>Mid-term</u>				
AFR	1.77%	1.76%	1.76%	1.75%
110% AFR	1.95%	1.94%	1.94%	1.93%
120% AFR	2.12%	2.11%	2.10%	2.10%
130% AFR	2.30%	2.29%	2.28%	2.28%
150% AFR	2.66%	2.64%	2.63%	2.63%
175% AFR	3.10%	3.08%	3.07%	3.06%
<u>Long-term</u>				
AFR	2.64%	2.62%	2.61%	2.61%
110% AFR	2.90%	2.88%	2.87%	2.86%
120% AFR	3.16%	3.14%	3.13%	3.12%
130% AFR	3.44%	3.41%	3.40%	3.39%

REV. RUL. 2015-19 TABLE 2

Adjusted AFR for September 2015

	<u>Period for Compounding</u>			
	<u>Annual</u>	<u>Semiannual</u>	<u>Quarterly</u>	<u>Monthly</u>
Short-term adjusted AFR	.45%	.45%	.45%	.45%
Mid-term adjusted AFR	1.52%	1.51%	1.51%	1.51%
Long-term adjusted AFR	2.64%	2.62%	2.61%	2.61%

REV. RUL. 2015-19 TABLE 3

Rates Under Section 382 for September 2015

Adjusted federal long-term rate for the current month	2.64%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	2.82%

5b

5B

SUPPLEMENTAL POSTING

APPEAL – MERRIT HILL 15273



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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August 18, 2015

Writer's direct phone # (512)475-3296
Email: tim.irvine@mail.tdhca.state.tx.us

Cynthia L. Bast, Esq.
Locke Lord, LLP
600 Congress, Suite 2200
Austin, TX 78701

RE: MERRITT HILL COUNTRY, TDHCA #15273
APPEAL RESPONSE

Dear Ms. Bast:

I have reviewed your appeal letter dated August 7, 2015, regarding the underwriting report published July 31, 2015, for the above application. With the appeal you provided excerpts from 10 TAC §10.307, Direct Loan Requirements, from the Underwriting and Loan Policy rules, a HOME application workshop presentation, the Matching Funds exhibit of the Uniform Multifamily Application, and the 2015 HOME/TCAP Frequently Asked Questions materials.

You are not asserting that the underwriting report itself is in error. You have not identified a calculation error, misstatement of fact, or misapplication of rule.

Your appeal relates to the loan terms used by the Real Estate Analysis Division ("REA") in underwriting this Application that resulted in a reduction to the HOME loan principal and recommended loan terms that are inconsistent with those applied for in the Application. You also state that there is a lack of clarity in TDHCA's published materials regarding the terms that would be allowed for HOME loans.

Discussion:

Section 4(a) of the Multifamily Development Program 2015-1 Notice of Funding Availability ("NOFA") states that funds will be structured in accordance with 10 TAC §10.307 of the Uniform Multifamily Rules, related to Direct Loan Requirements, except that all recommendations will be underwritten at a 3% interest rate and for a 30 year amortization period. 10 TAC §10.307(a)(1) states that an interest rate may be as low as zero percent provided all applicable program requirements are met. In this case, the program requirements call for staff to underwrite and recommend loans at a 3% interest rate and 30 year amortization.

Staff based the HOME loan recommendation consistent with rule and the NOFA and has not deviated from any general principle. It is a debt coverage ratio constrained loan sizing. Using the operating *pro forma*



provided in the Application and the terms called for by the NOFA, the maximum supportable loan amount at a 1.15 debt coverage ratio was recommended.

The \$450,000 reduction to the requested loan amount was not caused by the transaction being over-sourced. If the capital structure showed that the transaction was over-sourced, staff would have reduced either the amount of the HOME loan or the amount of recommended tax credits (after deferral of repayable developer fee).

The reduction in the loan amount required an additional deferral of developer fee of \$450,000 making the total deferred developer fee equal to \$541,640 (39% of the total fee). The deferred fee is repayable within seven years based on the Applicant's *pro forma*, well within the fifteen year maximum.

In summary, the HOME loan recommendation was made based on the application of the assumptions required by the NOFA and pursuant to the Uniform Multifamily Rules.

With respect to the lack of clarity regarding the terms that would be allowed for HOME loans you point to materials provided at the application workshop, the Matching Funds exhibit from the application form itself, and the Frequently Asked Questions (in addition to the NOFA and rules as addressed above).

Specific to the NOFA, the Frequently Asked Questions ("FAQ"), published February 19, 2015, state that an applicant may apply for an interest rate lower than 3% and an amortization period greater than 30 years. But the FAQ is consistent with the NOFA providing that HOME and TCAP loans will be underwritten at the 3% interest rate and 30 year amortization.

While the program was designed to underwrite and structure loans at the 3% interest rate and 30 year amortization, staff anticipated that not all transactions would be financially feasible under those terms, depending on final determination of the underwritten *pro forma* and other factors. Allowing an applicant the ability to apply for terms different than the NOFA requirement would provide REA some flexibility in structuring loans that would produce affirmative feasibility recommendations using different loan terms. In other words, if a transaction would underwrite using the terms stated in the NOFA (3% interest rate and 30 year amortization) that structure would be used, but if a transaction simply would not underwrite on that basis, REA had the latitude to consider other ways for the transaction to be found feasible within the constraints of the Department's underwriting rules.

This flexibility was not intended to allow for terms different than what was stated in the NOFA simply for maximizing the loan amount. If a transaction is underwritten using the terms in the NOFA and is financially feasible using less HOME funds than requested as a result of a debt coverage limitation, then the HOME loan was recommended using the terms required by the NOFA but with a lower principal amount. That was the case here.

If the transaction was not financially feasible using the terms in the NOFA, REA could then modify the terms of the loan (amount, interest rate and amortization) in attempt to achieve an affirmative financial feasibility conclusion.

With respect to the Matching Funds exhibit in the 2015 Uniform Multifamily Application, we agree that this exhibit does not track the current wording of the relevant Texas Administrative Code Rules. However, we believe the rule clearly requires that every application provide the 5% match in order to be eligible for an award.

Prior to 2014, the Direct Loan Requirements provided for an interest rate as low as 0% if the applicant provided match in the amount of 5% and an interest rate as low as 2% if a 2% match was provided. In 2014, the rules were changed such that all HOME applications require a 5% match without any relationship to interest rate. Additionally, the match requirement itself was moved from Subchapter D (§10.307 Direct Loan Requirement) to Subchapter C (§10.204(7)(E) Financing Narrative).

We appreciate your bringing this application exhibit to our attention, and we will clarify its wording to be consistent with the current rule.

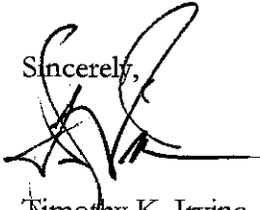
The application workshop materials you referenced appear to reinforce the minimum terms under which the Board could approve an award as provided in the rule, and those minimums are not in dispute. Any perceived lack of clarity appears to relate to the Department's moving away from using the minimum terms allowed in rule to be the automatic, a one size fits all, approach to sizing and pricing the HOME/TCAP loans and allowing the applicant to demonstrate the need for terms as low as the rule allows. However, I believe that the NOFA was clear about how the developments would be underwritten and recommended for an award.

Appeal Determination

Because the loan amount, interest rate, and amortization terms recommended in the Underwriting Report are consistent with the NOFA and multifamily rules, your appeal is denied.

Pursuant to 10 TAC, Chapter 10, Subchapter G, §10.902(d) and (e), you have requested that your appeal, if denied by me, be filed with the Board and heard at its next regularly scheduled meeting. Thus if you wish for this appeal to be considered by the Board at its September 3, 2015, meeting you need to submit any additional information with your appeal to the Board before the seventh calendar day preceding the date of the Board meeting.

If you have questions or comments, please call me or Brent Stewart, Director of our Real Estate Analysis Division at (512) 475-2973.

Sincerely,

Timothy K. Irvine
Executive Director



600 Congress, Suite 2200
Austin, TX 78701
Telephone: 512-305-4700
Fax: 512-305-4800
www.lockelord.com

Cynthia L. Bast
Direct Telephone: 512-305-4707
Direct Fax: 512-391-4707
cbast@lockelord.com

August 7, 2015

(Via e-mail)

Mr. Tim Irvine
Texas Department of Housing & Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Appeal – Merritt Hill Country
TDHCA No. 15273

Dear Mr. Irvine:

On behalf of DDC Merritt Hill Country, Ltd. (the "**Applicant**"), we submit this underwriting appeal for the reduction in HOME funds awarded to the Applicant from \$2,000,000 to \$1,550,000 and the change of loan terms from 0% interest to 3% interest and from a 40-year amortization to a 30-year amortization. As noted in the underwriting report, the change in loan terms causes a significant deferral of development fee. For a smaller property in a rural area, we believe this could be detrimental. A copy of the Applicant's appeal form is attached to this letter.

The Applicant objects to the lack of clarity in TDHCA's various published materials regarding the terms that would be allowed for HOME loans. Starting with the 2015 Uniform Multifamily Rules, TDHCA states that an interest rate may be as low as 0% and that the amortization should be between 30 and 40 years. (See rules excerpt at [Exhibit A.](#)) In the application workshop, TDHCA reiterated this point. (See excerpt from the presentation at [Exhibit B.](#)) As the Applicant was completing the Application, Tab 33 with regard to HOME matching stated that the interest rate may be 0% if a 5% match was provided. The Applicant supplied a 5% match. (See application excerpt at [Exhibit C.](#))

The Applicant recognizes that the NOFA stated that TDHCA would use an interest rate of 3% and a 30-year amortization for underwriting purposes. Yet, it was never clear that TDHCA would use those terms in each and every instance in a manner that would reduce the HOME funds awarded. Even the HOME FAQ published by TDHCA indicates that lower interest rates and longer amortization could be requested. The FAQ states that TDHCA will use a 3% interest rate and a 30-year amortization for underwriting, "giving the REA staff the ability to increase the interest rate and/or reduce the

Mr. Tim Irvine
August 7, 2015
Page 2

amortization period on the HOME or TCAP loan as necessary." (See FAQ excerpt at Exhibit D.). However, the FAQ did not say that the staff would also have the discretion to change the requested loan amount.

In the process of underwriting tax credits, TDHCA staff uses clearly defined methods for determining the amount of credits that can be awarded. If the proposed development supports the amount of credits requested and is not "oversourced," an applicant's request is honored. This year, in underwriting the HOME funds, staff has deviated from that general principle. Merritt Hill Country is not oversourced with a \$2,000,000 HOME loan at 0% interest with a 40-year amortization.

In conclusion, Applicant requests the restoration of the entire \$2,000,000 of HOME funds for which it applied. If necessary, Applicant is willing to pay some interest rate between 0% and 3% on that principal sum and is willing to use an amortization less than 40 years. For your information, the Applicant intends to add parking spaces to its site plan, which will allow the owner to charge for garage spaces, generating additional income that can be utilized to support debt.

Thank you for your consideration. We look forward to your response.

Sincerely,



Cynthia L. Bast

cc: Tom Gouris
Brent Stewart
Colby Denison

Exhibit A – Rules Excerpt
Exhibit B – Workshop Excerpt
Exhibit C – Application Excerpt
Exhibit D – FAQ Excerpt



REAL ESTATE ANALYSIS
Appeal Election Form

Date Sent To TDHCA: August 7, 2015

15273 Merritt Hill Country

I am in receipt of my 2015 Underwriting Report Notice and have reviewed the Appeal Policy at 10TAC Chapter 10. I recognize that should I choose to file an appeal, I must file a formal appeal to the Executive Director within seven days from the date this Notice was issued and the Underwriting report was posted to the Department's website. I understand that my appeal documentation must identify my specific grounds for appeal.

- No appeal to the recommendations of the Department's underwriting report as published on the Department's website.
- Appeal to the Executive Director.

If my appeal is denied by the Executive Director:

- Appeal to the Board of Directors and request that the appeal is added to the next available Board of Directors' meeting agenda. I understand that my Board appeal documentation must still be submitted by 5:00 p.m., seven days prior to the next board meeting or three days prior if the Executive Director has not responded to my appeal in order to be included in the board book. I understand that if no documentation is submitted, the appeal documentation submitted to the Executive Director will be utilized.
- Wait to hear the Executive Director's response before deciding whether to appeal to the Board of Directors or not.

Signed: _____

Title: _____

Authorized Representative

Date: _____

7.31.15

Please email to:
Pam Cloyde
pamela.cloyde@tdhca.state.tx.us

Exhibit A
Rules Excerpt

§10.307. Direct Loan Requirements.

- (a) Direct Loans through the Department must be structured according to the criteria as identified in paragraphs (1) - (5) of this subsection:
- (1) the interest rate may be as low as zero percent provided all applicable program requirements are met as well as requirements in this subchapter;
 - (2) unless structured only as an interim construction or bridge loan, the loan term shall be no less than fifteen (15) years and no greater than forty (40) years and the amortization schedule shall be no less than thirty (30) years and no greater than forty (40) years. The Department's debt will match within six (6) months of the shortest term or amortization of any senior debt so long as neither exceeds forty (40) years.

Exhibit B

Workshop Excerpt

HOME Loan Requirements

- Minimum of 5% Match required for **all** applicants
- At least 90% of the HOME units must be restricted at 60% AMI or below at *initial* occupancy
- 20% of HOME units must be restricted at 50% AMI/Low HOME rent or below throughout affordability period
- Interest rate may be as low as 0% on HOME loan
- Term and amortization on HOME loan must be within 6 months of shortest amortization and term of any senior debt
- Maximum 40 year term and amortization
- 24 month construction period

NEW!



Exhibit C

Application Excerpt

Matching Funds (HOME Applications Only)

To the extent that Match in the amount of 5% of the HOME award is provided, the interest rate may be adjusted to as low as 0%; otherwise, the interest rate will be as low as 2% and 2% match must be provided.

Indicate the amount and source of Match funds in the appropriate spaces in the table below. Provide supporting documentation in the form of firm commitments from the match source. If a property tax abatement is pledged as Match, include a letter from the appropriate appraisal district documenting a specific cash value and duration for the abatement.

Generally, a Related Party contribution to the Development is not considered eligible Match. Please contact the Department for specific examples that are not provided in the Match Guidance below.

Type of Match Pledged	Pledged Amount	Source of Funds
Non-Federal Grants		
Waived, foregone or deferred fees and charges (ex: debris removal and container fees, tap fees, building permits, other mandatory fees charged by the local municipality) **CANNOT INCLUDE DEVELOPER FEES**		
Below Market Financing		
Property Tax Abatement		
Donated Non-Professional Labor		
Non-Federally Funded Infrastructure		
Rental Value of Donated Use of Site Preparation or Construction Equipment		
Donated Construction Materials		
Donated Site Preparation		
Donated Demolition Services		
Donated Real Property		
Total Value of Match Pledged	\$ -	
Total Amount of HOME funds Requested	\$ -	TDHCA HOME
Percentage of Project Funds to be Matched (Total Value of Match /Project Funds Requested)	#DIV/0!	

Exhibit D
FAQ Excerpt



Posted:
2/19/2015
Updated:

2015 HOME/TCAP Frequently Asked Questions (FAQs)

Q: Is the Department requiring applicants for HOME/TCAP funds to indicate a 3% interest rate and 30 year amortization period for the HOME or TCAP loan in the Sources & Uses tab?

A: No. An interest rate less than 3% and amortization period greater than 30 years may be requested by the applicant for the HOME or TCAP loan in the Sources & Uses tab in accordance with 10 TAC §10.307(a)(1) and (2). However, Real Estate Analysis (REA) staff will underwrite the HOME or TCAP loan with a 3% interest rate and 30 year amortization period to determine whether or not the transaction may support a higher interest rate and/or shorter amortization period than what was requested by the applicant, giving REA staff the ability to increase the interest rate and/or reduce the amortization period on the HOME or TCAP loan as necessary.

Q: Do 9%-layered HOME/TCAP applicants gain an advantage in terms of “date received” for HOME/TCAP purposes by submitting their Market Analysis earlier than April 1?

A: No. All 9%-layered HOME/TCAP applicants will be considered to have been received on April 1 regardless of whether or not the Market Analysis is submitted before that date. The prioritization of awards for 9%-layered HOME/TCAP applications is detailed in section 3 of the 2015-1 Multifamily Development Program Notice of Funding Availability (NOFA).

Q: How are TCAP units designated on the Rent Schedule tab?

A: The “HOME Units (Rent/Inc)” column can be used to designate the TCAP units on the Rent Schedule.

Q: What are the rent and income limits, as well as the LURA restrictions, for TCAP units?

A: The rent and income limits for TCAP are the same as HOME rent and income limits. The HOME rent and income limits can be found by typing in HOME in the Financing section (and completing the other required information) of the [Project Income and Rent Tool](#). The LURA restrictions for both HOME and TCAP depend on the term of the loan, but under no circumstances will the affordability period in the LURA be less than 30 years.

Q: How many HOME or TCAP units are required?

A: The number of HOME or TCAP units will be determined using the [HOME TCAP Unit Calc Tool](#). There are two tests within the tool that determine how many HOME or TCAP units will be required: 1) The HOME/TCAP request inclusive of Match must not exceed \$75,000 per

6a

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 3, 2015

Presentation, Discussion, and Possible Action on proposed repeals of 10 TAC Chapter 10 Subchapter A, concerning General Information and Definitions, Subchapter B, concerning Site and Development Requirements and Restrictions, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications, and Subchapter G, concerning Fee Schedule, Appeals and Other Provisions, and a proposed new 10 TAC Chapter 10 Subchapter A, concerning General Information and Definitions, Subchapter B, concerning Site and Development Requirements and Restrictions, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications, and Subchapter G, concerning Fee Schedule, Appeals and Other Provisions, and directing their publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Uniform Multifamily Rules contain eligibility, threshold, and procedural requirements relating to applications requesting multifamily funding; and

WHEREAS, changes have been proposed to improve the efficiency of the funding sources involved and enhance their effectiveness in achieving policy objectives;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 10 Subchapter A General Information and Definitions, Subchapter B Site and Development Requirements and Restrictions, Subchapter C Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications, and Subchapter G Fee Schedule, Appeals and Other Provisions and proposed new 10 TAC Chapter 10, Subchapters A, B, C and G concerning Uniform Multifamily Rules together with the preambles presented to this meeting, are approved for publication in the *Texas Register* for public comment and

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

BACKGROUND

General Information: Attached behind this Board Action Request is the proposed 2016 Uniform Multifamily Rule which reflects staff's recommendations for the Board's consideration. This rule establishes the general requirements associated in making an award of multifamily development funding. In getting the 2016 rulemaking process underway, staff disseminated anticipated changes utilizing various methods. Staff hosted a roundtable discussion with approximately 170 people in attendance, participated in several discussions at the TAAHP Conference in July 2015, and discussed proposed changes and

solicited feedback. In August 2015 staff also participated in several meetings with industry individuals, at their request, to discuss their ideas on proposed changes. Lastly, staff launched as it has in prior years, the online discussion forum to allow interested registered users of the forum an opportunity to engage with the Department and one another and provide feedback on possible changes. Staff evaluated the information received in these discussions by which to formulate the draft rules contained herein.

Rule-Making Timeline: Upon Board approval, the draft Uniform Multifamily Rules will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted between September 18, 2015, and October 15, 2015, and there will also be a consolidated public hearing during this time to garner public comment. The Uniform Multifamily Rules will be brought before the Board in November for final approval and subsequently published in the *Texas Register* for adoption.

Subchapters for this Action Request: This Board Action Request includes the subchapters, as noted below, that are part of the 2016 draft Uniform Multifamily Rule. The other subchapters (*e.g.*, Subchapters D and E) are found under a separate Board Action Request and include specific changes to those rules.

Subchapter A – Provides general information regarding the Department's multifamily funding and includes an extensive list of definitions specific to multifamily applications.

Subchapter B – Outlines the site and development requirements and restrictions, including but not limited to, floodplain restrictions, proximity to community assets, undesirable site and neighborhood features, development size limitations, rehabilitation costs, common and unit amenities, and tenant supportive services.

Subchapter C – Includes procedural requirements for submitting an application, the documentation required as part of the application including forms and templates, criteria that would render an applicant or application ineligible, how applications will be prioritized for review, information regarding board decisions, and the waiver process.

Subchapter G - This subchapter contains information regarding Department fees and other general requirements, including, but not limited to, the appeals process, adherence to obligations and the alternative dispute resolution policy.

Statutory Changes: While the majority of the statutory changes made during the 84th Legislative Session are proposed to be incorporated into the 2016 Draft QAP, staff has included the statutory requirement in HB 74 described below in Subchapter C.

- HB 74 – Requires the creation of a process by which a local political subdivision or a census designated place may apply to the Department for a rural designation.

Summary of Proposed Changes: This section outlines some of the more significant recommendations by staff. Citation and page references are indicated for ease of reference.

1. **Subchapter A §10.3 Definitions** (*Various Pages in Subchapter A*). The changes to this subchapter include the following: removal of the definition for colonia as such area is instead defined under §11.9(c)(6) of the QAP relating to the scoring item; a new definition for Elderly Development will replace the definition for Qualified Elderly Development. This change is the result from recent guidance from HUD regarding how elderly developments will be monitored depending on the type of funding involved; modifications to Rural Area that takes into

consideration the ability for an area to request a rural designation; and a modification to supportive housing that includes a consideration for tax-exempt bond developments utilizing a financing structure where the bonds are expected to be redeemed upon construction completion, placement in service or stabilization and no other permanent debt will remain, the Supportive Housing Development may be treated as Supportive Housing under the Underwriting Rules.

Staff notes that with respect to the modifications to the Elderly Development definition, the impact such change will have on various aspects of the Department's rules, included herein as well as other rules on the Board agenda today, are still under review by staff. Staff anticipates hosting a roundtable discussion during the public comment period to better understand possible ramifications associated with the change in concept.

2. **Subchapter B §10.101(2) Site and Development Requirements and Restrictions – Mandatory Community Services and Other Assets** (*Page 1 of 15 in Subchapter B*). This section requires all multifamily developments funded through the Department to be located within 3 miles of a full service grocery store, a pharmacy and an urgent care facility or the application would be considered ineligible. The list of community assets has been modified to include proximity to a higher education campus, removes religious institutions, and modifies that the proximity to a medical office should be that of a general practitioner. Senior centers as a separate item, has been removed, since it could be categorized in an existing asset of indoor public recreation facility. Also reflected under this section is a new requirement that a development be located within the attendance zones of an elementary school, a middle school and a high school that has a Met Standard rating by the Texas Education Agency or the application would be considered ineligible except for applications proposing to serve a limited elderly population.
3. **Subchapter B §10.101 Site and Development Requirements and Restrictions – Undesirable Site Features** (*Page 3 of 15 in Subchapter B*). Rehabilitation developments with existing and ongoing assistance that are requesting to be exempt from the proximity to undesirable site features listed in this section must include a letter stating how funding the scope of work with housing tax credits is consistent with achieving at least one or more of the stated goals as outlined in the State's Analysis of Impediments to Fair Housing Choice, or if the development is within the boundaries of a participating jurisdiction or entitlement community, as outlined in the local Analysis of Impediments to Fair Housing Choice.
4. **Subchapter B §10.101 Site and Development Requirements and Restrictions – Undesirable Neighborhood Characteristics** (*Page 3 of 15 in Subchapter B*). Changes to this section have been refined to help clarify the criteria by which staff and the Board evaluates a proposed site. In addition to the poverty rate of a census tract and facility listings within ASTM-required search distances as reflected in the Environmental Site Assessment, the rate of violent crimes as reported on Neighborhoodscout clarifies the boundaries of such crimes are within the census tract or within 1,000 feet of any census tract. Moreover, staff has proposed that a development site located within 1,000 feet of blight to require disclosure. Specifically, blight would be indicative of more than one structure, visible from the street, which has fallen into disrepair, overgrowth, and/or vandalism that it could commonly be regarded as blight or abandoned. While there was previously a disclosure fee associated with these undesirable characteristics that reduced the amount of the application fee required should an applicant desire to move forward, that fee is proposed to be eliminated. Other changes to this section elaborate further on the types of information that can be submitted to establish mitigation of such undesirable neighborhood characteristics. The factors to be considered by the Board should staff deem the site to be

ineligible have been modified as well. Such factors include whether the development involves the preservation of existing occupied affordable housing with existing federal restrictions, a factual determination that such undesirable characteristics do not accurately represent the true nature of the situation to render the site ineligible and lastly, a determination that the development is necessary to affirmatively further fair housing.

5. **Subchapter B §10.101 Site and Development Requirements and Restrictions – Common Amenities** (*Page 9 of 15 in Subchapter B*). Some of the common amenities listed in this section include additional clarification with respect to how some of the amenities will be monitored by the Department. This section also clarifies how, in the case of second phase developments, the minimum points required would need to be met if the amenities are anticipated to be shared between the two developments.
6. **Subchapter B §10.101 Site and Development Requirements and Restrictions – Tenant Supportive Services** (*Page 13 of 15 in Subchapter B*). Clarifying language indicating that any services provided must be those that will directly benefit the target population of the development and that any services offered must be made accessible so that all tenants would be able to participate. This section also reflects modifications to some of the elderly-specific tenant services.
7. **Subchapter C §10.204 Required Documentation for Application Submission.** The format for the submission of the full application is proposed to be an electronic upload to the Department’s secure web transfer server instead of submitting a CD-R (*page 1 of 24*). This subchapter also outlines the process by which an area can request to be designated rural as required under HB 74. (*Page 13 of 24*). For applicants that propose a property tax exemption the application must include documentation that substantiates the reasonable expectation that the owner will qualify for such exemption (*Page 21 of 24*).
8. **Subchapter G §10.901 Fee Schedule, Appeals and Other Provisions** (*Page 3 of 6 in Subchapter G*). The fee schedule removes the undesirable neighborhood characteristics disclosure fee and retains the fee related to deficiency requests by a third party (formerly known as the challenge process).

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 10, Subchapter A §§10.1 - 10.4, concerning the Uniform Multifamily Rules. The purpose of the proposed new sections is to explain the purpose of the uniform multifamily rules, define terms that are used throughout the various subchapters and applicable to multifamily funding from the Department, and provide guidance on critical program dates associated with the multifamily funding the Department administers. The proposed repeal of existing Subchapter A is published concurrently with this rulemaking.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be to explain the purpose of the uniform multifamily rules, define terms and provide guidance on program dates. The average cost of filing an application is between \$15,000 and \$30,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new or additional economic effect on small or micro-businesses. The average cost of filing an application is between \$15,000 and \$30,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 18, 2015 to October 15, 2015, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 15, 2015.**

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The new sections affect no other statutes, articles or codes.

10.1 Purpose.

10.2 General.

10.3 Definitions.

10.4 Program Dates.

Uniform Multifamily Rules

Subchapter A – General Information and Definitions

§10.1.Purpose. This chapter applies to an award of multifamily development funding or other assistance including the award of Housing Tax Credits by the Texas Department of Housing and Community Affairs (the "Department") and establishes the general requirements associated in making such awards. Applicants pursuing such assistance from the Department are required to certify, among other things, that they have familiarized themselves with the rules that govern that specific program; including, but not limited to, [Chapter 1 Subchapter C of this title \(relating to Previous Participation\)](#), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules) and other Department rules. This chapter does not apply to any project-based rental [assistance](#) or operating assistance programs or funds unless incorporated by reference in whole or in part in a Notice of Funding Availability ("NOFA") or rules for such a program except to the extent that Developments receiving such assistance and otherwise subject to this chapter remain subject to this chapter.

§10.2.General.

~~(a) This chapter may not contemplate unforeseen situations that may arise, and in that regard the Department staff is to apply a reasonableness standard in the evaluation of Applications for multifamily development funding. Additionally,~~ Direct Loan funds and other non-Housing Tax Credit or tax exempt bond resources may be made available through a NOFA or other similar governing document that includes the basic Application and funding requirements:

- (1) deadlines for filing Applications and other documents;
- (2) any additional submission requirements that may not be explicitly provided for in this chapter;
- (3) any applicable Application set-asides and requirements related thereto;
- (4) award limits per Application or Applicant;
- (5) any federal or state laws or regulations that may supersede the requirements of this chapter; and
- (6) other reasonable parameters or requirements necessary to implement a program or administer funding effectively.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, rent and income limits, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the multifamily rules or [may](#) be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the multifamily rules to each specific situation as it is presented in the submitted Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to independently perform the necessary due diligence to research, confirm, and verify any data, opinions, interpretations or other information upon which Applicant bases an Application.

(c) Board Standards for Review. Some issues may require or benefit from board review. The Board is not constrained to a particular standard, and while its actions on one matter are not binding as to how it will address another matter, the Board does seek to promote consistency with its policies, including the policies set forth in this chapter.

(d) Census Data. Where this chapter requires the use of census or American Community Survey data, the Department shall use the most current data available as of October 1, ~~2015~~2014, unless specifically otherwise provided in federal or state law or in the rules. The availability of more current data shall generally be

disregarded. For Rural Area and Urban Area designations, the Department shall use in establishing the designations, the U.S. Census Bureau's Topographically Integrated Geographic Encoding and Referencing ("TIGER") shape files applicable for the population dataset used in making such designations.

(e) Public Information Requests. Pursuant to Texas Government Code, §2306.6717, any pre-application and any full Application, including all supporting documents and exhibits, must be made available to the public, in their entirety, on the Department's website. The filing of a pre-application or Application with the Department shall be deemed as consent to the release of any and all information contained therein, including supporting documents and exhibits, and as a waiver of any of the applicable provisions of Texas Government Code, Chapter 552, with the exception of any such provisions that are considered by law as not subject to a waiver.

(f) Responsibilities of Municipalities and Counties. In providing resolutions regarding housing de-concentration issues, threshold requirements, or scoring criteria, municipalities and counties should consult their own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas ("FHA-AST") form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds.

(g) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted on or before 5:00 p.m. [Austin local time Central Time Zone](#) on the day of the deadline. [If the deadline falls on a weekend or holiday, the deadline is 5:00 p.m. Austin local time on the next day which is not a weekend or holiday and on which the Department is open for general operation.](#)

§10.3. Definitions.

(a) Terms defined in this chapter apply to the Housing Tax Credit Program, Multifamily Housing Revenue Bond Program, HOME Program and any other programs for the development of affordable rental property administered by the Department and as may be defined in this title. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning as defined in Texas Government Code Chapter 2306, Internal Revenue Code (the "Code") §42, the HOME Final Rule, and other Department rules, as applicable.

(1) Adaptive Reuse--The change-in-use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes (e.g., school, warehouse, office, hospital, hotel, etc.), into a building which will be used, in whole or in part, for residential purposes. Adaptive reuse requires that the exterior walls of the existing building remain in place. All units must be contained within the original exterior walls of the existing building. Porches and patios may protrude beyond the exterior walls. Ancillary non-residential buildings, such as a clubhouse, leasing office and/or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site.

(2) Administrative Deficiencies--Information requested by Department staff that is required to clarify or correct one or more inconsistencies or to provide non-material missing information in the original Application or to assist staff in evaluating the Application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application. Administrative Deficiencies may be issued at any time while the Application or Contract is under consideration by the Department, including at any time while reviewing performance under a Contract, processing documentation for a Commitment of Funds, closing of a loan, processing of a disbursement request, close-out of a Contract, or resolution of any issues related to compliance.

(3) **Affiliate**--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, has Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.

(4) **Affordability Period**--The Affordability Period commences as specified in the Land Use Restriction Agreement (LURA) or federal regulation, or commences on the first day of the Compliance Period as defined by the Code §42(i)(1), and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period shall be imposed by the LURA or other deed restriction and may be terminated upon foreclosure or deed in lieu of foreclosure. The Department reserves the right to extend the Affordability Period for HOME or NSP Developments that fail to meet program requirements. During the Affordability Period, the Department shall monitor to ensure compliance with programmatic rules as applicable, regulations, and Application representations.

(5) **Applicable Percentage**--The percentage used to determine the amount of the Housing Tax Credit for any Development, as defined more fully in the Code §42(b).

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

(i) nine percent if such timing is deemed appropriate by the Department or if the ability to claim the full 9 percent credit is extended by the U.S. Congress prior to [March 1, 2016](#) ~~February 27, 2015~~;

(ii) forty basis points over the current applicable percentage for 70 percent present value credits, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department; or

(iii) fifteen basis points over the current applicable percentage for 30 percent present value credits, unless fixed by Congress, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department.

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

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

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

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

(6) **Applicant**--means any individual or a group of individuals and any Affiliates who file an Application for funding or tax credits subject to the requirements of this chapter or 10 TAC Chapters 11 or 12 and who may contemplate the later formation of one or more business entities, such as a limited partnership, that is to be engaged in the ownership of a Development. In administering the application process the Department staff will assume that the applicant will be able to form any such entities and that all necessary rights, powers, and privileges including, but not limited to, site control will be transferable to that entity. The formation of the ownership entity, qualification to do business (if needed), and transfer of such rights, powers, and privileges must be accomplished as required in this Chapter and 10 TAC Chapters 11 and 12, as applicable.

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

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

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

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

(11) Breakeven Occupancy--The occupancy level at which rental income plus secondary income is equal to all operating expenses, including replacement reserves and taxes, and mandatory debt service requirements for a Development.

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

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

(14) Carryover Allocation Agreement--A document issued by the Department, and executed by the Development Owner, pursuant to §10.402(f) of this chapter (relating to Housing Tax Credit and Tax Exempt Bond Developments).

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

(16) Certificate of Reservation--The notice given by the Texas Bond Review Board ("TBRB") to an issuer reserving a specific amount of the state ceiling for a specific issue of bonds.

(17) Code--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the U.S. Department of the Treasury or the Internal Revenue Service ("IRS").

(18) Code of Federal Regulations ("CFR")--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

~~(19) Colonia--A geographic area that is located in a county some part of which is within one hundred fifty (150) miles of the international border of this state, that consists of eleven (11) or more dwellings that are located in proximity to each other in an area that may be described as a community or neighborhood, and that:~~

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

~~(B) has the physical and economic characteristics of a colonia, as determined by the Department, and is a geographic area encompassing no more than two (2) square miles. Factors to be considered by the Department include, but are not limited to, ability to access basic utilities and boundaries that may define communities or neighborhoods. Applicants will be required to define the geographic area to be evaluated by the Department.~~

(19~~20~~) Commitment (also referred to as Contract)--A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants or other sources of funds or financial assistance from the Department will be made available.

(20~~1~~) Commitment of Funds--Occurs after the Development is approved by the Board and once a Commitment or Award Letter [and Loan Term Sheet](#) is executed between the Department and Development Owner. For Direct Loan Programs, this process is distinct from "Committing to a specific local project" as defined in 24 CFR Part 92, which may occur when the activity is set up in the disbursement and information system established by HUD; known as the Integrated Disbursement and Information System (IDIS). The Department's commitment of funds may not align with commitments made by other financing parties.

(21~~2~~) Committee--See *Executive Award and Review Advisory Committee*.

(22~~3~~) Comparable Unit--A Unit, when compared to the subject Unit, is similar in net rentable square footage, number of bedrooms, number of bathrooms, overall condition, location (with respect to the subject Property based on proximity to employment centers, amenities, services and travel patterns), age, unit amenities, utility structure, and common amenities.

(23~~4~~) Competitive Housing Tax Credits ("~~HTC~~")--Tax credits available from the State Housing Credit Ceiling.

(24~~5~~) Compliance Period--With respect to a building financed by Housing Tax Credits, the period of fifteen (15) taxable years, beginning with the first taxable year of the credit period pursuant to §42(i)(1) of the Code.

(25~~6~~) Continuously Occupied--The same household has resided in the Unit for at least twelve (12) months.

(26~~7~~) Contract--See *Commitment*.

[\(27\) Contract Rent--Net rent based upon current and executed rental assistance contract\(s\), typically with a federal, state or local governmental agency.](#)

(28) Contractor--See *General Contractor*.

(29) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. Controlling entities of a partnership include the general partners, special limited partners when applicable, but not investor limited partners who do not possess other factors or attributes that give them Control. Controlling entities of a limited liability company include but are not limited to the managers, managing members, any members with 10 percent or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership, but not investor members who do not possess other factors or attributes that give them Control. Controlling individuals or entities of a corporation, including non-profit corporations, include voting members of the corporation's board, whether or not any one member did not participate in a particular decision due to recusal or absence. Multiple Persons may be deemed to have Control simultaneously.

~~(30) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.~~

(304) Credit Underwriting Analysis Report--Sometimes referred to as the "Report." A decision making tool used by the Department and Board containing a synopsis and reconciliation of the Application information submitted by the Applicant.

(312) Debt Coverage Ratio ("DCR")--Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." Calculated as Net Operating Income for any period divided by scheduled debt service required to be paid during the same period.

(323) Deferred Developer Fee--The portion of the Developer Fee used as a source of funds to finance the development and construction of the Property.

(334) Deobligated Funds--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and a Development Owner or Applicant.

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

(356) Developer--Any Person entering into a contractual relationship with the Owner to provide Developer Services with respect to the Development and receiving a fee for such services and any other Person receiving any portion of a developer fee, whether by subcontract or otherwise, except if the Person is acting as a consultant with no Control and receiving less than 10 percent of the total Developer fee. The Developer may or may not be a Related Party or Principal of the Owner.

(367) Developer Fee--Compensation in amounts defined in §10.302(e)(7) of this chapter (relating to Underwriting Rules and Guidelines) paid by the Owner to the Developer for Developer Services inclusive of compensation to a Development Consultant(s), Development Team member or any subcontractor that performs Developer Services or provides guaranties on behalf of the Owner will be characterized as Developer Fee.

(378) Developer Services--A scope of work relating to the duties, activities and responsibilities for pre-development, development, design coordination, and construction oversight of the Property generally including but not limited to:

- (A) site selection and purchase or lease contract negotiation;
- (B) identifying and negotiating sources of construction and permanent financing, including financing provided by the Department;
- (C) coordination and administration of activities, including the filing of applications to secure such financing;
- (D) coordination and administration of governmental permits, and approvals required for construction and operation;
- (E) selection and coordination of development consultants including architect(s), engineer(s), third-party report providers, attorneys, and other design or feasibility consultants;
- (F) selection and coordination of the General Contractor and construction contract(s);
- (G) construction oversight;
- (H) other consultative services to and for the Owner;
- (I) guaranties, financial or credit support if a Related Party; and

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

(38) Development--A residential rental housing project that consists of one or more buildings under common ownership and financed under a common plan which has applied for Department funds. This includes a project consisting of multiple buildings that are located on scattered sites and contain only rent restricted units. (§2306.6702)

~~(39) Development Site--The area, or if scattered site, areas on which the Development is proposed and to be encumbered by a LURA.~~

~~(40) Development--A residential rental housing project that consists of one or more buildings under common ownership and financed under a common plan which has applied for Department funds. This includes a project consisting of multiple buildings that are located on scattered sites and contain only rent restricted units. (§2306.6702)~~

(3941) Development Consultant or Consultant--Any Person (with or without ownership interest in the Development) who provides professional or consulting services relating to the filing of an Application, or post award documents as required by the program.

(402) Development Owner (also referred to as "Owner")--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department and is responsible for performing under the allocation and/or Commitment with the Department. (§2306.6702)

(41) Development Site--The area, or if scattered site, areas on which the Development is proposed and to be encumbered by a LURA.

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

(434) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program, or Housing Trust Fund or other program available through the Department for multifamily development. Direct Loans may also include deferred forgivable loans or other similar direct funding by the Department, regardless if it is required to be repaid. The tax-exempt bond program is specifically excluded.

(445) Economically Distressed Area--An area that is in a census tract that has a median household income that is 75 percent or less of the statewide median household income and in a municipality or, if not within a municipality, in a county that has been awarded funds under the Economically Distressed Areas Program administered by the Texas Water Development Board within the five (5) years ending at the beginning of the Application Acceptance Period. Notwithstanding all other requirements, for funds awarded to another type of political subdivision (e.g., a water district), the Development Site must be within the jurisdiction of the political subdivision.

(456) Effective Gross Income ("EGI")--The sum total of all sources of anticipated or actual income for a rental Development, less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

(467) Efficiency Unit--A Unit without a separately enclosed Bedroom designed principally for use by a single person.

(47) Elderly Development--a Development that is subject to an Elderly Limitation or a Development that is subject to an Elderly Preference.

(A) Elderly Limitation Development--A Development subject to an "elderly limitation" is a Development that meets the requirements of the Housing for Older Persons Act ("HOPA") under the Fair Housing Act and receives no funding that requires leasing to persons other than the elderly (unless the funding is from a federal program for which the Secretary of HUD has confirmed that it may operate as a Development that meets the requirements of HOPA); or

(B) Elderly Preference Development—A property receiving HUD funding and certain other types of federal assistance is a Development subject to an "elderly preference." A Development subject to an Elderly Preference must lease to other populations, including in many cases elderly households with children. A property that is deemed to be a Development subject to an Elderly Preference must be developed and operated in a manner which will enable it to serve reasonable foreseeable demand for households with children, including, but not limited to, making provision for such in developing its unit mix and amenities.

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

(49) Environmental Site Assessment ("ESA")--An environmental report that conforms to the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.

(50) Executive Award and Review Advisory Committee ("EARAC" also referred to as the "Committee")--The Department committee created under Texas Government Code §2306.1112.

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

(52) Extended Use Period--With respect to an HTC building, the period beginning on the first day of the Compliance Period and ending the later of:

- (A) the date specified in the Land Use Restriction Agreement or
- (B) the date which is fifteen (15) years after the close of the Compliance Period.

(53) First Lien Lender--A lender whose lien has first priority as a matter of law or by operation of a subordination agreement or other intercreditor agreement.

(54) General Contractor (including "Contractor")--One who contracts for the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in subparagraphs (A) and (B) of this paragraph:

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

(B) if more than 75 percent of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

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

(56) Governing Body--The elected or appointed body of public or tribal officials, responsible for the enactment, implementation, and enforcement of local rules and the implementation and enforcement of applicable laws for its respective jurisdiction.

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

(58) Gross Capture Rate--Calculated as the Relevant Supply divided by the Gross Demand.

(59) Gross Demand--The sum of Potential Demand from the Primary Market Area ("PMA"), demand from other sources, and Potential Demand from a Secondary Market Area ("SMA") to the extent that SMA demand does not exceed 25 percent of Gross Demand.

(60) Gross Program Rent--Maximum rent limits based upon the tables promulgated by the Department's division responsible for compliance, which are developed by program and by county or Metropolitan Statistical Area ("MSA") or Primary Metropolitan Statistical Area ("PMSA") or national non-metro area.

(61) Guarantor--Any Person that provides, or is anticipated to provide, a guaranty for all or a portion of the equity or debt financing for the Development.

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

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

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

(65) Historically Underutilized Businesses ("HUB")--An entity that is certified as such under Texas Government Code, Chapter 2161 by the State of Texas.

(66) Housing Contract System ("HCS")--The electronic information system established by the Department for tracking, funding, and reporting Department Contracts and Developments. The HCS is primarily used for Direct Loan Programs administered by the Department.

(67) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Development Owner for a specific Application in accordance with the provisions of this chapter and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).

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

(69) Housing Quality Standards ("HQS")--The property condition standards described in 24 CFR §982.401.

(70) Initial Affordability Period--The Compliance Period or such longer period as shall have been elected by the Owner as the minimum period for which Units in the Development shall be retained for low-income tenants and rent restricted, as set forth in the LURA.

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

(72) Land Use Restriction Agreement ("LURA")--An agreement, regardless of its title, between the Department and the Development Owner which is a binding covenant upon the Development Owner and successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds. (§2306.6702)

(73) Low-Income Unit--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department utilizing its published income limits.

(74) Managing General Partner--A general partner of a partnership (or, as provided for in paragraph (55) of this subsection, its functional equivalent) that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also refer to a manager or managing member of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.

(75) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates conducted in accordance with §10.303 of this chapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(76) Market Analyst--A real estate appraiser or other professional familiar with the subject property's market area who prepares a Market Analysis.

(77) Market Rent--The achievable rent at the subject Property for a unit without rent and income restrictions determined by the Market Analyst or Underwriter after adjustments are made to actual rents on Comparable Units to account for differences in net rentable square footage, functionality, overall condition, location (with respect to the subject Property based on proximity to primary employment centers, amenities, services and travel patterns), age, unit amenities, utility structure, and common area amenities. The achievable rent conclusion must also consider the proportion of market units to total units proposed in the subject Property.

(78) Market Study--See *Market Analysis*.

(79) Material Deficiency--Any deficiency in an Application or other documentation that exceeds the scope of an Administrative Deficiency. May include a group of Administrative Deficiencies that, taken together, create the need for a substantial re-assessment or reevaluation of the Application.

(80) Multifamily Programs Procedures Manual--The manual produced and amended from time to time by the Department which reiterates and implements the rules and provides guidance for the filing of multifamily related documents.

(81) Net Operating Income ("NOI")--The income remaining after all operating expenses, including replacement reserves and taxes that have been paid.

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

(83) Net Rentable Area ("NRA")--The unit space that is available exclusively to the tenant and is 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.

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

(85) Notice of Funding Availability ("NOFA")--A notice issued by the Department that announces funding availability, usually on a competitive basis, for multifamily rental programs requiring Application submission from potential Applicants.

(86) Off-Site Construction--Improvements up to the Development Site such as the cost of roads, water, sewer, and other utilities to provide access to and service the Site.

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

(88) One Year Period ("1YP")--The period commencing on the date on which the Department and the Owner agree to the Qualified Contract price in writing and continuing for twelve (12) calendar months.

(89) Owner--See *Development Owner*.

(90) Person--Without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization or entity of any nature whatsoever, and shall include any group of Persons acting in concert toward a common goal, including the individual members of the group.

(91) Persons with Disabilities--With respect to an individual, means that such person has:

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) is regarded as having such an impairment, to include persons with severe mental illness and persons with substance abuse disorders.

(92) Physical Needs Assessment--See *Property Condition Assessment*.

(93) Place--An area defined as such by the United States Census Bureau, which, in general, includes an incorporated city, town, or village, as well as unincorporated areas known as census designated places. The Department may provide a list of Places for reference.

(94) Post Carryover Activities Manual--The manual produced and amended from time to time by the Department which explains the requirements and provides guidance for the filing of post-carryover activities, or for Tax Exempt Bond Developments, the requirements and guidance for post Determination Notice activities.

(95) Potential Demand--The number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placement in service date.

(96) Primary Market--(~~"PMA"~~)--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §10.303 of this chapter from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(97) Primary Market Area ("PMA")--See *Primary Market*.

(98) Principal--Persons that will exercise Control (which includes voting board members pursuant to §10.3(a)(29) of this chapter) over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) partnerships, Principals include all General Partners, special limited partners, and Principals with ownership interest;

(B) corporations, Principals include any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder; and

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

(99) Pro Forma Rent--For a restricted Unit, the lesser of the Net Program Rent or the Market Rent. For an unrestricted unit, the Market Rent. Contract Rents, if applicable, will be used as the Pro Forma Rent.

(100) 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.

(101) Property Condition Assessment ("PCA")--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The PCA provides an evaluation of the physical condition of an existing Property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the Property. The PCA must be prepared in accordance with §10.306 of this chapter (relating to Property Condition Assessment Guidelines) as it relates to a specific Development.

(102) Qualified Contract ("QC")--A bona fide contract to acquire the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the Applicable Fraction (specified in the LURA) of the calculation as defined within §42(h)(6)(F) of the Code.

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

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

~~(105) Qualified Nonprofit Development--A Development which meets the requirements of §42(h)(5) of the Code, includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.~~

~~(105) Qualified Elderly Development--A Development which is operated with property-wide age restrictions for occupancy and which meets the requirements of "housing for older persons" under the federal Fair Housing Act. The age restrictions associated with or character of such a Development are sometimes referred to as "Qualified Elderly".~~

(106) Qualified Nonprofit Organization--An organization that meets the requirements of §42(h)(5)(C) of the Code for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the property, meets the requirements of Texas Government Code §2306.6706, and §2306.6729, and §42(h)(5) of the Code.

~~(107) Qualified Nonprofit Development--A Development which meets the requirements of §42(h)(5) of the Code, includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.~~

(107~~8~~) Qualified Purchaser--Proposed purchaser of the Development who meets all eligibility and qualification standards stated in the Qualified Allocation Plan of the year the Request is received, including attending, or assigning another individual to attend, the Department's Property Compliance Training.

(10~~8~~9) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the construction of an equal number of units or less on the Development Site. At least one unit must be reconstructed in order to qualify as Reconstruction.

(10~~9~~10) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the Reconstruction of a Development on the Development Site, but does not include Adaptive Reuse. (§2306.004(26-a)) More specifically, Rehabilitation is the repair, refurbishment and/or replacement of existing mechanical and structural components, fixtures and finishes. Rehabilitation will correct deferred maintenance, reduce functional obsolescence to the extent possible and may include the addition of: energy efficient components and appliances, life and safety systems; site and resident amenities; and other quality of life improvements typical of new residential Developments.

(110~~11~~) Related Party--As defined in Texas Government Code, §2306.6702.

(111~~12~~) Relevant Supply--The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:

(A) the proposed subject Units;

(B) Comparable Units in another proposed development within the PMA with a priority Application over the subject, based on the Department's evaluation process described in §10.201(6) of this chapter (relating to Procedural Requirements for Application Submission) that may not yet have been presented to the Board for consideration of approval;

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

(D) Comparable Units in previously approved but Unstabilized Developments in the Secondary Market Area (SMA), in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.

(1123) Report--See *Credit Underwriting Analysis Report*.

(1143) Request--See *Qualified Contract Request*.

(1145) Reserve Account--An individual account:

(A) created to fund any necessary repairs for a multifamily rental housing Development; and

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

(1156) Right of First Refusal ("ROFR")--An Agreement to provide a right to purchase the Property to a Qualified Nonprofit Organization or tenant organization with priority to that of any other buyer at a price whose formula is prescribed in the LURA.

(1167) Rural Area--

(A) A Place that is located:

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

(ii) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an urban area

(B) For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §10.204(5)(A) of this chapter (relating to Required Documentation for Application Submission) or as requested in accordance with §10.204(5)(B).

(1187) Secondary Market (~~SMA~~)--Sometimes referred to as "Secondary Market Area." The area defined by the Qualified Market Analyst as described in §10.303 of this chapter.

(1189) Secondary Market Area ("SMA")--See *Secondary Market*.

(11920) Single Room Occupancy ("SRO")--An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.

(120±) Site Control--Ownership or a current contract or series of contracts, that meets the requirements of §10.204(10) of this chapter, that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the owner, to develop a Property and subject it to a LURA reflecting the requirements of any awards of assistance it may receive from the Department.

(1212) Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, underground utilities, and site amenities.

(1223) State Housing Credit Ceiling--The aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with applicable federal law, including §42(h)(3)(C) of the Code, and Treasury Regulation §1.42-14.

(1234) Sub-Market--An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(1245) Supportive Housing--Residential rental developments intended for occupancy by individuals or households in need of specialized and specific non-medical services in order to maintain independent living. Supportive housing developments generally include established funding sources outside of project cash flow that require certain populations be served and/or certain services provided. The developments are expected to be debt free or have no permanent foreclosable or noncash flow debt. ~~A Supportive Housing Development financed with tax-exempt bonds with a project based rental assistance contract for a majority of the Units may be treated as Supportive Housing under all subchapters of this chapter, except Subchapter D of this chapter (relating to Underwriting and Loan Policy).~~ A Supportive Housing Development financed with tax-exempt bonds with a project based rental assistance contract for a majority of the Units may be treated as Supportive Housing under all subchapters of this chapter, except Subchapter D of this chapter (relating to Underwriting and Loan Policy). If the bonds are expected to be redeemed upon construction completion, placement in service or stabilization and no other permanent debt will remain, the Supportive Housing Development may be treated as Supportive Housing under Subchapter D of this chapter. The services offered generally include case management and address special attributes of such populations as Transitional Housing for homeless and at risk of homelessness, persons who have experienced domestic violence or single parents or guardians with minor children.

(125) TDHCA Operating Database--Sometimes referred to as "TDHCA Database." A consolidation of recent actual income and operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described in Subchapter F of this chapter (relating to Compliance Monitoring), and published on the Department's web site (www.tdhca.state.tx.us).

(126) Target Population--The designation of types of housing populations shall include ~~those Developments that are entirely Qualified~~ Elderly Developments, and those that are entirely Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations. An existing Development that has been designated as a Development serving the general population may not change to become an Elderly Development without Board approval.

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

(128) Tax-Exempt Bond Process Manual--The manual produced and amended from time to time by the Department which explains the process and provides guidance for the filing of a Housing Tax Credit Application utilizing Tax-Exempt Bonds.

~~(129) TDHCA Operating Database--Sometimes referred to as "TDHCA Database." A consolidation of recent actual income and operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described in Subchapter F of this chapter (relating to Compliance Monitoring), and published on the Department's web site (www.tdhca.state.tx.us).~~

(12930) Third Party--A Person who is not:

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

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

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

(D) any individual that is an executive officer or member of the governing board or has greater than 10 percent ownership interest in any of the entities are identified in subparagraphs (A) - (C) of this paragraph.

(130~~1~~) Total Housing Development Cost--The sum total of the acquisition cost, Hard Costs, soft costs, Developer fee and General Contractor fee incurred or to be incurred through lease-up by the Development Owner in the acquisition, construction, rehabilitation, and financing of the Development.

(131~~2~~) Transitional Housing--A Supportive Housing development that includes living Units with more limited individual kitchen facilities and is:

(A) used exclusively to facilitate the transition of homeless individuals and those at-risk of becoming homeless, to independent living within twenty-four (24) months; and

(B) is owned by a Development Owner that includes a governmental entity or a qualified non-profit which provides temporary housing and supportive services to assist such individuals in, among other things, locating and retaining permanent housing. The limited kitchen facilities in individual Units must be appropriately augmented by suitable, accessible shared or common kitchen facilities.

[\(132\) U.S. Department of Agriculture \("USDA"\)--Texas Rural Development Office \("TRDO"\) serving the State of Texas.](#)

[\(133\) U.S. Department of Housing and Urban Development \("HUD"\)-regulated Building--A building for which the rents and utility allowances of the building are reviewed by HUD.](#)

(133~~4~~) Underwriter--The author(s) of the Credit Underwriting Analysis Report.

~~(134) Uniform Physical Condition Standards ("UPCS")--As developed by the Real Estate Assessment Center of HUD.~~

[\(135\) Uniform Multifamily Application Templates--The collection of sample resolutions and form letters, produced by the Department, as may be required under this Chapter, Chapter 11 and Chapter 12 of this title that may be used. \(but are not required to be used\), to satisfy the requirements of the applicable rule.](#)

[\(136\) Uniform Physical Condition Standards \("UPCS"\)--As developed by the Real Estate Assessment Center of HUD.](#)

(137~~5~~) Unit--Any residential rental unit in a Development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation.

(138~~6~~) Unit Type--Units will be considered different Unit Types if there is any variation in the number of bedroom, bathrooms or a square footage difference equal to or more than 120 square feet. For example: A two Bedroom/one bath Unit is considered a different Unit Type than a two Bedroom/two bath Unit. A three Bedroom/two bath Unit with 1,000 square feet is considered a different Unit Type than a three Bedroom/two bath Unit with 1,200 square feet. A one Bedroom/one bath Unit with 700 square feet will be considered an equivalent Unit Type to a one Bedroom/one bath Unit with 800 square feet.

(139~~7~~) Unstabilized Development--A development with Comparable Units that has been approved for funding by the Department's Board of Directors or is currently under construction or has not maintained a 90 percent occupancy level for at least twelve (12) consecutive months following construction completion. A

development may be deemed stabilized by the Underwriter based on factors relating to a development's lease-up velocity, Sub-Market rents, Sub-Market occupancy trends and other information available to the Underwriter. The Market Analyst may not consider such development stabilized in the Market Study.

~~(140³⁹⁸)~~ Urban Area--A Place that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than a Place described by paragraph (116)(A)(ii) of this subsection. For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §10.204(5) of this chapter.

~~(139) U.S. Department of Agriculture ("USDA")--Texas Rural Development Office (TRDO) serving the State of Texas.~~

~~(140) U.S. Department of Housing and Urban Development (HUD)-regulated Building--A building for which the rents and utility allowances of the building are reviewed by HUD.~~

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

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

(b) Request for Staff Determinations. Where the definitions of Development, Development Site, New Construction, Rehabilitation, Reconstruction, Adaptive Reuse, and Target Population fail to account fully for the activities proposed in an Application, an Applicant may request and Department staff may provide a determination to an Applicant explaining how staff will review an Application in relation to these specific terms and their usage within the applicable rules. Such request must be received by the Department prior to submission of the pre-application (if applicable to the program) or Application (if no pre-application was submitted). Staff's determination may take into account the purpose of or policies addressed by a particular rule or requirement, materiality of elements, substantive elements of the development plan that relate to the term or definition, the common usage of the particular term, or other issues relevant to the rule or requirement. All such determinations will be conveyed in writing. If the determination is finalized after submission of the pre-application or Application, the Department may allow corrections to the pre-application or the Application that are directly related to the issues in the determination. It is an Applicant's sole responsibility to request a determination and an Applicant may not rely on any determination for another Application regardless of similarities in a particular fact pattern. For any Application that does not request and subsequently receive a determination, the definitions and applicable rules will be applied as used and defined herein. Such a determination is intended to provide clarity with regard to Applications proposing activities such as: scattered site development or combinations of construction activities (e.g. Rehabilitation with some New Construction). An Applicant may appeal a determination for their Application if the determination provides for a treatment that relies on factors other than the explicit definition. A Board determination or a staff determination not timely appealed cannot be further appealed or challenged.

§10.4.Program Dates. This section reflects key dates for all multifamily development programs except for the Competitive Housing Tax Credit Program. A program calendar for the Competitive Housing Tax Credit Program is provided in Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Non-statutory deadlines specifically listed in this section may be extended ~~for good cause~~ by the Executive Director for a period of not more than five (5) business days provided; however, that the Applicant requests an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Executive Director that there is good cause for the extension. Except as provided for under 10 TAC §1 relating to reasonable accommodations. ~~E~~extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party or the documentation involves signatures needed on certification forms in the Application.

(1) Full Application Delivery Date. The deadline by which the Application must be submitted to the Department. For Direct Loan Applications, such deadline will generally be defined in the applicable NOFA and for Tax-Exempt Bond Developments, such deadlines are more fully explained in §10.201(2) of this chapter (relating to Procedural Requirements for Application Submission).

(2) Notice to Submit Lottery Application Delivery Date. No later than December [11, 2015](#)~~12, 2014~~, Applicants that receive an advance notice regarding a Certificate of Reservation must submit a notice to the Department, in the form prescribed by the Department.

(3) Applications Associated with Lottery Delivery Date. No later than December [18, 2015](#)~~19, 2014~~, Applicants that participated in the Texas Bond Review Board Lottery must submit the complete tax credit Application to the Department.

(4) Administrative Deficiency Response Deadline. Such deadline shall be five (5) business days after the date on the deficiency notice without incurring a penalty fee pursuant to §10.901 of this chapter (relating to Fee Schedule).

(5) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal (if applicable), Market Analysis and the Site Design and Development Feasibility Report). For Direct Loan Applications, the Third Party reports must be submitted with the Application in order for it to be considered a complete Application. For Tax-Exempt Bond Developments, the Third Party Reports must be submitted no later than seventy-five (75) calendar days prior to the Board meeting at which the tax credits will be considered. The seventy-five (75) calendar day deadlines are available on the Department's website.

(6) Resolutions Delivery Date. Resolutions required for Tax-Exempt Bond Developments or Direct Loan Applications must be submitted no later than fourteen (14) calendar days before the Board meeting at which consideration of the award will occur.

(7) Challenges to Neighborhood Organization Opposition Delivery Date. No later than forty-five (45) calendar days prior to the Board meeting at which consideration of the award will occur.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 10, Subchapter B §10.101, concerning Site and Development Requirements and Restrictions. The purpose of the new section is to provide guidance relating to site and development requirements and restrictions for all development sites for which applications are submitted in applying for multifamily funding through the Department. The proposed repeal of existing §10.101 is published concurrently with this rulemaking.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be to provide guidance relating to site and development requirements and restrictions relating to applications applying for multifamily funding through the Department. The average cost of filing an application is between \$15,000 and \$30,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new or additional economic effect on small or micro-businesses. The average cost of filing an application is between \$15,000 and \$30,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 18, 2015 to October 15, 2015, to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 15, 2015.**

STATUTORY AUTHORITY. The new section is proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new section is proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new section affects Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The new section affects no other statutes, articles or codes.

§10.101 Site and Development Requirements and Restrictions.

Subchapter B – Site and Development Requirements and Restrictions

§10.101. Site and Development Requirements and Restrictions.

(a) Site Requirements and Restrictions. The purpose of this section is to identify specific requirements and restrictions related to a Development Site seeking multifamily funding or assistance from the Department.

(1) Floodplain. New Construction or Reconstruction Developments located within a one-hundred (100) year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site in full compliance with the National Flood Protection Act and all applicable federal and state statutory and regulatory requirements. The Applicant will have to use floodplain maps and comply with regulation as they exist at the time of commencement of construction. Even if not required by such provisions, the Site must be developed so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain. If there are more stringent local requirements they must also be met. If no FEMA Flood Insurance Rate Maps are available for the proposed Development Site, flood zone documentation must be provided from the local government with jurisdiction identifying the one-hundred (100) year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from the U.S. Department of Housing and Urban Development (HUD) or U.S. Department of Agriculture (USDA) are exempt from this requirement. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the one-hundred (100) year floodplain provided the ~~state or~~ local government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application or the existing structures meet the requirements that are applicable for New Construction or Reconstruction Developments, as certified to by a Third Party engineer.

(2) Mandatory Community Services and Other Assets.

(A) Services. Development Sites must be located within three (3) miles of a full service grocery store, a pharmacy, and an urgent care facility. These do not need to be in separate facilities to be considered eligible. For purposes of this provision, a full service grocery store is defined as a store in which a typical household may buy the preponderance of its typical food and household items needs, including a variety of options for fresh meats, produce, dairy, baked goods, frozen foods, and some household cleaning and paper goods. A typical convenience store would not qualify. An urgent care facility is defined as a medical facility that, at minimum, offers, during hours that include and extend beyond the typical workday of Monday-Friday, 8am-6pm, treatment of common injuries and illnesses that do not require an emergency room visit but still require immediate attention. A map must be included identifying the Development Site and the location of each service by name. Each service must exist or be under active construction, post pad (e.g. framing the structure) by the date the Application is submitted.

(B) Other Community Assets. Development Sites must be located within a one mile radius (two-mile radius for Developments located in a Rural Area), unless otherwise required by the specific asset as noted below, of at least ~~three six~~ (3~~6~~) community assets listed in ~~clauses~~subparagraphs (i~~A~~) – (xvi~~T~~) of this sub~~paragraph~~paragraph. Supportive Housing Developments located in an Urban Area must meet the requirement in ~~clause~~subparagraph (xvi~~T~~) of this sub~~paragraph~~paragraph. Only one community asset of each type listed will count towards the number of assets required. These do not need to be in separate facilities to be considered for points. A map must be included identifying the Development Site and the location of each of the community assets by name. All assets must exist or, ~~if under construction, must~~ be under active construction, post pad (e.g. framing the structure) by the date the Application is submitted:

~~(A) full service grocery store;~~

~~(B) pharmacy;~~

~~(i~~6~~) convenience store/mini-market;~~

- (iiD) department or retail merchandise store (retail merchandise must be available to unaccompanied minors)store;
- (iiiE) federally insured depository institutionbank/credit union;
- (ivF) restaurant (including fast food, but not including establishments that are primarily bars and serve food as an incidental item);
- (vG) indoor public recreation facilities accessible to the general public, such as, community centers, ~~and~~ libraries, fitness club/gym, and senior centers; ~~accessible to the general public~~;
- (viH) outdoor public recreation facilities accessible to the general public, such as parks, golf courses, and swimming pools; ~~accessible to the general public~~;
- (I) medical office of a general practitioner (physician, dentistry, optometry) or hospital (excluding those used to qualify under subparagraph A)/medical clinic;
- (viiI) public schools (only eligible for Developments that are not ~~Qualified~~Elderly Limitation Developments);
- ~~(K) senior center accessible to the general public;~~
- (viii) campus of an accredited higher education institution;
- ~~(L) religious institutions;~~
- (ivM) community, civic or service organizations, such as Kiwanis or Rotary Club;
- (xN) child care center (must be licensed - only eligible for Developments that are not ~~Qualified~~Elderly Limitation Developments);
- (xiO) post office;
- (xiiP) city hall;
- (xiiiQ) county courthouse;
- (xivR) fire station;
- (xvS) police station;
- (xviT) Development Site is located within ½ mile, connected by an accessible route, of a designated public transportation stop at which public transportation (not including “on demand” transportation) stops on a regular, scheduled basis; a site's eligibility for on demand transportation does not meet this requirement. ~~However, accessible transportation provided at no cost to the tenant when the Property Management Office is open, such as cab vouchers or a specialized van on-site, to a bus or other public transit stop, does qualify.~~

(C) Public Schools. The Development Site must be located within the attendance zones of an elementary school, a middle school and a high school that has a Met Standard rating by the Texas Education Agency. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment or “choice” programs, an Applicant may use the lowest rating of all elementary, middle, or high schools, respectively, which may possibly be attended by the tenants. The applicable school rating will be the 2015 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle

school rating. Development Sites that do not meet this requirement shall be considered ineligible, unless the Application proposes a Development that is subject to an Elderly Limitation.

(3) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (J) of this paragraph will be considered ineligible. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, ~~or~~ USDA, or Veterans Affairs ("VA") may be granted an exemption by the Board. Such an exemption must be requested at the time of or prior to the filing of an Application and must include a letter ~~stating from the fair housing or civil rights office of the existing federal oversight entity indicating that~~ the Rehabilitation of the existing units is consistent with achieving at least one or more of the stated goals as outlined in the State of Texas Analysis of Impediments to Fair Housing Choice or, if within the boundaries of a participating jurisdiction or entitlement community, as outlined in the local analysis of impediments to fair housing choice. the Fair Housing Act. The distances are to be measured from the nearest boundary of the Development Site to the undesirable feature. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (J) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Transportation Code, §396.001;

(B) Development Sites located within 100 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail;

(C) Development Sites located within 500 feet of heavy industrial or dangerous uses such as manufacturing plants, fuel storage facilities (excluding gas stations), refinery blast zones, etc.;

(D) Development Sites located within 2 miles of potentially hazardous uses such as nuclear plants or ~~large~~ refineries capable of refining ~~(e.g. oil refineries producing~~ more than 100,000 barrels of oil daily);

(E) Development Sites located within 300 feet of a solid waste or sanitary landfills;

(F) Development Sites in which the buildings are located within the easement of any overhead high voltage transmission line, support structures for high voltage transmission lines, radio antennae, satellite towers, or other similar structures. This does not apply to local service electric lines and poles;

(G) Development Sites in which the buildings are located within the accident zones or clear zones for commercial or military airports;

(H) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined as stated in Local Government Code, §243.002;

(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids; or

(J) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents and which cannot be adequately mitigated.

(4) Undesirable Neighborhood Characteristics.

(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics to the Department. Disclosure of undesirable characteristics must be made at the time the Application is submitted to

the Department. Alternatively, an Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department or after inducement (for Tax-Exempt Bond Developments). ~~but must be accompanied by the Undesirable Neighborhood Characteristic Disclosure Fee pursuant to §10.901(21) of this chapter (relating to Fee Schedule).~~ Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, the Application may be subject to termination. Termination due to non-disclosure may be appealed pursuant to §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and which will include, where applicable, a review as described in subparagraph (C) of this paragraph. The assessment of the Development Site and neighborhood will be presented to the Board ~~in a report,~~ with a recommendation with respect to the eligibility of the Development Site. Factors to be considered by the Board, despite the existence of the undesirable neighborhood characteristics are identified in subparagraph (E) of this paragraph. Should the Board uphold staff's recommendation or make a determination that a Development Site is ineligible ~~based on staff's report,~~ the termination of the Application resulting from such Board action is not subject to appeal. ~~In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the use of Department funds at the Development Site must be consistent with achieving at least one of the goals in clauses (i) – (iii) of this subparagraph.~~

~~(i) Preservation of existing occupied affordable housing units that are subject to existing federal rent or income restrictions, that will not result in a further concentration of poverty and the Application includes a letter from the fair housing or civil rights office of the existing federal oversight entity indicating that the Rehabilitation of the existing units is consistent with the Fair Housing Act;~~

~~(ii) Improvement of housing opportunities for low income households and members of protected classes in areas that do not have high concentrations of existing affordable housing; or~~

~~(iii) Provision of affordable housing in areas where there has been significant recent community investment and evidence of new private sector investment; and~~

~~(iv) The Board may consider whether or not funding sources requested for the Development Site would otherwise be available for activities that would more closely align with the Department's and state's goals.~~

(B) The existence of any one of the ~~four~~^{three} undesirable neighborhood characteristics in clauses (i) – ~~(iv)~~⁽ⁱⁱⁱ⁾ of this subparagraph must be disclosed by the Applicant and will prompt further review as outlined in subparagraph (C) of this paragraph:

(i) The Development Site is located within a census tract that has a poverty rate above 40 percent for individuals (or 55 percent for Developments in regions 11 and 13).~~;~~

(ii) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crimes is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com. ~~for the immediately surrounding area. "Immediately surrounding area" for the purposes of this provision is defined as the census tract within which the Development Site is located, the police beat within which the Development Site is located for a city's police department, or within a one half mile radius of the Development Site. The data used must include incidents recorded during the entire 2013 or 2014 calendar year but may include up to 36 consecutive months of data. Sources such as the written statement from a local police department or data from neighborhoodscout.com may be used to document compliance with this provision;~~

~~(iii) The Development Site is located within 1,000 feet of more than one structure, visible from the street, which have fallen into such disrepair, overgrowth, and/or vandalism that it could commonly be regarded as blighted or abandoned.~~

(iv) The Environmental Site Assessment for the Development Site indicates any facilities listings within the ASTM-required search distances from the approximate site boundaries on any one of the following databases:

- (I) U.S. Environmental Protection Agency ("USEPA") National Priority List ("NPL"); Comprehensive Environmental Response, Compensation, and Liability Information System ("CERCLIS");
- (II) Federal Engineering and/or Institutional Controls Registries ("EC"); Resource Conservation and Recovery Act ("RCRA") facilities associated with treatment, storage, and disposal of hazardous materials that are undergoing corrective action ("RCRA CORRACTS");
- (III) RCRA Generators/Handlers of hazardous waste; or
- (IV) State voluntary cleanup program.

(C) Should any one of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, staff will conduct a further Development Site and neighborhood review which will include assessments of those items identified in clauses (i) – (viii) of this paragraph.

(i) A determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;

~~(ii) An assessment of blight in the neighborhood, evidenced by boarded up or abandoned residential and/or commercial businesses and/or the visible physical decline of property or properties;~~

(ii) An assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;

(iii) An assessment concerning any of the features reflected in paragraph (3) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (3);

(iv) An assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the neighborhood, including comment on concentration based on neighborhood size;

(v) An assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located; and

(vi) An assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy; and

~~(viii) An assessment of the number and/or strength of mitigating factors for otherwise undesirable neighborhood characteristics, including but not limited to community revitalization plans, demographic data that suggests increasing socio-economic diversity, crime statistics evidencing trends that crime rates are decreasing, new construction in the area, and any other evidence of public and/or private investment in the neighborhood.~~

~~(D) During or after staff's review of the Development Site, the Department may request additional information from the Applicant. This information is not required to be submitted with the initial disclosure but must be made available at the Department's request.~~ Information regarding mitigation

of undesirable neighborhood characteristics should be relevant to the undesirable characteristics that are present in the neighborhood. For example, a plan to clean up an environmental hazard is an appropriate response to disclosure of a facility listed in the Environmental Site Assessment. With respect to crime, such information may include, but is not limited to, crime statistics evidencing trends that crime rates are materially and consistently decreasing, violent crime data based on the police beat within which the Development Site is located for the city's police department, or violent crimes within a one half mile radius of the Development Site. The data used must include incidents recorded during the entire 2014 and 2015 calendar year. A written statement from the local police department, information identifying efforts by the local police department addressing issues of crime, or documentation indicating that the high level of criminal activity is concentrated at the Development Site, which presumably would be remediated by the planned Development, may also be used to document compliance with this provision. Other mitigation efforts to address undesirable characteristics may include new construction in the area already underway that evidences public and/or private investment, and to the extent blight or abandonment is present, acceptable mitigation would go beyond the securement or razing and require the completion of a desirable permanent use of the site(s) on which the blight or abandonment is present such as new or rehabilitated housing, new business, development and completion of dedicated municipal or county-owned park space. ~~For instance, a plan to clean up an environmental hazard is an appropriate response to disclosure of a facility listed in the environmental site assessment, while a management plan and/or efforts of the local police department are appropriate to address issues of crime.~~ Mitigation of undesirable characteristics ~~must~~should also include timelines that evidence that efforts are already underway and a reasonable expectation that the issue(s) being addressed will be resolved or ~~at least~~significantly improved by the time the proposed Development is placed in service. ~~Information likely to be requested may include but is not limited to those items in clauses (i) – (iv) of this subparagraph.~~

- ~~(i) Community revitalization plans (whether or not submitted for points under §11.9(d)(7) of this title);~~
- ~~(ii) Evidence of public and/or private plans to develop or redevelop in the neighborhood, whether residential or commercial;~~
- ~~(iii) Mitigation plans for any adverse environmental features; and/or~~
- ~~(iv) Statements from appropriate local elected officials regarding how the development will accomplish objectives in meeting obligations to affirmatively further fair housing and will address the goals set forth in the Analysis of Impediments and Consolidated Plan(s) of the local government and/or the state.~~

(E) In order for the Development Site to be found eligible by the Board, despite the existence of undesirable neighborhood characteristics, the use of Department funds at the Development Site must be consistent with achieving at least one of the goals in clauses (i) – (iii) of this subparagraph.

(i) Preservation of existing occupied affordable housing units that are subject to existing federal rent or income restrictions;

(ii) Factual determination that the undesirable characteristic that has been disclosed are not of such a nature or severity that they should render the Development Site ineligible based on mitigation efforts as established under subparagraph (D) of this paragraph; or

(iii) The Development is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order.

(b) Development Requirements and Restrictions. The purpose of this section is to identify specific restrictions on a proposed Development submitted for multifamily funding by the Department.

(1) Ineligible Developments. A Development shall be ineligible if any of the criteria in subparagraphs (A) and (B) of this paragraph are deemed to apply.

(A) General Ineligibility Criteria.

- (i) Developments comprised of hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities which are usually classified as transient housing (as provided in the §42(i)(3)(B)(iii) and (iv) of the Code);
- (ii) Any Development with any building(s) with four or more stories that does not include an elevator;
- (iii) A Housing Tax Credit Development that provides on-site continual or frequent nursing, medical, or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;
- (iv) A Development that violates §1.15 of this title (relating to Integrated Housing Rule);
- (v) A Development seeking Housing Tax Credits that will not meet the general public use requirement under Treasury Regulation, §1.42-9 or a documented exception thereto; or
- (vi) A Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, §104(d) requirements and proposing Rehabilitation or Reconstruction, if the Applicant is not proposing the one-for-one replacement of the existing unit mix. Adding additional units would not violate this provision.

(B) Ineligibility of ~~Qualified~~ Elderly Developments.

- (i) Any ~~Qualified~~ Elderly Development of two stories or more that does not include elevator service for any Units or living space above the first floor;
- (ii) Any ~~Qualified~~ Elderly Development with any Units having more than two bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, and/or security officer. These employee Units must be specifically designated as such; or
- (iii) Any ~~Qualified~~ Elderly Development (including ~~Qualified~~ Elderly in a Rural Area) proposing more than 70 percent two-bedroom Units.

(2) Development Size Limitations. The minimum Development size is 16 Units. New Construction or Adaptive Reuse Developments in Rural Areas are limited to a maximum of 80 Units. Other Developments do not have a limitation as to the maximum number of Units.

(3) Rehabilitation Costs. Developments involving Rehabilitation must establish a scope of work that will substantially improve the interiors of all units and exterior deferred maintenance. The following minimum Rehabilitation amounts must be maintained through the issuance of IRS Forms 8609 or at the time of the close-out documentation, as applicable:

(A) For Housing Tax Credit Developments under the USDA Set-Aside the minimum Rehabilitation will involve at least \$19,000 per Unit in Building Costs and Site Work;

(B) For Tax-Exempt Bond Developments, less than twenty (20) years old, [based on the placed in service date](#), the minimum Rehabilitation will involve at least \$15,000 per Unit in Building Costs and

Site Work. If such Developments are greater than twenty (20) years old, [based on the placed in service date](#), the minimum Rehabilitation will involve at least \$25,000 per Unit in Building Costs and Site Work;

(C) For all other Developments, the minimum Rehabilitation will involve at least \$25,000 per Unit in Building Costs and Site Work; or

(D) Rehabilitation Developments financed with Direct Loans provided through the HOME program (or any other program subject to 24 CFR 92) that triggers the rehabilitation requirements of 24 CFR 92 will be required to meet all applicable state and local codes, ordinances, and standards; the 2012 International Existing Building Code ("IEBC"); and the requirements in clauses (i) - (iv) of this subparagraph.

(i) recommendations made in the Environmental Assessment and Physical Conditions Assessment with respect to health and safety issues, major systems (structural support; roofing; cladding and weatherproofing; plumbing; electrical; and heating, ventilation, and air conditioning), and lead based paint must be implemented;

(ii) all accessibility requirements pursuant to 10 TAC §1.206 (relating to Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973) and §1.209 (relating to Substantial Alteration of Multifamily Developments) must be met;

(iii) properties located in the designated catastrophe areas specified in 28 TAC §5.4008 must comply with 28 TAC §5.4011 (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008); and

(iv) should IEBC be more restrictive than local codes, or should local codes not exist, then the Development must meet the requirements imposed by IEBC.

(4) Mandatory Development Amenities. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all of the amenities in subparagraphs (A) - (M) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (M) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), (I), or (M) of this paragraph; however, access must be provided to a comparable amenity in a common area. ~~These~~ All amenities listed below must be at no charge to the tenants. Tenants must be provided written notice of the applicable required amenities for the Development. ~~elections made by the Development Owner.~~

(A) All Units must be wired with RG-6/U COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;

(B) Laundry Connections;

(C) Exhaust/vent fans (vented to the outside) in the bathrooms;

(D) Screens on all operable windows;

(E) Disposal and Energy-Star rated dishwasher (not required for USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);

(F) Energy-Star rated refrigerator;

(G) Oven/Range;

- (H) Blinds or window coverings for all windows;
- (I) At least one Energy-Star rated ceiling fan per Unit;
- (J) Energy-Star rated lighting in all Units which may include compact fluorescent or LED light bulbs;
- (K) Plumbing fixtures ~~(toilets and faucets)~~ must meet ~~design performance~~ standards ~~at 30 TAC §290.252 (relating to Design Standards) of Texas Health and Safety Code, Chapter 372;~~
- (L) All Units must have central heating and air-conditioning (Packaged Terminal Air Conditioners meet this requirement for SRO or Efficiency Units only); and
- (M) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half (1.5) spaces per Unit for non-~~Qualified~~ Elderly Developments and one (1) space per Unit for ~~Qualified~~-Elderly Developments. The minimum number of required spaces must be available to the tenants at no cost.

(5) Common Amenities.

(A) All Developments must include sufficient common amenities as described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points required in accordance with clauses (i) - (vi) of this subparagraph. For Developments with 41 Units or more, at least two (2) of the required threshold points must come from subparagraph (C)(xxxi) of this paragraph.

- (i) Developments with 16 to 40 Units must qualify for four (4) points;
- (ii) Developments with 41 to 76 Units must qualify for seven (7) points;
- (iii) Developments with 77 to 99 Units must qualify for ten (10) points;
- (iv) Developments with 100 to 149 Units must qualify for fourteen (14) points;
- (v) Developments with 150 to 199 Units must qualify for eighteen (18) points; or
- (vi) Developments with 200 or more Units must qualify for twenty-two (22) points.

(B) These points are not associated with any selection criteria points. The amenities must be for the benefit of all tenants and made available throughout normal business hours and maintained throughout the ~~Compliance Period~~Extended Use Period. Tenants must be provided written notice of the elections made by the Development Owner. If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the requirement. All amenities must meet accessibility standards and spaces for activities must be sized appropriately to serve the proposed Target Population. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site, which includes those amenities required under subparagraph (C)(xxxi) of this paragraph. If scattered site with fewer than 41 Units per site, at a minimum at least some of the amenities required under subparagraph (C)(xxxi) of this paragraph must be distributed proportionately across all sites. In the case of additional phases of a Development any amenities that are anticipated to be shared with the first phase development cannot be claimed for purposes of meeting this requirement for the second phase. The second phase must include enough points to meet this requirement that are provided on the Development Site. For example, if a swimming pool exists on the phase one property and it is anticipated that the second phase tenants will be allowed it use it, the swimming pool cannot be claimed for points for purposes of this requirement for the second phase Development. All amenities must be accessible and must be available to all units via an accessible route.

(C) The common amenities and respective point values are set out in clauses (i) - (xxxi) of this subparagraph. Some amenities may be restricted for Applicants proposing a specific Target Population. An Applicant can only count an amenity once; therefore combined functions (a library which is part of a community room) will only qualify for points under one category:

- (i) Full perimeter fencing (2 points);
- (ii) Controlled gate access (2 points);
- (iii) Gazebo w/sitting area (1 point);
- (iv) Accessible walking/jogging path separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);
- (v) Community laundry room with at least one washer and dryer for every 40 Units (3 points);
- (vi) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point);
- (vii) Covered pavilion that includes barbecue grills and tables with at least one grill and table for every 50 Units (2 points);
- (viii) Swimming pool (3 points);
- (ix) Splash pad/water feature play area (1 point);
- (x) Furnished fitness center. Equipped with fitness equipment options with at least one option per every 40 Units or partial increment of 40 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, sauna, stair-climber, or other similar equipment. Equipment shall be commercial use grade or quality. All Developments must have at least two equipment options but are not required to have more than five equipment options regardless of number of Units (2 points);
- (xi) Equipped and functioning business center or equipped computer learning center. Must be equipped with 1 computer for every ~~40~~ Units loaded with basic programs ([maximum of 5 computers needed](#)), 1 laser printer for every 3 computers (minimum of one printer) and at least one scanner which may be integrated with printer (2 points);
- (xii) Furnished Community room (2 points);
- (xiii) Library with an accessible sitting area (separate from the community room) (1 point);
- (xiv) Enclosed community sun porch or covered community porch/patio (1 point);
- (xv) Service coordinator office in addition to leasing offices (1 point);
- (xvi) Senior Activity Room stocked with supplies (Arts and Crafts, etc.) (2 points);
- (xvii) Health Screening Room (1 point);
- (xviii) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);
- (xix) Horseshoe pit; putting green; shuffleboard court; [or](#) video game console(s) with a variety of games and a dedicated location accessible to all tenants to play such games (1 point);
- (xx) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);
- (xxi) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot (1 point). Can only select this item if clause (xxii) of this subparagraph is not selected; or
- (xxii) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (2 points). Can only select this item if clause (xxi) of this subparagraph is not selected;
- (xxiii) Sport Court (Tennis, Basketball or Volleyball) (2 points);
- (xxiv) Furnished and staffed Children's Activity Center that must have age appropriate furnishings and equipment. Appropriate levels of staffing must be provided during after-school hours and during school vacations (3 points);
- (xxv) Community Theater Room equipped with a 52 inch or larger screen with surround sound equipment; DVD player; and theater seating (3 points);
- (xxvi) Dog Park area that is fully enclosed and intended for tenant owned dogs to run off leash or a dog wash station with plumbing for hot and cold water connections and tub drainage (requires that the Development allow dogs) (1 point);
- (xxvii) Common area Wi-Fi (1 point);

(xxviii) Twenty-four hour, ~~live~~ [seven days a week](#) monitored camera/security system in each building (3 points);

(xxix) ~~Secured~~ [bicycle parking within reasonable proximity to each residential building that allows for bicycles to be secured with lock \(lock not required to be provided to tenant\)](#) (1 point);

(xxx) Rooftop viewing deck (2 points); or

(xxxi) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Points may be selected from only one of four categories: Limited Green Amenities, Enterprise Green Communities, Leadership in Energy and Environmental Design (LEED), and ICC 700 National Green Building Standard. A Development may qualify for no more than four (4) points total under this clause.

(I) Limited Green Amenities (2 points). The items listed in subclauses (I) - (IV) of this clause constitute the minimum requirements for demonstrating green building of multifamily Developments. Six (6) of the twenty-two (22) items listed under items (-a-) - (-v-) of this subclause must be met in order to qualify for the maximum number of two (2) points under this subclause;

(-a-) a rain water harvesting/collection system and/or locally approved greywater collection system;

(-b-) native trees and plants installed that reduce irrigation requirements and are appropriate to the Development Site's soil and microclimate to allow for shading in the summer and heat gain in the winter. [For Rehabilitation Developments this would be applicable to new landscaping planned as part of the scope of work;](#)

(-c-) water-conserving fixtures that meet the EPA's WaterSense Label. Such fixtures must include low-flow or high efficiency toilets, bathroom lavatory faucets, showerheads, and kitchen faucets. Rehabilitation Developments may install compliant faucet aerators instead of replacing the entire faucets;

(-d-) all of the HVAC condenser units located so they are fully shaded 75 percent of the time during summer months (i.e. May through August) as certified by the design team at cost certification;

(-e-) Energy-Star qualified hot water heaters or install those that are part of an overall Energy-Star efficient system;

(-f-) install individual or sub-metered utility meters [for electric and water](#). Rehabilitation Developments may claim sub-meter only if not already sub-metered at the time of Application;

(-g-) healthy finish materials including the use of paints, stains, adhesives, and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standard;

(-h-) install daylight sensor, motion sensors or timers on all exterior lighting and install fixtures that include automatic switching on timers or photocell controls for all lighting not intended for 24-hour operation or required for security;

(-i-) recycling service provided throughout the Compliance Period;

(-j-) for Rehabilitation Developments or Developments with 41 units or less, construction waste management system provided by contractor that meets LEEDs minimum standards;

(-k-) for Rehabilitation Developments or Developments with 41 units or less, clothes dryers vented to the outside;

(-l-) for Developments with 41 units or less, at least 25% by cost FSC certified salvaged wood products;

- (-m-) locate water fixtures within 20 feet of hot water heater;
- (-n-) ~~drip~~~~drop~~ irrigate at non-turf areas;
- (-o-) radiant barrier decking for New Construction Developments or “cool” roofing materials;
- (-p-) permanent shading devices for windows with solar orientation;
- (-q-) Energy-Star certified insulation products;
- (-r-) full cavity spray foam insulation in walls;
- (-s-) Energy-Star rated windows;
- (-t-) ~~FloorScore~~~~floor score~~ certified flooring;
- (-u-) sprinkler system with rain sensors;
- (-v-) NAUF (No Added Urea Formaldehyde) cabinets.

(II) Enterprise Green Communities (4 points). The Development must incorporate all mandatory and optional items applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at <http://www.greencommunitiesonline.org>.

(III) LEED (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e., Certified, Silver, Gold or Platinum).

(IV) ICC 700 National Green Building Standard (4 points). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NAHB Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(6) Unit Requirements.

(A) Unit Sizes. Developments proposing New Construction or Reconstruction will be required to meet the minimum sizes of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with any selection criteria. Developments proposing Rehabilitation (excluding Reconstruction) or Supportive Housing Developments will not be subject to the requirements of this subparagraph.

- (i) five hundred (500) square feet for an Efficiency Unit;
- (ii) six hundred (600) square feet for a one Bedroom Unit;
- (iii) eight hundred (800) square feet for a two Bedroom Unit;
- (iv) one thousand (1,000) square feet for a three Bedroom Unit; and
- (v) one thousand, two-hundred (1,200) square feet for a four Bedroom Unit.

(B) Unit and Development Features. Housing Tax Credit Applicants may select amenities for the score of an Application under this section, but must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values. Tax-Exempt Bond Developments must include enough amenities to meet a minimum of seven (7) points. Applications not funded with Housing Tax Credits (e.g. Direct Loan Applications) must include enough amenities to meet a minimum of four (4) points. The amenity shall be for every Unit at no extra charge to the tenant. The points selected at Application and corresponding list of amenities will be required to be identified in the LURA, and the points selected at Application must be maintained throughout the ~~Compliance Period~~~~Extended Use Period~~. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

- (i) Covered entries (0.5 point);
- (ii) Nine foot ceilings in living room and all bedrooms (at minimum) (0.5 point);
- (iii) Microwave ovens (0.5 point);
- (iv) Self-cleaning or continuous cleaning ovens (0.5 point);
- (v) Refrigerator with icemaker (0.5 point);
- (vi) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the property site (0.5 point);
- (vii) Energy-Star qualified laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (1.5 points);
- (viii) Covered patios or covered balconies (0.5 point);
- (ix) Covered parking (including garages) of at least one covered space per Unit (1.5 points);
- (x) R-15 Walls / R-30 Ceilings (rating of wall/ceiling system) (1.5 points);
- (xi) 14 SEER HVAC (or greater) for New Construction, Adaptive Reuse, and Reconstruction or radiant barrier in the attic for Rehabilitation (excluding Reconstruction) (1.5 points);
- (xii) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);
- (xiii) Desk or computer nook (0.5 point);
- (xiv) Thirty (30) year shingle or metal roofing (0.5 point); and
- (xv) Greater than 30 percent stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points).

(7) Tenant Supportive Services. The supportive services include those listed in subparagraphs (A) - ~~(Z)~~ of this paragraph. Tax Exempt Bond Developments must select a minimum of eight (8) points; Applications not funded with Housing Tax Credits (*e.g.* HOME Program or other Direct Loans) must include enough services to meet a minimum of four (4) points. The points selected and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.619 of this chapter (relating to Monitoring for Social Services) and maintained throughout the ~~Compliance Period~~Extended Use Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. The services provided should be those that will directly benefit the Target Population of the Development. Tenants must be provided written notice of the elections made by the Development Owner. No fees may be charged to the tenants for any of the services, ~~and~~ there must be adequate space for the intended services and services offered should be accessible to all (*e.g.* exercises classes must be offered in a manner that would enable a person with a disability to participate.). Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. All of these services must be provided by a person on the premises

- (A) joint use library center, as evidenced by a written agreement with the local school district (2 points);
- (B) weekday character building program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics, for example teen dating violence, drug prevention, bullying, teambuilding, internet dangers, stranger danger, etc.) (2 points);
- (C) daily transportation such as bus passes, cab vouchers, specialized van on-site (4 points);
- (D) Food pantry/common household items accessible to residents at least on a monthly basis (1 point);
- (E) GED preparation classes (shall include an instructor providing on-site coursework and exam) (2+ points);

- (F) English as a second language classes (shall include an instructor providing on-site coursework and exam) (1 point);
- (G) quarterly financial planning courses (i.e. homebuyer education, credit counseling, investing advice, retirement plans, etc.). Courses must be offered through an on-site instructor; a CD-ROM or online course is not acceptable (1 point);
- (H) annual health fair [provided by a health care professional](#)(1 point);
- (I) quarterly health and nutritional courses (1 point);
- (J) organized youth programs [or other recreational activities such as games, movies or crafts](#) offered by the Development (1 point);
- (K) scholastic tutoring (shall include weekday homework help or other focus on academics) (3 points);
- (L) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);
- (M) weekly exercise classes [\(offered at times when most residents would be likely to attend\)](#) (2 points);
- (N) twice monthly arts, crafts, and other recreational activities [\(e.g. ~~such as~~ Book Clubs and creative writing classes\)](#) (2 points);
- (O) annual income tax preparation (offered by an income tax prep service) (1 point);
- (P) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point);
- (Q) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, etc.) (1 point);
- (R) specific case management services offered by a qualified Owner or Developer or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (1 point);
- (S) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for [Elderly Developments or Developments where seniors and the service is provided for](#) Persons with Disabilities [and documentation to that effect can be provided for monitoring purposes](#) (2 points);
- (T) any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point);
- (U) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; also resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points);
- (V) external partnerships for provision of weekly ~~AA or NA~~ [substance abuse](#) meetings at the Development Site (2 points);
- (W) contracted onsite occupational or physical therapy services for [Elderly Developments seniors or Developments where the service is provided for](#) ~~and~~ Persons with Disabilities [and documentation to that effect can be provided for monitoring purposes](#) (2 points);
- (X) a full-time resident services coordinator with a dedicated office space at the Development (2 points);
- (Y) a resident-run ~~pea patch or~~ community garden [with annual soil preparation and mulch provided by the Owner and access to water](#) (1 point);and
- (Z) Development Sites located within a one mile radius of one of the following can also qualify for one (1) point:
- (i) Facility for treatment of alcohol and/or drug dependency;
 - (ii) Facility for treatment of PTSD and other significant psychiatric or psychological conditions;

- (iii) Facility providing therapeutic and/or rehabilitative services relating to mobility, sight, speech, cognitive, or hearing impairments; or
- (iv) Facility providing medical and/or psychological and/or psychiatric assistance for persons of limited financial means.

(8) Development Accessibility Requirements. All Developments must meet all specifications and accessibility requirements as identified in subparagraphs (A) - (C) of this paragraph and any other applicable state or federal rules and requirements. The accessibility requirements are further identified in the Certification of Development Owner as provided in the Application.

(A) The Development shall comply with the accessibility requirements under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), as specified under 24 C.F.R. Part 8, Subpart C, and as further defined in Chapter 1, Subchapter B of this title (relating to Accessibility Requirements). ([§§2306.6722; 2306.6730](#))

(B) New Construction (excluding New Construction of non-residential buildings) Developments where some Units are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each unit type of otherwise exempt units (*i.e.*, one bedroom one bath, two bedroom one bath, two bedroom two bath, three bedroom two bath) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level.

(C) The Development Owner is and will remain in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, ~~the Code Requirements for Housing Accessibility 2000 (or as amended from time to time) produced by the International Code Council~~ and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))

(D) All Applications proposing Rehabilitation (including Reconstruction) will be treated as Substantial Alteration, in accordance with §1.205 of this title.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 10, Subchapter C §§10.201 - 10.207, concerning the Uniform Multifamily Rules. The purpose of the proposed new sections is to provide guidance for application submission, define what would cause an applicant and application to be ineligible for consideration of multifamily funding, and explain processes regarding Board decisions. The proposed repeal of existing Subchapter C is published concurrently with this rulemaking.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be to provide additional clarity regarding requirements for application submission, define ineligible applicants and applications, and explain processes regarding Board decisions. The average cost of filing an application is between \$15,000 and \$30,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new or additional economic effect on small or micro-businesses. The average cost of filing an application is between \$15,000 and \$30,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 18, 2015 to October 15, 2015, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 15, 2015.**

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The new sections affect no other statutes, articles or codes.

§10.201 Procedural Requirements for Application Submission.

§10.202 Ineligible Applicants and Applications.

§10.203 Public Notifications.

§10.204 Required Documentation for Application Submission.

§10.205 Required Third Party Reports.

§10.206 Board Decisions.

§10.207 Waiver of Rules for Applications.

Subchapter C

Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications

§10.201.Procedural Requirements for Application Submission. The purpose of this section is to identify the procedural requirements for Application submission. Only one Application may be submitted for a Development Site in an Application Round. While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original pre-application fee (as applicable) that was paid as long as no substantive evaluation was performed by the Department. Applicants are subject to the schedule of fees as set forth in §10.901 of this chapter (relating to Fee Schedule). Unless it submits and receives Board approval for a material amendment, an Applicant that provides materials to a neighborhood organization, a local governmental body, or a state representative to secure support (including materials in a pre-application or application) may not change any unit or common amenity(ies) depicted or described in such materials or alter the size, number, or configuration of buildings reflected in such materials.

(1) General Requirements.

(A) An Applicant requesting funding from the Department must submit an Application in order to be considered for an award. An Application must be complete (including all required exhibits and supporting materials) and submitted by the required program deadline. If an Application, including the corresponding Application fee as described in §10.901 of this chapter, is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed not to have made an Application.

(B) Applying for multifamily funds from the Department is a technical process that must be followed completely. As a result of the competitive nature of some funding sources, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time, and cannot be waived except where authorized, and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Applicants should ensure that all documents are legible, properly organized and tabbed, and that digital media is fully readable by the Department. Department staff receiving an application may perform a cursory review to see if there are any glaring problems. This is a cursory review and may not be relied upon as confirmation that the Application was complete or in proper form.

(C) The Applicant must upload ~~deliver one (1) CD-R containing~~ a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. Each copy must be in a single file and individually bookmarked in the order required by the Multifamily Programs Procedures Manual. Additional files required for Application submission (e.g., Third Party Reports) outside the Uniform Application must also be uploaded to the secure web transfer server ~~may be included on the same CD-R or a separate CD-R as the Applicant sees fit. It is the responsibility of the Applicant to confirm the upload to the Department's secure web transfer server was successful and to do so in advance of the deadline. Where there are instances of computer, mystery glitches, etc. that prevents the Application from being received by the Department prior to the deadline the Application may be terminated.~~

(D) Applications must include materials addressing each and all of the items enumerated in this chapter and other chapters as applicable. If an Applicant does not believe that a specific item should be applied, the Applicant must include, in its place, a statement identifying the required item, stating that it is not being supplied, and a statement as to why the Applicant does not believe it should be required.

(2) Filing of Application for Tax-Exempt Bond Developments. Applications may be submitted to the Department as described in subparagraphs (A) and (B) of this paragraph. Multiple site applications for Tax-Exempt Bond Developments will be considered to be one Application as identified in Texas Government Code, Chapter 1372. Applications will be required to satisfy the requirements of the Qualified Allocation Plan (QAP) and Uniform Multifamily Rules in place at the time the Application is received by the Department. Applications that receive a Traditional Carryforward designation after November 15 will not be accepted until after January 2 and will be subject to the QAP and Uniform Multifamily Rules in place at the time the Application is received by the Department.

(A) Lottery Applications. For Applicants participating in the TBRB lottery for private activity bond volume cap and whereby advance notice is given regarding a Certificate of Reservation, the Applicant must submit a Notice to Submit Lottery Application form to the Department no later than the Notice to Submit Lottery Application Delivery Date described in §10.4 of this chapter (relating to Program Dates). The complete Application, accompanied by the Application Fee described in §10.901 of this chapter must be submitted no later than the Applications Associated with Lottery Delivery Date described in §10.4 of this chapter.

(B) Waiting List Applications. Applications designated as Priority 1 or 2 by the TBRB and receiving advance notice of a Certificate of Reservation for private activity bond volume cap must submit Parts 1 - 4 of the Application and the Application Fee described in §10.901 of this chapter prior to the issuance of the Certificate of Reservation by the TBRB. The remaining parts of the Application must be submitted at least seventy-five (75) days prior to the Board meeting at which the decision to issue a Determination Notice would be made. An Application designated as Priority 3 will not be accepted until after the issuer has induced the bonds, [with such documentation included in the Application](#), and is subject to the following additional timeframes:

(i) The Applicant must submit to the Department confirmation that a Certificate of Reservation from the TBRB has been issued not more than thirty (30) days after the Application is received by the Department. The Executive Director may, for good cause, approve an extension for up to an additional fifteen (15) days to submit confirmation the Certificate of Reservation has been issued. The Application will be terminated if the Certificate of Reservation is not received within the required timeframe;

(ii) The Department will require at least seventy-five (75) days to review an Application, unless Department staff can complete its evaluation in sufficient time for Board consideration. Applicants should be aware that unusual financing structures, portfolio transactions, and the need to resolve Administrative Deficiencies may require additional time to review and the prioritization of Applications will be subject to the review priority established in paragraph (6) of this subsection;

(iii) Department staff may choose to delay presentation to the Board in instances in which an Applicant is not reasonably expected to close within sixty (60) days of the issuance of a Determination Notice. [Applications that receive Traditional Carryforward will be subject to closing within the same timeframe as would be typical of the Certificate of Reservation. This will be a condition of the award and reflected in the Determination Notice.](#)

(3) Certification of Tax Exempt Bond Applications with New Docket Numbers. Applications that receive an affirmative Board Determination, but for which closing on the bonds does not occur prior to the Certificate of Reservation expiration date, and which subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. 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. The Applicant would need to receive a new docket number from the TBRB and meet the requirements described in subparagraphs (A) - (C) of this paragraph:

(A) The Application must remain unchanged, which means that at a minimum, the following cannot have changed: Site Control, total number of Units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, Target Population, scoring criteria (if TDHCA is bond issuer) or TBRB priority status including the effect on the inclusive capture rate. The entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as long as the financing structure and terms remain unchanged. Notifications under §10.203 of this chapter (relating to Public Notifications (§2306.6705(9))) are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty (30) calendar days after the date the TBRB issues the new docket number.; or

(B) the new docket number may not be issued more than four (4) months from the date the original application was withdrawn from the TBRB. The new docket number must be from the same program year as the original docket number or, for Applications that receive a new docket number from the program year that is immediately succeeding the program year of the original docket number, the requirements in clauses (i) and (ii) of this subparagraph must be met:

(i) The Applicant must certify that the Development will meet all rules and requirements in effect at the time the new docket number is issued; and

(ii) The Department must determine that the changes in the rules applicable to the program(s) under which the Application was originally awarded are not of a material nature that would necessitate a new Application and that any new forms and clarifications to the Application are of a nature that can be resolved through the Administrative Deficiency process; or

(C) if there are changes to the Application as referenced in subparagraph (A) of this paragraph or if such changes in the rules pursuant to subparagraph (B)(ii) of this paragraph are of a material nature the Applicant will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new Determination Notice to be issued. If there is public opposition but the Application remains the same pursuant to subparagraph (A) of this paragraph, a new Application will not be required to be submitted; however, the Application must be presented before the Board for consideration of the re-issuance of the Determination Notice.

(4) Withdrawal of Application. An Applicant may withdraw an Application prior to or after receiving an award of funding by submitting to the Department written notice of the withdrawal. An Applicant may be subject to a fee associated with a withdrawal if warranted and allowable under §10.901 of this chapter.

(5) Evaluation Process. Priority Applications, which shall include those Applications believed likely to be competitive, will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, Application reviews by the Department shall be prioritized based upon the likelihood that an Application will be competitive for an award based upon the set-aside, self score, received date, or other ranking factors. Thus, non-competitive or lower scoring Applications may never be reviewed. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application's priority, but no Application with a competitive ranking shall be skipped or otherwise overlooked. This initial assessment may be a high level assessment, not a full assessment. Applications deemed to be priority Applications may change from time to time. The Department shall underwrite Applications that received a full program review and remain competitive to determine financial feasibility and an appropriate funding amount. In making this determination, the Department will use §10.302 of this chapter (relating to Underwriting Rules and Guidelines) and §10.307 of this chapter (relating to Direct Loan Requirements). The Department may have an external party perform all

or part or none of the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation. Applications will undergo a previous participation review in accordance with [Chapter 1 Subchapter C §1.5](#) of this title (relating to Previous Participation ~~Reviews~~) and Development Site conditions may be evaluated through a physical site inspection by the Department or its agents.

(6) Prioritization of Applications under various Programs. This paragraph identifies how ties or other prioritization matters will be handled when dealing with de-concentration requirements, capture rate calculations, and general review priority of Applications submitted under different programs.

(A) De-concentration and Capture Rate. Priority will be established based on the earlier date associated with an Application. The dates that will be used to establish priority are as follows:

- (i) For Tax-Exempt Bond Developments, the issuance date of the Certificate of Reservation issued by the TBRB; and
- (ii) For all other Developments, the date the Application is received by the Department; and
- (iii) Notwithstanding the foregoing, after July 31, a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any Housing Tax Credit Application from the current Application Round on the waiting list.

(B) General Review Priority. Review priority for Applications under various multifamily programs will be established based on Department staff's consideration of any statutory timeframes associated with a program or Application in relation to the volume of Applications being processed. In general, those with statutory deadlines or more restrictive deadlines will be prioritized for review and processing ahead of those that are not subject to the same constraints. In general, any non-Competitive Housing Tax Credit Applications received during the competitive tax credit round will take longer to process due to the statutory constraints on the award and allocation of competitive tax credits.

(7) Administrative Deficiency Process. The purpose of the Administrative Deficiency process is to allow staff to request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. The review may occur in several phases and deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail, ~~or if an e-mail address is not provided in the Application, by facsimile~~ to the Applicant and one other contact party if identified by the Applicant in the Application. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period and may also be sent in response to reviews on post-award submissions. Responses are required to be submitted electronically as a PDF or multiple PDF files. A review of the response provided by the Applicant may reveal that issues initially identified as an Administrative Deficiency are actually determined to be beyond the scope of an Administrative Deficiency process, meaning that they in fact implicated matters of a material nature not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an Administrative Deficiency response has been received or that such response is satisfactory. Communications from staff that the response was satisfactory do not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determinations regarding the sufficiency of documentation submitted to cure an Administrative Deficiency as well as the distinction between material and non-material missing information are reserved for the Director of Multifamily Finance, Executive Director, and Board.

(A) Administrative Deficiencies for Competitive HTC Applications. Unless an extension has been timely requested and granted, if an Administrative Deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then (5 points) shall be deducted from the selection criteria score for each additional day the deficiency remains

unresolved. If Administrative Deficiencies are not resolved by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, and may not add any set-asides, increase the requested credit amount, revise the Unit mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency. (§2306.6708(b); §2306.6708) To the extent that the review of Administrative Deficiency documentation alters the score assigned to the Application, Applicants will be re-notified of their final adjusted score.

(B) Administrative Deficiencies for all other Applications or sources of funds. If Administrative Deficiencies are not resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then an Administrative Deficiency Notice Late Fee of \$500 for each business day the deficiency remains unresolved will be assessed, and the Application will not be presented to the Board for consideration until all outstanding fees have been paid. Applications with unresolved deficiencies after 5:00 p.m. on the tenth day following the date of the deficiency notice may be terminated. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination. Department staff may or may not assess an Administrative Deficiency Notice Late Fee for or terminate Applications for Tax-Exempt Bond or Direct Loan Developments during periods when private activity bond volume cap or Direct Loan funds are undersubscribed. Applicants should be prepared for additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section.

(8) Limited Priority Reviews. If, after the submission of the Application, an Applicant identifies an error in the Application that would generally be the subject of an Administrative Deficiency, the Applicant may request a limited priority review of the specific and limited issues in need of clarification or correction. The issue may not relate to the score of an Application. This limited priority review may only cover the specific issue and not the entire Application. If the limited priority review results in the identification of an issue that does indeed need correction or clarification, staff will request such through the Administrative Deficiency process as stated in paragraph (7) of this section, if deemed appropriate. A limited priority review is intended to address:

(A) clarification of issues that Department staff would have difficulty identifying due to the omission of information that the Department may have access to only through Applicant disclosure, such as a prior removal from a tax credit transaction or participation in a Development that is not identified in the previous participation portion of the Application; or

(B) technical correction of non-material information that would cause an Application deemed non-competitive to be deemed competitive and, therefore, subject to a staff review. For example, failure to mark the Nonprofit Set-Aside in an Application that otherwise included complete submission of documentation for participation in the Nonprofit Set-Aside.

(9) Challenges to Opposition for Tax-Exempt Bond Developments. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such comment is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §10.4 of this chapter. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or

determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

§10.202. Ineligible Applicants and Applications. The purpose of this section is to identify those situations in which an Application or Applicant may be considered ineligible for Department funding and subsequently terminated. If such ineligibility is determined by staff to exist, then prior to termination the Department may send a notice to the Applicant and provide them the opportunity to explain how they believe they or their Application is eligible. The items listed in this section include those requirements in §42 of the Code, Texas Government Code, Chapter 2306, and other criteria considered important by the Department, and does not represent an exhaustive list of ineligibility criteria that may otherwise be identified in applicable rules or a NOFA specific to the programmatic funding.

(1) Applicants. An Applicant shall be considered ineligible if any of the criteria in subparagraphs (A) - (N) of this paragraph apply to the Applicant. If any of the criteria apply to any other member of the Development Team, the Applicant will also be deemed ineligible unless a substitution of that Development Team member is specifically allowable under the Department's rules and sought by the Applicant or appropriate corrective action has been accepted and approved by the Department. An Applicant is ineligible if the Applicant:

(A) has been or is barred, suspended, or terminated from procurement in a state or Federal program or listed in HUD's System for Award Management (SAM); (§2306.0504)

(B) has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen (15) years preceding the Application submission;

(C) is, at the time of Application, subject to an enforcement or disciplinary action under state or federal securities law or by the NASD; subject to a federal tax lien; or the subject of a proceeding in which a Governmental Entity has issued an order to impose penalties, suspend funding, or take adverse action based on an allegation of financial misconduct or uncured violation of material laws, rules, or other legal requirements governing activities considered relevant by the Governmental Entity;

(D) has breached a contract with a public agency, and, if such breach is permitted to be cured under the contract, has been given notice of the breach and a reasonable opportunity to cure, and failed to cure that breach within the time specified in the notice of breach;

(E) has misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Developer's participation in contracts with the agency, and the amount of financial assistance awarded to the Developer by the agency;

(F) has been found by the Board to be ineligible based on a previous participation review performed in accordance with [Chapter 1 Subchapter C§1.5](#) of this title;

(G) is delinquent in any loan, fee, or escrow payments to the Department in accordance with the terms of the loan, as amended, or is otherwise in default with any provisions of such loans;

(H) has failed to cure any past due fees owed to the Department at least ten (10) days prior to the Board meeting at which the decision for an award is to be made;

(I) is in violation of a state revolving door or other standard of conduct or conflict of interest statute, including Texas Government Code, §2306.6733, or a provision of Texas Government Code, Chapter 572, in making, advancing, or supporting the Application;

(J) has previous eContracts or eCommitments that have been partially or fully deobligated during the twelve (12) months prior to the submission of the Application, and through the date of final allocation due to a failure to meet contractual obligations, and the PersonParty is on notice that such deobligation results in ineligibility under this chapter;

(K) has provided fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation or omission in an Application or Commitment, as part of a challenge to another Application or any other information provided to the Department for any reason. The conduct described in this subparagraph is also a violation of this chapter and will subject the Applicant to the assessment of administrative penalties under Texas Government Code, Chapter 2306 and this title;

(L) was the owner or Affiliate of the owner of a Department HOME or NSP-assisted rental development for which the federal affordability requirements were prematurely terminated and the affordability requirements have not re-affirmed or HOME or NSP funds repaid;

(M) fails to disclose, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, ~~voluntarily or involuntarily~~, that has terminated voluntarily or involuntarily within the past ten (10) years or plans to or is negotiating to terminate their relationship with any other affordable housing development. Failure to disclose is grounds for termination. The disclosure must identify the person or persons and development involved, the identity of each other development, and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. An Application may be terminated based upon factors in the disclosure. The Executive Director shall make an initial determination whether the person or persons should be involved in the Application within thirty (30) days after the date on which the Applicant ~~has made full disclosure~~receives a preliminary deficiency notice with respect to the Application, including providing information responsive to any supplemental Department requests. The decision of the Executive Director may be appealed in accordance with §10.902 of this chapter. ~~If the Executive Director has not made and issued such an initial determination on or before the day thirty (30) days after the date on which the Applicant has made full disclosure, including providing information responsive to any supplemental Department staff requests, the person or persons made the subject of the disclosure shall be presumptively fit to proceed in their current role or roles. Such presumption in no way affects or limits the ability of the Department staff to initiate debarment proceedings under the Department's debarment rules at a future time if it finds that facts and circumstances warranting debarment exist.~~In the Executive Director's making an initial determination or the Board's making a final determination as to a person's fitness to be involved as a principal with respect to an Application, the factors described in clauses (i) - (v) of this subparagraph shall be considered:

(i) the amount of resources in a development and the amount of the benefit received from the development;

(ii) the legal and practical ability to address issues that may have precipitated the termination or proposed termination of the relationship;

(iii) the role of the person in causing or materially contributing to any problems with the success of the development;

(iv) the person's compliance history, including compliance history on other developments; and

(v) any other facts or circumstances that have a material bearing on the question of the person's ability to be a compliant and effective participant in their proposed role as described in the Application; or

(N) is found to have participated in the dissemination of misinformation about affordable housing and the persons it serves or about a competing Applicant that would likely have the effect of fomenting opposition to an Application where such opposition is not based in substantive and legitimate concerns that do not implicate potential violations of fair housing laws. Nothing herein shall be construed or effectuated in a manner to deprive a person of their right of free speech, but it is a requirement of those who voluntarily choose to participate in this program that they refrain from participating in the above-described inappropriate behaviors. Applicants may inform Department staff about activities potentially prohibited by this provision outside of the [Third Party Request for Administrative Deficiency challenge](#) process described in §11.10 of this title (relating to [Third Party Request for Administrative Deficiency for Challenges of Competitive HTC Applications](#)). An Applicant submitting documentation of a potential violation may not appeal any decision that is made with regard to another competing Applicant's application.

(2) Applications. An Application shall be ineligible if any of the criteria in subparagraphs (A) - (C) of this paragraph apply to the Application:

(A) a violation of Texas Government Code, §2306.1113, exists relating to Ex Parte Communication. An ex parte communication occurs when an Applicant or Person representing an Applicant initiates substantive contact (other than permitted social contact) with a board member, or vice versa, in a setting other than a duly posted and convened public meeting, in any manner not specifically permitted by Texas Government Code, §2306.1113(b). Such action is prohibited. For Applicants seeking funding after initial awards have been made, such as waiting list Applicants, the ex parte communication prohibition remains in effect so long as the Application remains eligible for funding. The ex parte provision does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may, or will be present; provided that no matters related to any Application being considered by the Board may be discussed. An attempted but unsuccessful prohibited ex parte communication, such as a letter sent to one or more board members but not opened, may be cured by full disclosure in a public meeting, and the Board may reinstate the Application and establish appropriate consequences for cured actions, such as denial of the matters made the subject to the communication.

(B) the Application is submitted after the Application submission deadline (time or date); is missing multiple parts of the Application; or has a Material Deficiency; or

(C) for any Development utilizing Housing Tax Credits or Tax-Exempt Bonds:

(i) at the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been a member of the Board or employed by the Department as the Executive Director, Chief of Staff, General Counsel, a Deputy Executive Director, the Director of Multifamily Finance, the Chief of Compliance, the Director of Real Estate Analysis, a manager over the program for which an Application has been submitted, or any person exercising such responsibilities regardless of job title; or (§2306.6703(a)(1): [§2306.6733](#)):

(ii) the Applicant proposes to replace in less than fifteen (15) years any private activity bond financing of the Development described by the Application, unless the exceptions in §2306.6703(a)(2) of the Texas Government Code are met.

§10.203. Public Notifications (§2306.6705(9)). A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications must not be older than three (3) months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments notifications and proof thereof must not be older than three (3) months prior to

the date Parts 5 and 6 of the Application are submitted, and for all other Applications no older than three (3) months prior to the date the Application is submitted. If notifications were made in order to satisfy requirements of pre-application submission (if applicable to the program) for the same Application, then no additional notification is required at Application. However, re-notification is required by all Applicants who have submitted a change from pre-application to Application that reflects a total Unit increase of greater than 10 percent or a 5 percent increase in density (calculated as units per acre) as a result of a change in the size of the Development Site. In addition, should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official.

(1) Neighborhood Organization Notifications.

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the Full Application Delivery Date and whose boundaries include the proposed Development Site.

(B) The Applicant must list, in the certification form provided in the Application, all Neighborhood Organizations on record with the county or state as of 30 days prior to the Full Application Delivery Date and whose boundaries include the proposed Development Site as of the submission of the Application.

(2) Notification Recipients. No later than the date the Application is submitted, notification must be sent to all of the persons or entities identified in subparagraphs (A) - (H) of this paragraph. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with return receipt requested or similar tracking mechanism in the format required in the Application Notification Template provided in the Application. Evidence of notification is required in the form of a certification provided in the Application. The Applicant is encouraged to retain proof of delivery in the event it is requested by the Department. Evidence of proof of delivery is demonstrated by a signed receipt for mail or courier delivery and confirmation of receipt by recipient for fax and e-mail. Officials to be notified are those officials in office at the time the Application is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

(A) Neighborhood Organizations on record with the state or county as of 30 days prior to the Full Application Delivery Date whose boundaries include the Development Site;

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

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

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

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

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

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

(H) State Senator and State Representative of the districts whose boundaries include the Development Site.

(3) Contents of Notification.

(A) The notification must include, at a minimum, all information described in clauses (i) - (vi) of this subparagraph.

- (i) the Applicant's name, address, individual contact name, and phone number;
- (ii) the Development name, address, city and county;
- (iii) a statement indicating the program(s) to which the Applicant is applying with the Texas Department of Housing and Community Affairs;
- (iv) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse or Rehabilitation;
- (v) the physical type of Development being proposed (e.g. single family homes, duplex, apartments, townhomes, high-rise etc.); and
- (vi) the total number of Units proposed and total number of low-income Units proposed.

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

§10.204. Required Documentation for Application Submission. The purpose of this section is to identify the documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. If any of the documentation indicated in this section is not resolved, clarified or corrected to the satisfaction of the Department through either original Application submission or the Administrative Deficiency process, the Application will be terminated. Unless stated otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program. The Application may include, or Department staff may request, documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development.

(1) Certification of Development Owner. This form, as provided in the Application, must be executed by the Development Owner and address the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification, that they have given it with all required authority and with actual knowledge of the matters certified. Applicants must read the certification carefully as it contains certain construction and Development specifications that each Development must meet.

(A) The Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or, if no local building codes are in place, then to the most recent version of the International Building Code.

(B) This Application and all materials submitted to the Department constitute records of the Department subject to Texas Government Code, Chapter 552, and the Texas Public Information Act.

(C) All representations, undertakings and commitments made by Applicant in the Application process for Development assistance expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment by the Department. If any such representations, undertakings and commitments concern or relate to the

ongoing features or operation of the Development, they shall each and all shall be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, in accordance with the Land Use Restriction Agreement.

(D) The Development Owner has read and understands the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.

(E) The Development Owner agrees to implement a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Development Owner will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609 or, if the Development does not have Housing Tax Credits, release of retainage.

(F) The Applicant will attempt to ensure that at least 30 percent of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Texas Government Code, §2306.6734.

(G) The Development Owner will affirmatively market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will affirmatively market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.

(H) The Development Owner will comply with any and all notices required by the Department.

[\(I\) If the Development has an existing LURA with the Department, the Development Owner will comply with the existing restrictions.](#)

(2) Applicant Eligibility Certification. This form, as provided in the Application, must be executed by any individuals required to be listed on the organizational chart and also identified in subparagraphs (A) - (D) below. The form identifies the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §10.202 of this chapter (relating to Ineligible Applicants and Applications).

(A) for for-profit corporations, any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder;

(B) for non-profit corporations or governmental instrumentalities (such as housing authorities), any officer authorized by the board, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, the Audit committee chair, the Board chair, and anyone identified as the Executive Director or equivalent;

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

(D) for limited liability companies, all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

(3) Architect Certification Form. This form, as provided in the Application, must be executed by the Development engineer, an accredited architect or ~~Department-approved~~ Third Party accessibility specialist. (§2306.6722; ~~and~~ §2306.6730)

(4) Notice, Hearing, and Resolution for Tax-Exempt Bond Developments. In accordance with Texas Government Code, §2306.67071, the following actions must take place with respect to the filing of an Application and any Department awards for a Tax-Exempt Bond Development.

(A) Prior to submission of an Application to the Department, an Applicant must provide notice of the intent to file the Application in accordance with §10.203 of this chapter (relating to Public Notifications (§2306.6705(9))).

(B) The Governing Body of a municipality must hold a hearing if the Development Site is located within a municipality or the extra territorial jurisdiction (ETJ) of a municipality. The Governing Body of a county must hold a hearing unless the Development Site is located within a municipality. For Development Sites located in an ETJ the county and municipality must hold hearings; however, the county and municipality may arrange for a joint hearing. The purpose of the hearing(s) must be to solicit public input concerning the Application or Development and the hearing(s) must provide the public with such an opportunity. The Applicant may be asked to substantively address the concerns of the public or local government officials.

(C) An Applicant must submit to the Department a resolution of no objection from the applicable Governing Body. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution, a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any FFAST form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds. For an Application with a Development Site that is:

- (i) Within a municipality, the Applicant must submit a resolution from the Governing Body of that municipality;
- (ii) Within the extraterritorial jurisdiction (ETJ) of a municipality, the Applicant must submit both:
 - (I) a resolution from the Governing Body of that municipality; and
 - (II) a resolution from the Governing Body of the county; or
- (iii) Within a county and not within a municipality or the ETJ of a municipality, a resolution from the Governing Body of the county.

(D) For purposes of meeting the requirements of subparagraph (C) of this paragraph, the resolution(s) must be submitted no later than the Resolutions Delivery Date described in §10.4 of this chapter (relating to Program Dates). An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Applicants should ensure that the resolutions all have the appropriate references and certifications or the Application may be terminated. The resolution(s) must certify that:

- (i) Notice has been provided to the Governing Body in accordance with Texas Government Code, §2306.67071(a) and subparagraph (A) of this paragraph;
- (ii) The Governing Body has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed Development;
- (iii) The Governing Body has held a hearing at which public comment may be made on the proposed Development in accordance with Texas Government Code, §2306.67071(b) and subparagraph (B) of this paragraph; and

(iv) After due consideration of the information provided by the Applicant and public comment, the Governing Body does not object to the proposed Application.

(5) Designation as Rural or Urban.

(A) Each Application must identify whether the Development Site is located in an Urban Area or Rural Area of a Uniform State Service Region. The Department shall make available a list of Places meeting the requirements of Texas Government Code, §2306.004(28-a)(A) and (B), for designation as a Rural Area and those that are an Urban Area in the Site Demographics Characteristics Report. Some Places are municipalities. For any Development Site located in the ETJ of a municipality and not in a Place, the Application shall have the Rural Area or Urban Area designation of the municipality whose ETJ within which the Development Site is located. For any Development Site not located within the boundaries of a Place or the ETJ of a municipality, the applicable designation is that of the closest Place.

(B) Certain areas located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area can request a Rural designation from the Department for purposes of receiving an allocation Housing Tax Credits (2306.6740). In order to apply for such a designation, a letter must be submitted from a duly authorized official of the political subdivision or census designated place addressing the factors outlined in clauses (i) – (vi) of this subparagraph. Photographs and other supporting documentation are strongly encouraged. In order for the area to be designated Rural by the Department for the 2016 Application Round, such requests must be made no later than December 15, 2015. If staff is able to affirm the findings outlined in the request, the Rural designation will be granted without further action and will remain in effect until such time that the population as described in clause (i) of this subparagraph exceeds 25,000. In the event that staff is unable to affirm the information contained in the request, a recommendation for denial will be presented to the Board.

(i) The population of the political subdivision or census designated place does not exceed 25,000;

(ii) The characteristics of the political subdivision or census designated place and how those differ from the characteristics of the area(s) with which it shares a contiguous boundary;

(iii) The percentage of the total border of the political subdivision or census designated place that is contiguous with other political subdivisions or census designated places designated as urban. For purposes of this assessment, less than fifty percent contiguity with urban designated places is presumptively rural in nature;

(iv) The political subdivision or census designated place contains a significant number of unimproved roads or relies on unimproved roads to connect it to other places;

(v) The political subdivision or census designated place lacks major amenities commonly associated with urban or suburban areas; and

(vi) The boundaries of the political subdivision or census designated place contain, or are surrounded by, significant areas of undeveloped or agricultural land. For purposes of this assessment, significant being more than one-third of the total surface area of political subdivision/census designated place, or a minimum of 1,000 acres immediately contiguous to the border.

(6) Experience Requirement. Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application, unless an experience certificate was issued by the Department in 2014 or 2015 which may be submitted as acceptable evidence of this requirement. Experience of multiple parties may not be aggregated to meet this requirement.

(A) A Principal of the Developer, Development Owner, or General Partner must establish that they have experience in the development and placement in service of 150 units or more. Acceptable documentation to meet this requirement shall include any of the items in clauses (i) - (ix) of this subparagraph:

- (i) American Institute of Architects (AIA) Document (A102) or (A103) 2007 - Standard Form of Agreement between Owner and Contractor;
- (ii) AIA Document G704--Certificate of Substantial Completion;
- (iii) AIA Document G702--Application and Certificate for Payment;
- (iv) Certificate of Occupancy;
- (v) IRS Form 8609, (only one per development is required);
- (vi) HUD Form 9822;
- (vii) Development agreements;
- (viii) Partnership agreements; or
- (ix) other documentation satisfactory to the Department verifying that a Principal of the Development Owner, General Partner, or Developer has the required experience.

(B) The names on the forms and agreements in subparagraph (A)(i) - (ix) of this paragraph must reflect that the individual seeking to provide experience is a Principal of the Development Owner, General Partner, or Developer as listed in the Application. For purposes of this requirement any individual attempting to use the experience of another individual or entity must demonstrate they had the authority to act on their behalf that substantiates the minimum 150 unit requirement.

(C) Experience may not be established for a Person who at any time within the preceding three years has been involved with affordable housing in another state in which the Person or Affiliate has been the subject of issued IRS Form 8823 citing non-compliance that has not been or is not being corrected with reasonable due diligence.

(D) If a Principal is determined by the Department to not have the required experience, an acceptable replacement for that Principal must be identified prior to the date the award is made by the Board.

(E) Notwithstanding the foregoing, no person may be used to establish such required experience if that Person or an Affiliate of that Person would not be eligible to be an Applicant themselves.

(7) Financing Requirements.

(A) Non-Department Debt Financing. Interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department must be included in the Application. For any Development that is a part of a larger development plan on the same site, the Department may request and evaluate information related to the other components of the development plan in instances in which the financial viability of the Development is in whole or in part dependent upon the other portions of the development plan. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required pursuant to this chapter or elected in accordance with Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be imposed by the LURA and monitored for compliance. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) and (ii) of this subparagraph.

- (i) Financing is in place as evidenced by:
- (I) a valid and binding loan agreement; and
 - (II) a valid recorded deed(s) of trust lien on the Development in the name of the Development Owner as grantor covered by a lender's policy of title insurance;
- (ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money must:
- (I) have been signed by the lender;
 - (II) be addressed to the Development Owner or Affiliate;
 - (III) for the permanent loan, include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization;
 - (IV) include anticipated interest rate, including the mechanism for determining the interest rate;
 - (V) include any required Guarantors, if known;
 - (VI) include the principal amount of the loan; and
 - (VII) include and address any other terms and conditions applicable to the financing. The term sheet may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits, if applicable; or
- (iii) For Developments proposing to refinance an existing USDA Section 515 loan, a letter from the USDA confirming receipt of the loan transfer application.

(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified in the Application. Applicants must provide evidence that an application for such gap financing has been made. Acceptable documentation may include a letter from the funding entity confirming receipt of an application or a term sheet from the lending agency which clearly describes the amount and terms of the financing. Other Department funding requested with Housing Tax Credit Applications must be on a concurrent funding period with the Housing Tax Credit Application, and no term sheet is required for such a request. Permanent loans must include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization or for non-amortizing loan structures a term of not less than thirty (30) years.

(C) Owner Contributions. If the Development will be financed in part by a capital contribution by the General Partner, Managing General Partner, any other partner that is not a partner providing the syndication equity, a guarantor or a Principal in an amount that exceeds 5 percent of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or repository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds remain readily available at Commitment. Regardless of the amount, all capital contributions other than syndication equity will be added to the Deferred Developer Fee for feasibility purposes under §10.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless the Development is a Supportive Housing Development, the Development is not supported with Housing Tax Credits, or the ownership structure includes a nonprofit organization with a history of fundraising to support the development of affordable housing.

(D) Equity Financing. (§2306.6705(2) and (3)) If applicable to the program, the Application must include a term sheet from a syndicator that, at a minimum, includes:

- (i) an estimate of the amount of equity dollars expected to be raised for the Development;
- (ii) the amount of Housing Tax Credits requested for allocation to the Development Owner;
- (iii) pay-in schedules;

- (iv) anticipated developer fees paid during construction; and
- (v) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis.

(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes the complete financing plan for the Development, including but not limited to, the sources and uses of funds; construction, permanent and bridge loans, rents, operating subsidies, and replacement reserves; and the status of commitments for all funding sources. For applicants requesting HOME funds, Match in the amount of at least 5 percent of the HOME funds requested must be documented with a letter from the anticipated provider of Match indicating the provider's willingness and ability to make a financial commitment should the Development receive an award of HOME funds. The information provided must be consistent with all other documentation in the Application.

(8) Operating and Development Cost Documentation.

(A) 15-year Pro forma. All Applications must include a 15-year pro forma estimate of operating expenses, in the form provided by the Department. Any "other" debt service included in the pro forma must include a description.

(B) Utility Allowances. This exhibit, as provided in the Application, must be submitted along with documentation from the source of the utility allowance estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate and must comply with the requirements of §10.614 of this chapter (relating to Utility Allowances). Where the Applicant uses any method that requires Department review, such review must have been requested prior to submission of the Application.

(C) Operating Expenses. This exhibit, as provided in the Application, must be submitted indicating the anticipated operating expenses associated with the Development. Any expenses noted as "other" in any of the categories must be identified. "Miscellaneous" or other nondescript designations are not acceptable.

(D) Rent Schedule. This exhibit, as provided in the Application, must indicate the type of Unit designation based on the Unit's rent and income restrictions. The rent and utility limits available at the time the Application is submitted should be used to complete this exhibit. Gross rents cannot exceed the maximum rent limits unless documentation of project-based rental assistance is provided. The unit mix and net rentable square footages must be consistent with the site plan and architectural drawings. For Units restricted in connection with Direct Loans, the restricted Units will generally be designated "floating" unless specifically disallowed under the program specific rules. For Applications that propose utilizing HOME funds, at least 90 percent of the Units restricted in connection with the HOME program must be available to families whose incomes do not exceed 60 percent of the Area Median Income.

(E) Development Costs. This exhibit, as provided in the Application, must include the contact information for the person providing the cost estimate and must meet the requirements of clauses (i) and (ii) of this subparagraph.

(i) Applicants must provide a detailed cost breakdown of projected Site Work costs (excluding site amenities), if any, prepared by a Third Party engineer or cost estimator. If Site Work costs (excluding site amenities) exceed \$15,000 per Unit and are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis.

(ii) If costs for Off-Site Construction are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the Off-Site Cost Breakdown

prepared by a Third Party engineer must be provided. The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes. If any Off-Site Construction costs are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those costs should be included in Eligible Basis. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the Development matches the fact pattern in PLR 200916007.

(F) Rental Assistance/Subsidy. (§2306.6705(4)) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds or proof of application for such funds must be provided. Such documentation shall, at a minimum, identify the source and annual amount of the funds, the number of units receiving the funds, and the term and expiration date of the contract or other agreement.

(G) Occupied Developments. The items identified in clauses (i) - (vi) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins. If the current property owner is unwilling to provide the required documentation then a signed statement from the Applicant attesting to that fact must be submitted. If one or more of the items described in clauses (i) - (vi) of this subparagraph is not applicable based upon the type of occupied structures on the Development Site, the Applicant must provide an explanation of such non-applicability. Applicant must submit:

(i) at least one of the items identified in subclauses (I) - (IV) of this clause:

(I) historical monthly operating statements of the Existing Residential Development for twelve (12) consecutive months ending not more than three (3) months from the first day of the Application Acceptance Period;

(II) the two (2) most recent consecutive annual operating statement summaries;

(III) the most recent consecutive six (6) months of operating statements and the most recent available annual operating summary; or

(IV) all monthly or annual operating summaries available; and

(ii) a rent roll not more than six (6) months old as of the first day the Application Acceptance Period that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and tenant names or vacancy;

(iii) a written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))

(iv) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))

(v) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or to ensure compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and

(vi) if applicable, evidence that the relocation plan has been submitted to the appropriate legal or governmental agency. (§2306.6705(6))

(9) Architectural Drawings. All Applications must include the items identified in subparagraphs (A) - (D) of this paragraph, unless specifically stated otherwise, and must be consistent with all applicable exhibits throughout the Application. The drawings must have a legible scale and show the dimensions of each perimeter wall and floor heights.

- (A) A site plan which:
- (i) includes a unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application;
 - (ii) identifies all residential and common buildings;
 - (iii) clearly delineates the flood plain boundary lines and shows all easements;
 - (iv) if applicable, indicates possible placement of detention/retention pond(s); and
 - (v) indicates the location of the parking spaces;
- (B) Building floor plans must be submitted for each building type. Applications for Rehabilitation (excluding Reconstruction) are not required to submit building floor plans unless the floor plan changes. Applications for Adaptive Reuse are only required to include building plans delineating each Unit by number and type. Building floor plans must include square footage calculations for balconies, breezeways, corridors and any other areas not included in net rentable area;
- (C) Unit floor plans for each type of Unit must be included in the Application and must include the square footage for each type of Unit. Applications for Adaptive Reuse are only required to include Unit floor plans for each distinct typical Unit type such as one-bedroom, two-bedroom and for all Unit types that vary in Net Rentable Area by 10 percent from the typical Unit; and
- (D) Elevations must be submitted for each [side of each](#) building type [\(or include a statement that all other sides are of similar composition as the front\)](#) and include a percentage estimate of the exterior composition and proposed roof pitch. Applications for Rehabilitation and Adaptive Reuse may submit photographs if the Unit configurations are not being altered and post-renovation drawings must be submitted if Unit configurations are proposed to be altered.

(10) Site Control.

- (A) Evidence that the Development Owner has Site Control must be submitted. If the evidence is not in the name of the Development Owner, then an Affiliate of the Development Owner must have Site Control that does not expressly preclude an ability to assign the Site Control to the Development Owner or another party. All of the sellers of the proposed Property for the thirty-six (36) months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development Team must be identified at the time of Application. The Department may request documentation at any time after submission of an Application of the Development Owner's ability to compel title and the Development Owner must be able to promptly provide such documentation or the Application, award, or Commitment may be terminated. The Department acknowledges and understands that the Property may have one or more encumbrances at the time of Application submission and the Department will use a reasonableness standard in determining whether such encumbrance is likely to impede an Applicant's ability to meet the program's requirements. Tax-Exempt Bond Lottery Applications must have Site Control valid through December 1 of the prior program year with the option to extend through March 1 of the current program year.
- (B) In order to establish Site Control, one of the items described in clauses (i) - (iii) of this subparagraph must be provided. In the case of land donations, Applicants must demonstrate that the entity donating the land has Site Control as evidenced through one of the items described in clauses (i) - (iii) of this subparagraph or other documentation acceptable to the Department.
- (i) a recorded warranty deed with corresponding executed settlement statement (or functional equivalent for an existing lease with at least forty-five (45) years remaining); or

(ii) a contract or option for lease with a minimum term of forty-five (45) years that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date; or

(iii) a contract for sale or an option to purchase that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date;

(C) If the acquisition can be characterized as an identity of interest transaction, as described in §10.302 of this chapter, then the documentation as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.

(11) Zoning. (§2306.6705(5)) Acceptable evidence of zoning for all Developments must include one of subparagraphs (A) - (D) of this paragraph. [In instances where annexation of a Development Site occurs while the Application is under review, the Applicant must submit evidence of appropriate zoning with the Commitment or Determination Notice.](#)

(A) No Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision that has no zoning.

(B) Zoning Ordinance in Effect. The Application must include a letter from a local government official with appropriate jurisdiction stating the Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development.

(C) Requesting a Zoning Change. The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate is in the process of seeking a zoning change, that a zoning application was received by the political subdivision, and that the jurisdiction received a release agreeing to hold the political subdivision and all other parties harmless in the event the appropriate zoning is denied. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice.

(D) Zoning for Rehabilitation Developments. The Application must include documentation of current zoning. If the Property is currently conforming but with an overlay that would make it a non-conforming use as presently zoned, the Application must include a letter from a local government official with appropriate jurisdiction which addresses the items in clauses (i) - (iv) of this subparagraph:

- (i) a detailed narrative of the nature of non-conformance;
- (ii) the applicable destruction threshold;
- (iii) Owner's rights to reconstruct in the event of damage; and
- (iv) penalties for noncompliance.

(12) Title Commitment/Policy. A title commitment or title policy must be submitted that includes a legal description that is consistent with the Site Control. If the title commitment or policy is dated more than six (6) months prior to the beginning of the Application Acceptance Period, then a letter from the title company indicating that nothing further has transpired during the six-month period on the commitment or policy must be submitted.

(A) The title commitment must list the name of the Development Owner as the proposed insured and lists the seller or lessor as the current owner of the Development Site.

(B) The title policy must show that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner.

(13) Ownership Structure.

(A) Organizational Charts. A chart must be submitted that clearly illustrates the complete organizational structure of the final proposed Development Owner and of any Developer or Guarantor, identifying all Principals thereof and providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner or the Developer or Guarantor, as applicable, whether directly or through one or more subsidiaries. Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must be included in this exhibit and trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries.

(B) Previous Participation. Evidence must be submitted that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, has provided a copy of the completed ~~and-executed-Previous Participation and Background Certification~~ Form to the Department. Individual Principals of such entities identified on the organizational chart must provide the Previous Participation ~~and-Background Certification~~ Form, unless excluded from such requirement pursuant to [Chapter 1 Subchapter C §1.5](#) of this title. ~~Any~~ Person (regardless of any Ownership interest or lack thereof) receiving more than 10 percent of the Developer ~~f~~Fee is also required to submit this document. The form must include a list of all developments that are, or were, previously under ownership or Control of the Applicant and/or each Principal, including any Person providing the required experience. All participation in any Department funded or monitored activity, including non-housing activities, as well as Housing Tax Credit developments or other programs administered by other states using state or federal programs must be disclosed. The Previous Participation ~~and-Background Certification~~ Form will authorize the parties overseeing such assistance to release compliance histories to the Department.

(14) Nonprofit Ownership. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner shall submit the documentation identified in subparagraph (A) or (B) of this paragraph as applicable, [and subparagraph \(C\) of this paragraph.](#)

(A) Competitive HTC Applications. Applications for Competitive Housing Tax Credits involving a §501(c)(3) or (4) nonprofit General Partner and which meet the Nonprofit Set-Aside requirements, must submit all of the documents described in this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609. (§2306.6706) Applications that include an affirmative election to not be treated under the set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit only need to submit the documentation in subparagraph (B) of this paragraph.

- (i) An IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity;
- (ii) The Nonprofit Participation exhibit as provided in the Application, including a list of the names and contact information for all board members, directors, and officers;
- (iii) A Third Party legal opinion stating:
 - (I) that the nonprofit organization is not affiliated with or Controlled by a for-profit organization and the basis for that opinion;
 - (II) that the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside pursuant to §42(h)(5) of the Code and the basis for that opinion;
 - (III) that one of the exempt purposes of the nonprofit organization is to provide low-income housing;

(IV) that the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board;

(V) that the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement;

(iv) a copy of the nonprofit organization's most recent financial statement as prepared by a Certified Public Accountant; and

(v) evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:

(I) in this state, if the Development is located in a Rural Area; or

(II) not more than ninety (90) miles from the Development, if the Development is not located in a Rural Area.

(B) All Other Applications. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner must submit an IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity and the Nonprofit Participation exhibit as provided in the Application. If the Application involves a nonprofit that is not a §501(c)(3) or (4), then they must disclose in the Application the basis of their nonprofit status.

[\(C\) For all Applications. Any Applicant proposing a Development with a property tax exemption must include an attorney statement and documentation supporting the amount, basis for qualification, and the reasonableness of achieving the exemption under the Property Tax Code. A proposed Payment in Lieu of Tax \("PILOT"\) agreement must be documented as being reasonably achievable.](#)

§10.205. Required Third Party Reports. The Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), Market Analysis, and the Site Design and Development Feasibility Report must be submitted no later than the Third Party Report Delivery Date as identified in §10.4 of this chapter (relating to Program Dates). For Competitive HTC Applications, the Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), the Site Design and Development Feasibility Report, and the Primary Market Area map (with definition based on census tracts, zip codes or census place in electronic format) must be submitted no later than the Full Application Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) and the Market Analysis must be submitted no later than the Market Analysis Delivery Date as identified in §11.2 of this title. For Competitive HTC Applications, if the reports, in their entirety, are not received by the deadline, the Application will be terminated. An electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name and Development location are required. All Third Party reports must be prepared in accordance with Subchapter D of this chapter (relating to Underwriting and Loan Policy). The Department may request additional information from the report provider or revisions to the report as needed. In instances of non-response by the report provider, the Department may substitute in-house analysis. The Department is not bound by any opinions expressed in the report.

(1) Environmental Site Assessment. This report, required for all Developments and prepared in accordance with the requirements of §10.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines), must not be dated more than twelve (12) months prior to the first day of the Application Acceptance Period. If this timeframe is exceeded, then a letter or updated report must be submitted, dated not more than three (3) months prior to the first day of the Application Acceptance Period from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report.

(A) Developments funded by USDA will not be required to supply this information; however, it is the Applicant's responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(B) If the report includes a recommendation that an additional assessment be performed, then a statement from the Applicant must be submitted with the Application indicating those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations, then evidence indicating the mitigating recommendations have been carried out must be submitted at cost certification.

(2) Market Analysis. The Market Analysis, required for all Developments and prepared in accordance with the requirements of §10.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If the report is older than six (6) months, but not more than twelve (12) months prior to the first day of the Application Acceptance Period, the Qualified Market Analyst that prepared the report may provide a statement that reaffirms the findings of the original Market Analysis. The statement may not be dated more than six (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original Market Analysis.

(A) The report must be prepared by a Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §10.303 of this chapter;

(B) Applications in the USDA Set-Aside proposing Rehabilitation with residential structures at or above 80 percent occupancy at the time of Application submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §10.304 of this chapter (relating to Appraisal Rules and Guidelines), will satisfy the requirement for a Market Analysis; however, the Department may request additional information as needed. (§2306.67055; §42(m)(1)(A)(iii))

(C) It is the responsibility of the Applicant to ensure that this analysis forms a sufficient basis for the Applicant to be able to use the information obtained to ensure that the Development will comply with fair housing laws.

(3) Property Condition Assessment (PCA). This report, required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Developments and prepared in accordance with the requirements of §10.306 of this chapter (relating to Property Condition Assessment Guidelines), must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. If the report is older than six (6) months, but not more than twelve (12) months prior to the first day of the Application Acceptance Period, the report provider may provide a statement that reaffirms the findings of the original PCA. The statement may not be dated more than six (6) months prior to the first day of the Application Acceptance Period and must be accompanied by the original PCA. For Developments which require a capital needs assessment from USDA the capital needs assessment may be substituted and may be more than six (6) months old, as long as USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §10.306 of this chapter. All Rehabilitation Developments financed with Direct Loans must also submit a capital needs assessment estimating the useful life of each major system. This assessment must include a comparison between the local building code and the International Existing Building Code of the International Code Council.

(4) Appraisal. This report, required for all Rehabilitation Developments and prepared in accordance with the requirements of §10.304 of this chapter, is required for any Application claiming any portion of the building acquisition in Eligible Basis, and Identity of Interest transactions pursuant to Subchapter D of this chapter, must not be dated more than six (6) months prior to the first day of the Application Acceptance Period. For Developments that require an appraisal from USDA, the appraisal may be more than six (6) months old, as long as USDA has confirmed in writing that the existing appraisal is still acceptable.

(5) Site Design and Development Feasibility Report. This report, compiled by the Applicant or Third Party Consultant, and prepared in accordance with this paragraph, which reviews site conditions and development requirements of the Development and Development Site, is required for any New Construction or Reconstruction Development.

(A) Executive Summary as a narrative overview of the Development in sufficient detail that would help a reviewer of the Application better understand the site, the site plan, off site requirements (including discussion of any seller contributions or reimbursements), any other unique development requirements, and their impact on Site Work and Off Site Construction costs. The summary should contain a general statement regarding the level of due diligence that has been done relating to site development (including discussions with local government development offices). Additionally, the overview should contain a summary of zoning requirements, subdivision requirements, property identification number(s) and millage rates for all taxing jurisdictions, development ordinances, fire department requirements, site ingress and egress requirements, building codes, and local design requirements impacting the Development (include website links but do not attach copies of ordinances). Careful focus and attention should be made regarding any atypical items materially impacting costs.

(B) Survey or current plat as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey or Category 1B - Standard Land Boundary Survey). Surveys may not be older than twelve (12) months from the beginning of the Application Acceptance Period. Plats must include evidence that it has been recorded with the appropriate local entity and that, as of the date of submission, it is the most current plat. Applications proposing noncontiguous single family scattered sites are not required to submit surveys or plats at Application, but this information may be requested during the Real Estate Analysis review.

(C) Preliminary site plan prepared by the civil engineer with a statement that the plan materially adheres to all applicable zoning, site development, and building code ordinances. The site plan must identify all structures, site amenities, parking spaces (include handicap spaces and ramps) and driveways, topography (using either existing seller topographic survey or U.S. Geological Survey (USGS)/other database topography), site drainage and detention, water and waste water utility tie-ins, general placement of retaining walls, set-back requirements, and any other typical or locally required items. Off-site improvements required for utilities, detention, access or other requirement must be shown on the site plan or ancillary drawings.

(D) Architect or civil engineer prepared statement describing the entitlement, site development permitting process and timing, building permitting process and timing, and an itemization specific to the Development of total anticipated impact, site development permit, building permit, and other required fees.

§10.206. Board Decisions (§§2306.6725(c); 2306.6731; and 42(m)(1)(A)(iv)). The Board's decisions regarding awards shall be based upon the Department's and the Board's evaluation of the proposed Developments' consistency with, and fulfillment of, the criteria and requirements set forth in this chapter, Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) and other applicable Department rules. The Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause, and the reasons for any decision that conflicts with the recommendations made by Department staff. Good cause includes the Board's decision to apply discretionary factors where authorized. The Department reserves the right to reduce the amount of funds requested in an Application, condition the award recommendation or terminate the Application based on the Applicant's inability to demonstrate compliance with program requirements.

§10.207. Waiver of Rules for Applications.

(a) General Waiver Process. This waiver section is applicable only to Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions), Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules for Applications), Subchapter E of this chapter (relating to Post Award and Asset Management Requirements), and Subchapter G of this chapter (relating to Fee Schedule, Appeals, and Other Provisions), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), and Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules). An Applicant may request a waiver in writing at or prior to the submission of the pre-application (if applicable) or the Application or subsequent to an award. Waiver requests will not be accepted between submission of the Application and any award for the Application. Where appropriate, the Applicant is encouraged to submit with the requested waiver any plans for mitigation or alternative solutions. Any such request for waiver must be specific to the unique facts and circumstances of an actual proposed Development and must be submitted to the Department in the format required in the Multifamily Programs Procedures Manual. Any waiver, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved. Waiver requests that are limited to Development design and construction elements not specifically required in Texas Government Code, Chapter 2306 must meet the requirements of paragraph (1) of this subsection. All other waiver requests must meet the requirements of paragraph (2) of this subsection.

(1) The waiver request must establish good cause for the Board to grant the waiver which may include limitations of local building or zoning codes, limitations of existing building structural elements for Adaptive Reuse or Rehabilitation (excluding Reconstruction) Developments, required amenities or design elements in buildings designated as historic structures that would conflict with retaining the historic nature of the building(s), or provisions of the design element or amenity that would not benefit the tenants due to limitations of the existing layout or design of the units for Adaptive Reuse or Rehabilitation (excluding Reconstruction) Developments. Staff may recommend the Board's approval for such a waiver if the Executive Director, ~~the Deputy Executive Director with oversight of multifamily programs, and Deputy Executive Director with oversight of asset management~~ finds that the Applicant has established good cause for the waiver. A recommendation for a waiver may be subject to the Applicant's provision of alternative design elements or amenities of a similar nature or that serve a similar purpose. Waiver requests for items that were elected to meet scoring criteria or where the Applicant was provided a menu of options to meet the requirement will not be considered under this paragraph.

(2) The waiver request must establish how it is necessary to address circumstances beyond the Applicant's control and how, if the waiver is not granted, the Department will not fulfill some specific requirement of law. In this regard, the policies and purposes articulated in Texas Government Code, §§2306.001, 2306.002, 2306.359, and 2306.6701, are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program.

(b) Waivers Granted by the Executive Director. The Executive Director may waive requirements as provided in this rule. Even if this rule grants the Executive Director authority to waive a given item, the Executive Director may present the matter to the Board for consideration and action. Neither the Executive Director nor the Board shall grant any waiver to the extent such requirement is mandated by statute. Denial of a waiver by the Executive Director may be appealed to the Board in accordance with §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)). Applicants should expect that waivers granted by the Executive Director will generally be very limited. The Executive Director's decision to defer to the Board will not automatically be deemed an adverse staff position with regard to the waiver request as public vetting of such requests is generally appropriate and preferred. However, this does not preclude a staff recommendation to approve or deny any specific request for a waiver.

(c) Waivers Granted by the Board. The Board, in its discretion, may waive any one or more of the rules in Subchapters B, C, E, and G of this chapter except no waiver shall be granted to provide forward commitments

or if the requested waiver is prohibited by statute (i.e., statutory requirements may not be waived). The Board, in its discretion, may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the multifamily rules.

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Subchapter G §§10.901 - 10.904, concerning the Uniform Multifamily Rules. The purpose of the proposed new sections is to provide for fees paid to the Department in order to cover the administrative costs of implementing the program and to provide guidance to applicants and awardees with regard to their responsibilities to the Department as well as a mechanism for formal communication with the Department. The proposed repeal of existing Subchapter G is published concurrently with this rulemaking.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be adequate revenue to cover the cost of monitoring compliance with the program requirements. The average cost of filing an application is between \$15,000 and \$30,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that any new economic impact on small or micro-businesses is expected to be minimal, and/or offset by reductions in other fees and would only be incurred if the business engages in actions that are at its option. The average cost of filing an application is between \$15,000 and \$30,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 18, 2015 to October 15, 2015, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Teresa Morales. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 15, 2015.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan, and Texas Government Code §2306.144, §2306.147, and §2306.6716.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including subchapter DD, concerning Low Income Housing Tax Credit Program. The new sections affect no other statutes, articles or codes.

§10.901 Fee Schedule.

§10.902 Appeals Process.

§10.903 Adherence to Obligations.

§10.904 Alternative Dispute Resolution (ADR) Policy.

Subchapter G – Fee Schedule, Appeals and other Provisions

§10.901. Fee Schedule. Any fees, as stated in this section, not paid will cause an Applicant to be ineligible to apply for Department funding, ineligible to receive additional Department funding associated with a Commitment, Determination Notice or Contract, and ineligible to submit extension requests, ownership transfers, and Application amendments until such time the Department receives payment. Payments of the fees shall be in the form of a check and to the extent there are insufficient funds available, it may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. The Executive Director may grant a waiver for specific extenuating and extraordinary circumstances, provided the Applicant submits a written request for a waiver no later than ten (10) business days prior to the deadline associated with the particular fee. For those requests that do not have a specified deadline, the written request for a fee waiver and description of extenuating and extraordinary circumstances must be included in the original request cover letter.

(1) Competitive Housing Tax Credit Pre-Application Fee. A pre-application fee, in the amount of \$10 per Unit, based on the total number of Units reflected in the pre-application, must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Pre-applications in which a Community Housing Development Corporation (CHDO) or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, ~~will~~ [may be eligible to](#) receive a discount of 10 percent off the calculated pre-application fee. (§2306.6716(d))

(2) Refunds of Pre-application Fees. (§2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of the pre-application fee for a pre-application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Intake and data entry will constitute 50 percent of the review, threshold review prior to a deficiency issued will constitute 30 percent of the review, and deficiencies submitted and reviewed constitute 20 percent of the review.

(3) Application Fee. Each Application must be accompanied by an Application fee.

(A) Housing Tax Credit Applications. The fee will be \$30 per Unit based on the total number of Units. For Applicants having submitted a competitive housing tax credit pre-application which met the pre-application threshold requirements, and for which a pre-application fee was paid, the Application fee will be \$20 per Unit based on the number of Units in the full Application. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, ~~will~~ [may be eligible to](#) receive a discount of 10 percent off the calculated Application fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be \$1,000 per Application. Pursuant to Texas Government Code, §2306.147(b), the Department is required to waive Application fees for [private](#) nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. In lieu of the Application fee, these organizations must include proof of their exempt status and a description of their supportive services as part of the Application. An Application fee is not required for Applications that have an existing Housing Tax Credit Allocation or HOME Contract with the Department, and construction on the development has not begun or if requesting an increase in the existing HOME award. The Application fee is not a reimbursable cost under the HOME Program.

(4) Refunds of Application Fees. Upon written request from the Applicant, the Department shall refund the balance of the Application fee for an Application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Intake and data entry will constitute 20 percent, the site visit will constitute 20 percent, eligibility

and selection review will constitute 20 percent, threshold review will constitute 20 percent, and underwriting review will constitute 20 percent.

(5) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation in whole or in part of a Development by an independent external underwriter in accordance with §10.201(5) of this chapter (relating to Procedural Requirements for Application Submission), if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the Commitment or Determination Notice Fee, as applicable, established in paragraphs (8) and (9) of this section, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.

(6) Administrative Deficiency Notice Late Fee. (Not applicable for Competitive Housing Tax Credit Applications). Applications that fail to resolve Administrative Deficiencies pursuant to §10.201(7) of this chapter shall incur a late fee in the amount of \$500 for each business day the deficiency remains unresolved.

(7) ~~Challenge Processing~~ Third Party Deficiency Request Fee. For Competitive Housing Tax Credits (HTC) Applications, a fee equal to \$500 for [an Administrative Deficiency be issued with respect to](#) -challenges submitted per Application.

(8) Housing Tax Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and returns the credits by November 1 of the current Application Round, then a refund of 50 percent of the Commitment Fee may be issued upon request.

(9) Tax Exempt Bond Development Determination Notice Fee. No later than the expiration date in the Determination Notice, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and is not able close on the bonds within ninety (90) days of the issuance date of the Determination Notice, then a refund of 50 percent of the Determination Notice Fee may be issued upon request.

(10) Building Inspection Fee. (For Housing Tax Credit and Tax-Exempt Bond Developments only.) No later than the expiration date on the Commitment or Determination Notice, a fee of \$750 must be submitted. Building inspection fees in excess of \$750 may be charged to the Development Owner not to exceed an additional \$250 per Development.

(11) Tax-Exempt Bond Credit Increase Request Fee. Requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to 4 percent of the amount of the credit increase for one (1) year.

(12) Extension Fees. All extension requests for deadlines relating to the Carryover, 10 Percent Test (submission and expenditure), or Cost Certification requirements submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee. Any extension request submitted fewer than thirty (30) days in advance or after the original deadline must be accompanied by an extension fee of \$2,500. An extension fee will not be required for extensions requested on Developments that involve Rehabilitation when the Department or U.S. Department of Agriculture (USDA) is the primary lender if USDA or the Department is the cause for the Applicant not meeting the deadline.

(13) Amendment Fees. An amendment request for a non-material change that has not been implemented will not be required to pay an amendment fee. Material amendment requests (whether implemented or not), or non-material amendment requests that have already been implemented will be required to submit an amendment fee of \$2,500. Amendment fees are not required for the Direct Loan programs.

(14) Right of First Refusal Fee. Requests for approval of the satisfaction of the Right of First Refusal provision of the Land Use Restriction Agreement (LURA) must be accompanied by a non-refundable fee of \$2,500.

(15) Qualified Contract Pre-Request Fee. A Development Owner must file a preliminary Qualified Contract Request to confirm eligibility to submit a Qualified Contract request. The Pre-Request must be accompanied by a non-refundable processing fee of \$250.

(16) Qualified Contract Fee. Upon eligibility approval of the Qualified Contract Pre-Request, the Development Owner may file a Qualified Contract Request. Such request must be accompanied by a non-refundable processing fee of \$3,000.

(17) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of \$500.

(18) Unused Credit or Penalty Fee. Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of IRS Form 8609. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10 percent of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of IRS Form 8609 if the tax credits are not returned, and 8609's issued, within one hundred eighty (180) days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with Internal Revenue Code, §42. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director will recommend to the Board the imposition of a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate for any Application in an Application Round occurring concurrent to the return of credits or if no Application Round is pending, the Application Round immediately following the return of credits. If any such point penalty is recommended to be assessed and presented for final determination by the Board, it must include notice from the Department to the affected party not less than fourteen (14) calendar days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point penalties. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20 percent.

(19) Compliance Monitoring Fee. (HTC and HOME Developments Only.) Upon receipt of the cost certification for HTC or HTC and HOME Developments, or upon the completion of the 24-month development period and the beginning of the repayment period for HOME only Developments, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal \$40 per tax credit Unit and \$34 per HOME designated Unit, with two fees due for units that are dually designated. For HTC Developments, the fee will be collected, retroactively if applicable, beginning with the first year of the credit period. For HOME only Developments, the fee will be collected beginning with the first year of the repayment period. The invoice must be paid prior to the issuance of IRS Form 8609 for HTC properties. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. Compliance fees may be adjusted from time to time by the Department.

(20) Public Information Request Fee. Public information requests are processed by the Department in accordance with the provisions of the Texas Government Code, Chapter 552. The Department uses the guidelines promulgated by the Office of the Attorney General to determine the cost of copying and other costs of production.

~~**(21) Undesirable Neighborhood Characteristic Disclosure Fee.** Applicants that disclose the presence of undesirable neighborhood characteristics pursuant to §10.101(a)(4) of this chapter (relating to Site and~~

~~Development Requirements and Restrictions) must submit a \$500 fee for Department review of such characteristics. Subsequent to paying the Undesirable Neighborhood Characteristics Disclosure Fee, if an Applicant submits an Application for the same Development Site, the Application Fee assessed pursuant to paragraph (3) of this section shall be reduced by \$500.~~

(212) Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b)) All fees charged by the Department in the administration of the tax credit and HOME programs will be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

§10.902.Appeals Process (§2306.0321; §2306.6715).

(a) An Applicant or Development Owner may appeal decisions made by the Department pursuant to the process identified in this section. Matters that can be appealed include:

- (1) A determination regarding the Application's satisfaction of applicable requirements, Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications), pre-application threshold criteria, underwriting criteria;
- (2) The scoring of the Application under the applicable selection criteria;
- (3) A recommendation as to the amount of Department funding to be allocated to the Application;
- (4) Misplacement of an Application or parts of an Application, mathematical errors in scoring an Application, or procedural errors resulting in unequal consideration of the Applicant's proposal;
- (5) Denial of a change to a Commitment or Determination Notice;
- (6) Denial of a change to a loan agreement;
- (7) Denial of a change to a LURA;
- (8) Any Department decision that results in the erroneous termination of an Application; and
- (9) Any other matter for which an appeal is permitted under this chapter.

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or Development Owner.

(c) An Applicant or Development Owner must file its appeal in writing with the Department not later than seven (7) calendar days after the date the Department publishes the results of any stage of the Application evaluation or otherwise notifies the Applicant or Development Owner of a decision subject to appeal. The appeal must be signed by the person designated to act on behalf of the Applicant or an attorney that represents the Applicant. For Application related appeals, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application as supplemented in accordance with the limitations and requirements of this chapter.

(d) The Executive Director may respond in writing not later than fourteen (14) calendar days after the date of actual receipt of the appeal by the Department. If the Applicant is not satisfied with the Executive Director's response to the appeal or the Executive Director does not respond, the Applicant may appeal directly in

writing to the Board. While additional information can be provided in accordance with any rules related to public comment before the Board, the Department expects that a full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal be disclosed in the appeal documentation filed with the Executive Director. Full disclosure allows the Executive Director to make a fully informed decision based on a complete analysis of the circumstances, and verification of any information that may warrant a granting of the appeal in the Applicant's or Development Owner's favor.

(e) An appeal filed with the Board must be received by Department staff not more than seven (7) days after a response from the Executive Director and at least seven (7) days prior to the applicable Board meeting or if the period for an Executive Director response has elapsed the appeal can be heard by the Board if filed at least three (3) days prior to the applicable meeting.

(f) Board review of an Application related appeal will be based on the original Application.

(g) The decision of the Board regarding an appeal is the final decision of the Department.

(h) The Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of an Application related appeal. (§2306.6717(a)(5))

§10.903. Adherence to Obligations. (§2306.6720) Any Applicant, Development Owner, or other Person that fails to adhere to its obligations with regard to the programs of the Department, whether contractual or otherwise, made false or misleading representations to the Department with regard to an Application, request for funding, or compliance requirements, or otherwise violated a provision of Texas Government Code, Chapter 2306 or a rule adopted under that chapter, may be subject to:

(1) Assessment of administrative penalties in accordance with the Department's rules regarding the assessment of such penalties. Each day the violation continues or occurs is a separate violation for purposes of imposing a penalty; and/or

(2) in the case of the competitive Low Income Housing Tax Credit Program, a point reduction of up to ten (10) points for any Application involving that Applicant over the next two Application Rounds succeeding the date on which the Department first gives written notice of any such failure to adhere to obligations or false or misleading representations. Point reductions under this section may be appealed to the Board.

§10.904. Alternative Dispute Resolution (ADR) Policy. In accordance with Texas Government Code, §2306.082, it is the Department's policy to encourage the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Texas Government Code, Chapter 2010, to assist in resolving disputes under the Department's jurisdiction. As described in Civil Practices and Remedies Code, Chapter 154, ADR procedures include mediation. Except as prohibited by law and the Department's Ex Parte Communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title. Any Applicant may request an informal conference with staff to attempt to resolve any appealable matter, and the Executive Director may toll the running of periods for appeal to accommodate such meetings. In the event a successful resolution cannot be reached, the statements made in the meeting process may not be used by the Department as admissions.

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules Subchapter A §§10.1 - 10.4, concerning General Information and Definitions. The purpose of the repeal is to allow for the replacement of the existing sections with a new Subchapter A that encompasses requirements for all applications applying for multifamily funding through the Department.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will involve the replacement of existing Subchapter A with a new Subchapter A that encompasses requirements for all applications applying for multifamily funding through the Department. There is no change in economic cost to any individuals required to comply with the repeal.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 18, 2015, to October 15, 2015, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 15, 2015.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code, §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed repeal affects Texas Government Code Chapter 2306, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The repeal affects no other statutes, articles or codes.

§10.1. Purpose.

§10.2. General.

§10.3. Definitions.

§10.4. Program Dates.

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules Subchapter B §10.101, concerning Site and Development Requirements and Restrictions. The purpose of the repeal is to allow for the replacement of the section with a new section that encompasses restrictions and requirements for all development sites for which applications are submitted in applying for multifamily funding through the Department. Proposed new §10.101 is published concurrently with this proposed repeal.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be the replacement of the existing section with a new section that encompasses requirements for all applications applying for multifamily funding through the Department. There is no change in economic cost to any individuals required to comply with the repeal.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 18, 2015, to October 15, 2015, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 15, 2015.**

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed repeal affects Texas Government Code Chapter 2306, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The repeal affects no other statutes, articles or codes.

§10.101. Site and Development Requirements and Restrictions.

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules Subchapter C §§10.201 - 10.207, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules. The purpose of the repeal is to allow for the replacement of the existing sections with new sections that encompass requirements for all applications applying for multifamily funding through the Department. Proposed new §§10.201 - 10.207 are being published concurrently with this rulemaking.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be the replacement of the sections with new sections that encompass requirements for all applications applying for multifamily funding through the Department. There is no new or additional economic cost to any persons required to comply with the repeal.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 18, 2015, to October 15, 2015, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 15, 2015.**

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed repeal affects Texas Government Code Chapter 2306, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The repeal affects no other statutes, articles or codes.

§10.201. Procedural Requirements for Application Submission.

§10.202. Ineligible Applicants and Applications.

§10.203. Public Notifications.

§10.204. Required Documentation for Application Submission.

§10.205. Required Third Party Reports.

§10.206. Board Decisions.

§10.207. Waiver of Rules for Applications.

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter G §§10.901 - 10.904, concerning Fee Schedule, Appeals and Other Provisions. The purpose of the repeal is to allow for the adoption of new Subchapter G to provide for updated guidance relating to fees paid to the Department in order to cover the administrative costs of implementing the program and to provide guidance to applicants and awardees with regard to their responsibilities to the Department as well as a mechanism for formal communication with the Department.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be the replacement of existing Subchapter G with a new Subchapter G that encompasses requirements for all applications applying for multifamily funding through the Department. There is no change in economic cost to any individuals required to comply with the repeal.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 18, 2015, to October 15, 2015, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 15, 2015.**

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan, and Texas Government Code §2306.144, §2306.147, and §2306.6716.

§The proposed repeal affects Texas Government Code Chapter 2306, including Subchapter DD, concerning Low Income Housing Tax Credit Program. The repeal affects no other statutes, articles or codes.

§10.901. Fee Schedule.

§10.902. Appeals Process.

§10.903. Adherence to Obligations.

§10.904. Alternative Dispute Resolution (ADR) Policy.

6b

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 3, 2015

Presentation, Discussion, and Possible Action on the proposed repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and a proposed new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and directing its publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the “Department”) is authorized to make Housing Tax Credit allocations for the State of Texas;

WHEREAS, the Department, as required by §42(m)(1) of the Internal Revenue Code and Texas Government Code §2306.67022, developed this Qualified Allocation Plan to establish the procedures and requirements relating to an allocation of Housing Tax Credits; and

WHEREAS, pursuant to Texas Government Code, Chapter 2306.6724, the Board shall adopt a proposed Qualified Allocation Plan no later than September 30;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 11, and proposed new 10 TAC Chapter 11 regarding the Qualified Allocation Plan, together with the preambles presented to this meeting, are hereby approved for publication in the *Texas Register* for public comment;

FURTHER RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed repeal and the draft Qualified Allocation Plan, together with the preambles in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

General Information: Attached to this Board Action Request is the 2016 Draft Qualified Allocation Plan (“QAP”) which reflects staff’s recommendations for the Board’s consideration. In getting the 2016 rulemaking process underway, staff disseminated anticipated changes utilizing various methods. Staff hosted a roundtable discussion with approximately 170 people in attendance and participated in several discussions at the TAAHP Conference in July, 2015, and discussed proposed changes and solicited feedback. In August, 2015, staff also participated in several meetings with

industry individuals, at their request, to discuss their ideas on proposed changes. Lastly, staff launched as it has in prior years, the online discussion forum to allow interested registered users of the forum an opportunity to engage with the Department and one another and provide feedback on possible changes.

After consideration of the input and feedback provided and after evaluating the 2015 application round, staff believes the 2015 QAP served its purpose well, furthering the policies of both statute and the Board effectively. In keeping with those policies, staff has proposed changes to specific sections and a more detailed breakdown of the specific changes is included below. Staff believes that in proposing these modifications and keeping all other items in the QAP the same, stakeholders can better formulate plans for future developments instead of trying to anticipate what changes will be made to the QAP.

Rule-Making Timeline: Upon Board approval, the draft QAP will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted between September 18, 2015, and October 15, 2015, and there will be a consolidated public hearing during this time to receive public comment as well. The QAP will be brought before the Board in November for final approval followed by the statutorily mandated submission to the Office of the Governor by November 15, 2015. Upon the Governor's approval or approval with modifications, which must occur no later than December 1, 2015, the adopted QAP will be published in the *Texas Register*.

Statutory Changes: Significant changes in the 2016 Draft QAP include the incorporation of statutory changes made during the 84th Legislative Session. These changes include the following:

- HB 74 – Requires the creation of a process by which a local political subdivision or a census designated place may apply to the Department for a Rural designation.
- HB 2926/SB 1315 – The House bill changes the statutory definition of “At-Risk” which results in developments participating in HUD’s Rental Assistance Demonstration program (“RAD”) to compete under that set-aside. The Senate bill changes the At-Risk definition by including HUD-held mortgages.
- HB 3311 – Places a limit on credits awarded to Urban developments reserved for elderly persons; the limit is based on a formula which takes into account the demand for elderly low-income units as a percentage of the demand for non-age restricted low-income units. This bill also equalizes the scoring between elderly and general population developments.
- HB 3535 – Requires that in an urban sub-region that contains a county with a population in excess of 1.7 million people, the highest scoring development shall be awarded, if any, that is part of a concerted revitalization effort where that municipality has a population of 500,000 or more. Staff notes that this bill, while passed this session, does not take effect until the 2017 application cycle.
- SB 1316 – Removes the commitment of development funding from local political subdivisions from the top eleven scoring items and reduced that funding to a de minimis amount.

Summary of Proposed Changes: This section outlines some of the more significant recommendations by staff, including more details relating to the statutory changes described above. Citation and page references are indicated for ease of reference.

1. **§11.2 – Program Calendar** (*Page 2 of 35*). This section is modified to reflect dates for the 2016 application round, including submission of resolutions for local government support and State Representative letters with the application on March 1, 2016 instead of April 1, 2016. The program calendar also removes the formal deadline associated with what used to be the challenge process. The proposed changes to the challenge process are described in greater detail below.
2. **§11.3(d) – Limitations on Developments in Certain Census Tracts** (*Page 5 of 35*). The language required in the resolution for this de-concentration factor has been modified to reflect that it must state that the proposed development is consistent with the jurisdiction's obligation to affirmatively further fair housing. This change reflects the Department's continued sensitivity over saturating areas with affordable housing and ensuring continued strides in furthering fair housing.
3. **§11.4(c) – Increase in Eligible Basis (30% Boost)** (*Page 6 of 35*). Developments located in a Small Area Difficult Development Area (SADDA), as determined by HUD, are eligible for a 30% increase in eligible basis. This provision applies to both 4% and 9% HTC applications and for 4% HTC, requires the SADDA designation to correspond with the year the Certificate of Reservation is issued. While this designation is allowed federally for HTC developments, Texas has historically excluded such areas from the boost because they were not necessarily high cost areas. Staff believes that considering HUD's re-assessment of how such areas will receive the designation will align with the Department's broader policy objectives of providing housing in areas that contain greater opportunities for residents.
4. **§11.6(3) – Award Recommendation Methodology** (*Page 9 of 35*). This section contains additional language that implements the requirements of HB 3311, specifically, that in urban regions containing a county that has a population in excess of one million, the Board cannot allocate more than the maximum percentage of credits available for elderly developments, unless there are no other qualified applications in the subregion. After evaluating the datasets available to calculate this maximum percentage, staff will utilize data which breaks households down by income, size, tenure and broad age groups, also known as HISTA data. Due to its proprietary nature, the Department cannot publish the dataset used in the calculation of the HB 3311 formula, but rather will publish the resulting maximum percentages for each affected area in the Site Demographics Characteristics Report on its website.
5. **§11.7 Tie Breaker.** (*Page 12 of 35*). A tie breaker, relating to lowest poverty rate of the census tract for applications that have the same score, has been added.
6. **§11.8(a) – Pre-Application Requirements** (*Page 12 of 35*). The modifications to this section formalize the method by which competitive HTC pre-applications will be submitted to the Department. Specifically, pre-applications will be submitted through an online interface instead of submission on a CD-R.

7. **§11.9 – Competitive HTC Selection Criteria – (Page 14 of 35).**

- *Rent Levels of Tenants (Page 16 of 35):* This scoring item has been modified to allow a Qualified Nonprofit to access the additional two points for Supportive Housing Developments, previously only available to those Developments qualifying under the Nonprofit Set-Aside. This change gives national nonprofits the ability claim the additional points and not just those who have a majority of their Board members residing in Texas.
- *Tenant Services (Page 16 of 35):* This scoring item has been modified to allow a Qualified Nonprofit to access the additional point for Supportive Housing Developments, previously only available to those Developments qualifying under the Nonprofit Set-Aside. This change gives national nonprofits the ability claim the additional point and not just those who have a majority of their Board members residing in Texas.
- *Opportunity Index (Page 16 of 35):* The modifications under this item reflect the equalization of scoring for general population and elderly developments as required under HB 3311.
- *Underserved Area (Page 18 of 35):* This scoring item reflects changes relating to how developments in colonias could qualify for additional points. Specifically, the proposed development must be located entirely or partially within the boundaries of a colonia, as determined by the Attorney General and within 150 miles of the Rio Grande River border. Moreover, the colonia must lack water, wastewater or electricity for its residents that are at a level commensurate with the quality and quantity expected of municipally provided infrastructure. The development must make available such water, wastewater or electricity physically within the borders of the colonia in a manner that would enable the current dwellings within the colonia to connect to such infrastructure. This scoring item was also modified to reflect the equalization of scoring for general population and elderly developments as required under HB 3311.
- *Tenant Populations with Special Housing Needs (Page 19 of 35):* This scoring item has been modified to create an additional incentive related to participation in the Department’s Section 811 Project Rental Assistance Demonstration Program, specifically, allowing for an additional point if Section 811 units are placed in an existing Development.
- *Aging in Place (Page 20 of 35):* This is a new scoring item intended to fulfill the requirement under HB 3311 that equalizes the scoring between general population elderly developments. This item is only available to Elderly Developments and functions as a parity item with Educational Excellence.
- *Commitment of Development Funding by Local Political Subdivision (Page 21 of 35):* The modifications to this scoring item reflect the statutory change pursuant to SB 1316 which moves this item “below the line” but maintains the amount of funding

required to be at a de minimis level. Consequently, the point value has been reduced from 14 points to 1 point.

- *Concerted Revitalization Plan (Page 26 of 35)*: This scoring item has been modified to provide for a more holistic view of revitalization efforts and tie points to measurable outcomes within the target area. It contemplates that affordable housing will be developed at a phase in the revitalization when significant areas of concern will have been mitigated to an acceptable level.
 - *Historic Preservation (Page 33 of 35)*: This existing scoring item has been de-coupled from Extended Affordability Period and modified to require at least 75 percent of the units within a historic preservation development to be within the historic structure receiving the Federal or State Historic Tax Credits.
8. **§11.10 – Third Party Request for Administrative Deficiency for Competitive HTC Applications** – *(Page 33 of 35)*: The Challenge Process is being replaced with a new Deficiency Request process, which will provide the opportunity for an unrelated third-party to bring new, material information about an Application to staff's attention. The Deficiency Request Process will be coupled with a "live" application file being posted to the Department's website ("live" meaning updated nightly). As Applications are reviewed, any changes that occur as a result of that review will be available on the Department's website. This will allow competitors to see whether or not staff has identified an issue for which the competitor is considering submitting a deficiency request.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 11, §§11.1 – 11.10, concerning the 2016 Housing Tax Credit Qualified Allocation Plan. The purpose of the proposed new sections is to replace the current Qualified Allocation Plan with a new Qualified Allocation Plan applicable to the 2016 cycle.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be a rule that encompasses requirements for all applications applying for housing tax credit funding through the Department. There will not be any new economic cost to any individuals required to comply with the new sections. The average cost of filing an application is between \$15,000 and \$30,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small or micro-businesses. The average cost of filing an application is between \$15,000 and \$30,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 18, 2015 to October 15, 2015, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Kathryn Saar, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Kathryn Saar. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 15, 2015.**

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including subchapter DD, concerning the Low Income Housing Tax Credit Program.

11.1 General

11.2 Program Calendar for Competitive Housing Tax Credits

11.3 Housing De-Concentration Factors

11.4 Tax Credit Request and Award Limits

11.5 Competitive HTC Set-Asides

11.6 Competitive HTC Allocation Process

11.7 Tie Breaker Factors

11.8 Pre-Application Requirements (Competitive HTC Only)

11.9 Competitive HTC Selection Criteria

11.10 Third Party Request for Administrative Deficiency for Competitive HTC Applications

State of Texas
Qualified Allocation Plan

§11.1.General.

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

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

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

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

(e) Census Data. Where this chapter requires the use of census or American Community Survey data, the Department shall use the most current data available as of October 1, ~~2015~~2014, unless specifically otherwise provided in federal or state law or in the rules. The availability of more current data shall generally be disregarded.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted on or before 5:00 p.m. ~~Central Time Zone~~ Austin local time on the day of the deadline. If the deadline falls on a weekend or holiday, the deadline is 5:00 p.m. Austin local time on the next day which is not a weekend or holiday and on which the Department is open for general operation.

§11.2. Program Calendar for Competitive Housing Tax Credits.

Non-statutory deadlines specifically listed in the Program Calendar may be extended ~~for good cause~~ by the Executive Director for a period of not more than five (5) business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Executive Director that there is good cause for the extension. Except as provided for under 10 TAC §1 relating to reasonable accommodations. Extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party.

Deadline	Documentation Required
01/02/201 6 5	Application Acceptance Period Begins.
01/08/201 6 5	Pre-Application Final Delivery Date (including waiver requests).
03/01/2016 02/27/2015	Full Application Delivery Date (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Property Condition Assessments (PCAs); Appraisals; Primary Market Area Map; Site Design and Development Feasibility Report; and all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors). <u>Final Input from Elected Officials Delivery Date (including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5) of this chapter (after opportunity to review materially complete Applications)).</u>
04/01/201 6 5	Final Input from Elected Officials Delivery Date (including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5) of this chapter (after opportunity to review materially complete Applications)). Market Analysis Delivery Date pursuant to §10.205 of this title. Site Challenges Delivery Date.
05/01/2015	Challenges to Neighborhood Organization Opposition Delivery Date.
05/01/2015	Application Challenges Deadline.

Deadline	Documentation Required
Mid-May	Final Scoring Notices Issued for Majority of Applications Considered "Competitive."
06/12/2015	Deadline for public comment to be included in a summary to the Board at a posted meeting.
June	Release of Eligible Applications for Consideration for Award in July.
July	Final Awards.
Mid-August	Commitments are Issued.
11/02/2015 11/01/2016	Carryover Documentation Delivery Date.
07/01/2016 07/03/2017	10 Percent Test Documentation Delivery Date.
12/31/2018 7	Placement in Service.
Five (5) business days after the date on the Deficiency Notice (without incurring point loss)	Administrative Deficiency Response Deadline (unless an extension has been granted).

§11.3.Housing De-Concentration Factors.

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

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

(relating to Program Calendar for Competitive Housing Tax Credits) or Resolutions Delivery Date in §10.4 of this title (relating to Program Dates), as applicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 20 percent Housing Tax Credit Units per total households as established by the 5-year American Community Survey and the Development is in a Place that has a population greater than 100,000 shall be considered ineligible unless the Governing Body of the appropriate municipality or county containing the Development has, by vote, specifically allowed the Development and submits to the Department a resolution stating the proposed Development is consistent with the jurisdiction's obligation to affirmatively further fair housing. The resolution must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

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

~~(2) the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and submits to the Department a resolution referencing this rule. In providing a resolution a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any FHAST form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.~~

(e) Additional Phase. Applications proposing an additional phase of an existing tax credit Development serving the same Target Population, or Applications proposing Developments that are adjacent to an existing tax credit Development serving the same Target Population, or Applications that are proposing a Development serving the same Target Population on a contiguous site to another Application awarded in the same program year, shall be considered ineligible unless the other Developments or phase(s) of the Development have been completed and have maintained occupancy of at least 90 percent for a minimum six (6) month period as reflected in the submitted rent roll. If the Application proposes the Rehabilitation or replacement of existing federally-assisted affordable housing units or federally-assisted affordable housing units demolished on the same site within two years of the beginning of the Application Acceptance Period, this provision does not apply.

§11.4. Tax Credit Request and Award Limits.

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

- (1) raises or provides equity;
- (2) provides "qualified commercial financing;"
- (3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or
- (4) receives fees as a Development Consultant or Developer that do not exceed 10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments and other Developments in which an entity that is exempt from federal income taxes owns at least 50% of the General Partner) to be paid or \$150,000, whichever is greater.

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

(c) Increase in Eligible Basis (30 percent Boost). Applications will be evaluated for an increase of up to but not to exceed 30 percent in Eligible Basis provided they meet the criteria identified in paragraphs (1) ~~or (32)~~ of this subsection. Staff will recommend no increase or a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. The criteria in paragraph ~~(32)~~ of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20 percent Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. For New Construction or Adaptive Reuse Developments located in a QCT with 20 percent or greater Housing Tax Credit Units per total households, the Development is eligible for the boost if the Application includes a resolution stating that the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and referencing this rule. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable. Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT.

(2) The Development is located in a Small Area Difficult Development Area (SADDA) (based on Small Area Fair Market Rents (FMRs) as determined by the Secretary of HUD) that has high construction, land and utility costs relative to the AMGI. For Tax-Exempt Bond Developments, as a general rule, an SADDA designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. Applicants must submit a copy of the SADDA map that clearly shows the proposed Development is located within the boundaries of a SADDA.

~~(32)~~ The Development meets one of the criteria described in subparagraphs (A) - (E) of this paragraph pursuant to §42(d)(5) of the Code:

- (A) the Development is located in a Rural Area;
- (B) the Development is proposing entirely Supportive Housing and is expected to be debt free or have no foreclosable or non-cash flow debt;
- (C) the Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria);

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

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

§11.5.Competitive HTC Set-Asides. (§2306.111(d)) This section identifies the statutorily-mandated set-asides which the Department is required to administer. An Applicant may elect to compete in each of the set-asides for which the proposed Development qualifies. In order to be eligible to compete in the Set-Aside, the Application must meet the requirements of the Set-Aside as of the Full Application Delivery Date. Election to compete in a Set-Aside does not constitute eligibility to compete in the Set-Aside, and Applicants who are ultimately deemed not to qualify to compete in the Set-Aside will be considered not to be participating in the Set-Aside for purposes of qualifying for points under §11.9(3) of this chapter (related to Pre-Application Participation).

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

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

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

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

Developments. (§2306.6714) Up to 5 percent of the State Housing Credit Ceiling associated with this set-aside may be given priority to Rehabilitation Developments under the USDA Set-Aside.

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

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

- (i) the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred to the Development Site (i.e. the site proposed in the tax credit Application) prior to the tax credit Commitment deadline;
- (ii) the Applicant seeking tax credits must propose the same number of restricted units (*e.g.* the Applicant may add market rate units); and
- (iii) the new Development Site must qualify for points on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria).

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

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

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

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

(1) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region ("sub-region") Housing Tax Credits in an amount consistent with the Regional Allocation Formula developed in compliance with Texas Government Code, §2306.1115. The process of awarding the funds made available within each sub-region shall follow the process described

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

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

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

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

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

(C) Initial Application Selection in Each Sub-Region (Step 3). The highest scoring Applications within each of the 26 sub-regions will then be selected provided there are sufficient funds within the sub-region to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the sub-regions. In Urban Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. This includes any Applications awarded under subparagraph (B) of this paragraph. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Texas Government Code, §2306.6711(h). These calculations will be published by the Department in the Site Demographics Characteristics Report (§2306.6711(h)).

(D) Rural Collapse (Step 4). If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region ("Rural sub-region") that remain after award under subparagraph (C) of this paragraph, those tax credits shall be combined into one "pool" and then be made available in any other Rural Area in the state to the Application in the most underserved Rural sub-region as compared to the sub-region's allocation. This rural redistribution will continue until all of the tax credits in the "pool" are allocated to Rural Applications and at least 20 percent of the funds available to the State are allocated to Applications in Rural Areas. (§2306.111(d)(3)) In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) - (ii) of this subparagraph will be used to select the next most underserved sub-region:

- (i) the sub-region with no recommended At-Risk Applications from the same Application Round; and
- (ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any sub-region in the State, will be combined into one "pool." The funds will be used to award the highest scoring Application (not selected in a prior step) in the most underserved sub-region in the State compared to the amount originally made available in each sub-region. In urban Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. This includes any Applications awarded under subparagraph (B) of this paragraph. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Texas Government Code, §2306.6711(h). These calculations will be published by the Department in the Site Demographics Characteristics Report (§2306.6711(h)). This process will continue until the funds remaining are insufficient to award the next highest scoring Application in the next most underserved sub-region. In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved sub-region:

- (i) the sub-region with no recommended At-Risk Applications from the same Application Round; and
- (ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

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

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. The waiting list is not static. The allocation process will be used in determining the Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or sub-region from which they were originally awarded. This means that the first Application on the waiting list is in part contingent on the nature of the credits that became available for award. The Department shall hold all credit available after the late-July awards until September 30 in order to collect credit that may become available when tax credit Commitments are submitted. Credit confirmed to be available, as of September 30, may be awarded to Applications on the waiting list unless insufficient credits are available to fund the next Application on the waiting list. For credit returned after September 30, awards from the waiting list will be made when the remaining balance is sufficient to award the next Application on

the waiting list based on the date(s) of returned credit. Notwithstanding the foregoing, if decisions related to any returns or rescissions of tax credits are under appeal or are otherwise contested, the Department may delay awards until resolution of such issues. (§2306.6710(a) - (f); §2306.111)

(5) Credit Returns Resulting from Force Majeure Events. In the event that the Department receives a return of Competitive HTCs during the current program year from an Application that received a Competitive Housing Tax Credit award during any of the preceding three years, such returned credit will, if [the Board determines that](#) all of the requirements of this paragraph are met [to its satisfaction](#), be allocated separately from the current year's tax credit allocation, and shall not be subject to the requirements of paragraph (2) of this section. Requests to separately allocate returned credit where all of the requirements of this paragraph have not been met or requests for waivers of any part of this paragraph will not be considered. For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in §(b)(2)(C)(iii) of Treasury Regulation 1.42-14. The Department's Governing Board may approve the execution of a current program year Carryover Agreement regarding the returned credits with the Development Owner that returned such credits only if:

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

(B) Acts or events caused by the ~~willful-negligent~~ or willful act [or omission](#) of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by Force Majeure;

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

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

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

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

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

(H) The Development Owner submits a signed written request for a new Carryover Agreement concurrently with the voluntary return of the HTCs.

§11.7. Tie Breaker Factors.

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

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

~~(2) Applications proposed to be located in a census tract with the lowest poverty rate as compared to another Application with the same score.~~

~~(3)~~ Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

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

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

(1) The pre-application must be submitted [using the URL provided by the Department, as outlined in the Multifamily Programs Procedures Manual](#), along with the required pre-application fee as described in §10.901 of this title (relating to Fee Schedule), not later than the Pre-application Final Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). If ~~the~~ such pre-application and corresponding fee ~~is~~ are not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

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

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

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

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

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

(A) Site Control meeting the requirements of §10.204(10) of this title (relating to Required Documentation for Application Submission). For purposes of meeting this specific requirement

related to pre-application threshold criteria, proof of consideration and any documentation required for identity of interest transactions is not required at the time of pre-application submission but will be required at the time of full application submission;

- (B) Funding request;
- (C) Target Population;
- (D) Requested set-asides (At-Risk, USDA, Nonprofit, and/or Rural);
- (E) Total Number of Units proposed;
- (F) Census tract number in which the Development Site is located;
- (G) Expected score for each of the scoring items identified in the pre-application materials; and
- (H) Proposed name of ownership entity.

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

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as of the beginning of the Application Acceptance Period.

(B) Notification Recipients. No later than the date the pre-application is submitted, notification must be sent to all of the persons or entities prescribed in clauses (i) – (viii) of this subparagraph. Developments located in an ETJ of a city are required to notify both city and county officials. The notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format required in the Pre-application Notification Template provided in the pre-application. The Applicant is encouraged to retain proof of delivery in the event the Department requires proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of delivery for fax and e-mail. Officials to be notified are those officials in office at the time the pre-application is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

(i) Neighborhood Organizations on record with the state or county as of the beginning of the Application Acceptance Period whose boundaries include the proposed Development Site;

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

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

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

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

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

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

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

(C) Contents of Notification.

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

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

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

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

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

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

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

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

(c) Pre-application Results. Only pre-applications which have satisfied all of the pre-application requirements, including those in §11.9(e)(3) of this chapter, will be eligible for pre-application points. The order and scores of those Developments released on the Pre-application Submission Log do not represent a Commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the Pre-application Submission Log. Inclusion of a pre-application on the Pre-application Submission Log does not ensure that an Applicant will receive points for a pre-application.

§11.9.Competitive HTC Selection Criteria.

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsections (b) - (e) of this section include those items required under Texas Government Code, Chapter 2306, §42 of the Code, and other criteria established in a manner consistent with Chapter 2306 and §42 of the Code. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. Due to the highly competitive nature of the program, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency. However, Department staff may provide the Applicant an opportunity to explain how they believe the Application, as submitted, meets the requirements for points or otherwise satisfies the requirements. Unless it submits and receives Board approval for a material amendment, an Applicant that provides materials to a neighborhood organization, a local governmental body, or a state representative to secure support (including materials in a pre-application or Application) may not change any unit or common amenity(ies) depicted or described in such materials or alter the size, number, or configuration of buildings reflected in such materials.

(b) Criteria promoting development of high quality housing.

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

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

- (i) five-hundred fifty (550) square feet for an Efficiency Unit;
- (ii) six-hundred fifty (650) square feet for a one Bedroom Unit;
- (iii) eight-hundred fifty (850) square feet for a two Bedroom Unit;
- (iv) one-thousand fifty (1,050) square feet for a three Bedroom Unit; and
- (v) one-thousand two-hundred fifty (1,250) square feet for a four Bedroom Unit.

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

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) (1 point). An Application may qualify to receive one (1) point provided the ownership structure contains a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date, or Qualified Nonprofit Organization provided the Application is under the Nonprofit Set-Aside. The HUB or Qualified Nonprofit Organization must have some combination of ownership interest in the General Partner of the Applicant, cash flow from operations, and developer fee which taken together equal at least 80 percent and no less than 5 percent for any category. For example, a HUB or Qualified Nonprofit Organization may have 20 percent ownership interest, 30 percent of the developer fee, and 30 percent of cash flow from operations. The HUB or Qualified Nonprofit Organization must also materially participate in the Development and operation of the Development ~~throughout the Compliance Period~~ and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. A Principal of the HUB or Qualified Nonprofit Organization cannot be a Related Party to any other Principal of the Applicant or Developer (excluding another Principal of said HUB or Qualified Nonprofit Organization).

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

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

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

- (i) At least 40 percent of all low-income Units at 50 percent or less of AMGI (16 points);
- (ii) At least 30 percent of all low income Units at 50 percent or less of AMGI (14 points); or
- (iii) At least 20 percent of all low-income Units at 50 percent or less of AMGI (12 points).

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

- (i) At least 20 percent of all low-income Units at 50 percent or less of AMGI (16 points);
- (ii) At least 15 percent of all low-income Units at 50 percent or less of AMGI (14 points); or
- (iii) At least 10 percent of all low-income Units at 50 percent or less of AMGI (12 points).

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

(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments ~~proposed by a Qualified~~ ~~qualifying under the~~ Nonprofit ~~Set-Aside~~ or for Developments participating in the City of Houston's Permanent Supportive Housing ("HPSH") program. A Development participating in the HPSH program and electing points under this subparagraph must have applied for HPSH funds by the Full Application Delivery Date, must have a commitment of HPSH funds by Commitment, must qualify for five (5) or seven (7) points under paragraph (4) of this subsection (relating to the Opportunity Index), and must not have more than 18 percent of the total Units restricted for Persons with Special Needs as defined under paragraph (7) of this subsection (relating to Tenant Populations with Special Housing Needs) (13 points);

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

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

(3) Tenant Services. (§2306.6710(b)(1)(IG) and §2306.6725(a)(1)) A Supportive Housing Development ~~proposed by a Qualified~~ ~~qualifying under the~~ Nonprofit ~~Set-Aside~~ or Developments participating in the ~~City of Houston's Permanent Supportive Housing ("HPSH")~~ program may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points. A Development participating in the HPSH program and electing eleven (11) points under this paragraph must have applied for HPSH funds by the Full Application Delivery Date, must have a commitment of HPSH funds by Commitment, must qualify for five (5) or seven (7) points under paragraph (4) of this subsection, and must not have more than 18 percent of the total Units restricted for Persons with Special Needs as defined under paragraph (7) of this subsection. By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application will remain the ~~minimum~~ ~~same~~. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.

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

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

- (i) ~~the Development targets the general population or Supportive Housing,~~ ~~†~~The Development Site is located in a census tract with income in the top quartile of median household income for

the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (7 points);

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

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

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

(B) For Developments located in a Rural Area, an Application may qualify to receive up to seven (7) cumulative points based on median income of the area and/or proximity to the essential community assets as reflected in clauses (i) - (vi) of this subparagraph if the Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (35 percent for regions 11 and 13) or within a census tract with income in the top or second quartile of median household income for the county or MSA as applicable or within the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement.

(i) The Development Site is located within the attendance zone and within 1.5 linear miles of an elementary, middle, or high school with a Met Standard rating (For purposes of this clause only, any school, regardless of the number of grades served, can count towards points. However, schools without ratings, unless paired with another appropriately rated school, or schools with a Met Alternative Standard rating, will not be considered.) (3 points);

(ii) The Development Site is within 1.5 linear miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program (2 points);

(iii) The Development Site is located within 1.5 linear miles of a full service grocery store (2 points);

(iv) The Development Site is located within 1.5 linear miles of a center that is licensed by the Department of Family and Protective Services to provide a child care program for infants, toddlers, and/or pre-kindergarten, at a minimum (2 points);

(v) The ~~Development is a Qualified Elderly Development and the~~ Development Site is located within 1.5 linear miles of a senior center (2 points); and/or

(vi) The Development Site is located within 1.5 linear miles of a health related facility (1 point).

(C) An elementary school attendance zone for the Development Site does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary schools that may possibly be attended by the tenants. In districts with "choice"

programs, where students can select one or more schools in the district that they wish to attend, an Applicant may use the district rating. The applicable school rating will be the 2014~~5~~ accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions.

(5) Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools that have achieved a 77 or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency, provided that the schools also have a Met Standard rating. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary, middle, or high schools, respectively, which may possibly be attended by the tenants. In districts with "choice" programs, where students can select one or more schools in the district that they wish to attend, an Applicant may use the district rating. The applicable school rating will be the ~~2014~~2015 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with the appropriate rating. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (3 points); or

(B) The Development Site is within the attendance zone of an elementary school and either a middle school or high school with the appropriate rating. For Developments in Region 11, the middle school or high school must achieve an Index 1 score of at least 70 to be eligible for these points (1 point); or

(C) The Development Site is within the attendance zone of a middle school and high school with the appropriate rating. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (1 point).

(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive two (2) points ~~for general population or Supportive Housing Developments~~ if the Development Site is located in one of the areas described in subparagraphs (A) - (D) of this paragraph. If an Application qualifies for points under paragraph (4) of this subsection then the Application is not eligible for points under subparagraphs (A) and (B) of this paragraph.

(A) ~~A Colonia;~~The Development Site is located wholly or partially within the boundaries of a colonia as such boundaries are determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border. For purposes of this scoring item, the colonia must lack water, wastewater, or electricity provided to all residents of the colonia at a level commensurate with the quality and quantity expected of a municipality and the proposed Development must make available any such missing water, wastewater, and electricity supply infrastructure physically within the borders of the colonia in a manner that would enable the current dwellings within the colonia to connect to such infrastructure;

(B) An Economically Distressed Area;

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

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

(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive ~~up to two-three~~ (23) points by serving Tenants with Special Housing Needs. Points will be awarded as described in subparagraphs (A) ~~and (B,C)~~ of this paragraph.

(A) Applications may qualify for three (3) points if a determination by the Department of approval is submitted in the Application indicating participation of an existing Development's in the Department's Section 811 Project Rental Assistance Demonstration Program ("Section 811 PRA Program"). In order to qualify for points, the existing Development must commit to the Section 811 PRA Program at least 10 units or, if the proposed Development would be eligible to claim points under subparagraph (B) of this paragraph, at least the same number of units (as would be required under subparagraph (B) of this paragraph for the proposed Development) have been designated for the Section 811 PRA Program in the existing Development. The same units cannot be used to qualify for points in more than one HTC Application.

~~(B) Applications meeting all of the requirements in clauses (i) – (iv) of this subparagraph are eligible to receive two (2) points by committing to participate in the Department's Section 811 PRA Project Rental Assistance Demonstration Program ("Section 811 Program"). In order to be eligible for points, Applicants must commit at least 10 Units in the proposed Development for participation in the Section 811 PRA Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 PRA Program guidelines and program requirements limits the proposed Development to fewer than 10 Units. Alternatively, Applications may qualify for points if evidence is submitted in the Application that indicates approval by the Department to commit the same number of units (as would be required in the proposed Development) in an existing Development in the Applicant's or an Affiliate's portfolio. Participation in the Section 811 Program will require execution of a Section 811 property agreement and other required documents on or before HTC Commitment. The same units cannot be used to qualify for points in more than one HTC Application. Once elected in the Application, Applicants may not withdraw their commitment to have the proposed Development participate in the Section 811 PRA Program unless the Department determines that the Development cannot meet all of the Section 811 PRA Program criteria. In this case, staff may allow the Application to qualify for points by meeting the requirements of subparagraph (C) of this paragraph. Should an Applicant receive an award of HTCs, the Department may allow Applicants to substitute alternate units in an existing Development in the Applicant's or Affiliates' portfolio; such properties require approval by the Department to commit the same number of units in the existing Development as were committed in the Application. It is the Applicant's responsibility to familiarize themselves with the Section 811 Program guidelines and program requirements, including the 30-year use restriction for the 811 units, before selecting points.~~

(i) The Development must not be an ~~an~~ ~~Qualified~~ Elderly ~~Limitation~~ Development or Supportive Housing;

(ii) The Development must not be originally constructed before 1978;

(iii) The Development has units available to be committed to the Section 811 ~~PRA~~ Program in the Development, meaning that those units do not have any other sources of project-based rental or long-term operating assistance within 6 months of receiving 811 assistance and cannot have an existing restriction for persons with disabilities; ~~and~~

(iv) The Development Site must be located in one of the following areas: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Dallas-Fort Worth-Arlington MSA; El Paso MSA; Houston-The Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA; ~~and~~.

(v) The Development must not be located in the mapped 500-year floodplain or in the 100 year floodplain.

~~(CB)~~ Applications proposing Developments that do not meet all of the requirements of clauses (i) – ~~(iv)~~ of subparagraph ~~(BA)~~ of this paragraph may qualify for two (2) points for meeting the requirements of this subparagraph. In order to qualify for points, Applicants must agree to set-aside at least 5 percent of the total Units for Persons with Special Needs. For purposes of this subparagraph, Persons with Special Needs is defined as households where one individual has alcohol and/or drug addictions, Colonia resident, Persons with Disabilities, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Needs, but will be required to continue to affirmatively market Units to Persons with Special Needs.

(8) Aging in Place. (§2306.6725(d)(2) An Application for an Elderly Development may qualify to receive up to three (3) points under this paragraph only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence).

(A) All Units are designed to be fully accessible in accordance with 10 TAC Chapter 1 Subchapter B (2 points).

(B) The Property will employ a full-time resident services coordinator on site for the duration of the Compliance Period and Extended Use Period. If elected under this subparagraph, points for service coordinator cannot be elected under subsection (c)(3) of this section (related to Tenant Services). For purposes of this provision, full-time is defined as follows (1 point):

(i) a minimum of 16 hours per week for Developments of 79 Units or less; and

(ii) a minimum of 32 hours for Developments of 80 Units or more (1 point).

(d) Criteria promoting community support and engagement.

(1) Local Government Support. (§2306.6710(b)(1)(B)) An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) - (C) of this paragraph, as applicable. The resolution(s) must be dated prior to Final Input from Elected Officials Delivery Date and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any [Fair Housing Activity Statement-Texas \("FHAST"\)](#) form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

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

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

(B) Within the extraterritorial jurisdiction of a municipality, the Application may receive points under clause (i) or (ii) of this subparagraph and under clause (iii) or (iv) of this subparagraph:

- (i) eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or
- (ii) seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; and
- (iii) eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or
- (iv) seven (7) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

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

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6710(b)(1)(B)25(a)(5)) An Application may receive ~~up to fourteen (14)~~one (1) points for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction over the proposed Development stating they will provide a loan, grant, reduced fees or contribution of other value for the benefit of the Development. ~~Development funding from~~

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

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

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

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

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

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

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

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

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

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

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

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(B); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in existence prior to the Pre-Application Final Delivery Date, and its boundaries must contain the Development Site. In addition, the Neighborhood Organization must be on record with the state (includes the Department) or county in which the Development Site is located. Neighborhood Organizations may request to be on record with the Department for the current Application Round with the Department by submitting documentation (such as evidence of board meetings, bylaws, etc.) not later than ~~by~~ 30 days prior to the Full Application Delivery Date. The written statement must meet all of the requirements in subparagraph (A) of this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations,

including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such statement is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date ~~May 1, 2016~~ ~~as identified in §11.2 of this chapter~~. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

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

(6) Input from Community Organizations. (§2306.6725(a)(2)) Where, at the time of Application, the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters must be submitted within the Application. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item.

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose ~~of~~ the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide evidence of some documentation of its tax exempt status and its existence and participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), or taxing entities.

(B) An Application may receive two (2) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application may receive two (2) points for a letter of support from a Special Management District whose boundaries, as of the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site.

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

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

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

(i) An Application may qualify to receive up to six (6) points if the Development Site is located in a ~~distinct~~ distinct area ~~that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems. The~~ in a community-concerted revitalization plan that meets the criteria described in subclauses (I) - ~~(IV)~~ of this clause:

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

(II) The ~~problems in the revitalization area must be identified adopting municipality or county must have performed, in through~~ a process ~~providing for in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized.~~ public input, an assessment of the factors in need of being addressed as a part of such community revitalization plan. Factors assessed must include at least five (5) of the following eight (8) factors These problems may include the following:

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

~~(-ba-) long-term disinvestment, such as significant~~ presence of residential and/or commercial blight, ~~which may include excessive vacancy, obsolete land use, significant decline in property value, or other similar conditions that impede growth~~streets and/or sidewalks in significant disrepair;

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

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

~~(-eb-) declining quality of life for area residents, such as high levels of~~ the presence of significant violent crime, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances or overt illegal activities;

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

~~(-g-) the lack of local business providing employment opportunities; or~~

~~(-h-) efforts to promote diversity, including multigenerational diversity, economic diversity, etcetera, where it has been identified in the planning process as lacking.~~

(III) ~~The target area must be larger than the assisted housing footprint and should be limited in size along the lines of specific neighborhoods rather than encompassing large areas of a city or county. Staff will review the target areas for presence of the~~ factors ~~problems~~ identified in ~~subclause (II) of this clause~~the plan and for targeted efforts within the plan to address those problems. In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to:

(-a-) attracting private sector development of housing and/or business;

(-b-) developing health care facilities;

(-c-) providing public transportation;

(-d-) developing significant recreational facilities; and/or

(-e-) improving under-performing schools.

~~(IV) The adopted plan, taken as a whole, must be a plan that can reasonably be expected to revitalize the neighborhood and address in a substantive and meaningful way the material factors identified in subclause (II) of this clause. Generally, because revitalization must identify specific matters needing to be addressed by revitalization and provide a plan and budget specifically directed to those identified issues, revitalization will be considered distinct and separate from broader economic development efforts.~~

(IV) The adopted plan must have sufficient, documented and committed funding ~~describe the planned budget and uses of funds~~ to accomplish its purposes ~~within the applicable target area~~on its established timetable. This funding must have been flowing in accordance with the

~~plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed prior to the Development being placed into service. To the extent that expenditures, incurred within four (4) years prior to the beginning of the Application Acceptance Period, have already occurred in the applicable target area, a statement from a city or county official concerning the amount of the expenditure and purpose of the expenditure may be submitted.~~

~~(VI) To be eligible for points under this item, the community revitalization plan must already be in place as of the Full Application Final Delivery Date pursuant to §11.2 of this chapter evidenced by a letter from the appropriate local official stating that:~~

~~(a) the plan was duly adopted with the required public input processes followed;~~

~~(b) the funding and activity under the plan has already commenced; and~~

~~(c) the adopting municipality or county has no reason to believe that the overall funding for the full and timely implementation of the plan will be unavailable.~~

(ii) Points will be awarded based on:

(I) Applications will receive four (4) points for a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area based on the target efforts outline in the plan~~if the applicable target area of the community revitalization plan has a total budget or projected economic value of \$6,000,000 or greater; or and~~

~~(II) Applications will receive two (2) points if the applicable target area of the community revitalization plan has a total budget or projected economic value of at least \$4,000,000; and~~

(III) Applications may receive (2) points in addition to those under subclause (I) ~~or (II)~~ of this clause if the Development is explicitly identified by the city or county as contributing most significantly to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. A resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application (this resolution is not required at pre-application). If multiple Applications submit resolutions under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application as contributing most significantly to concerted revitalization efforts.

~~(B) For Developments located in Urban Areas outside of Region 3.~~

~~(i) An Application may qualify for up to six (6) points for meeting the criteria under subparagraph (A) of this paragraph (with the exception of being located in Region 3); or~~

~~(ii) An Application will qualify for four (4) points if the city or county has an existing plan for Community Development Block Grant—Disaster Relief Program (CDBG-DR) funds that meets the requirements of subclauses (I) —(V) of this clause. To qualify for points, the Development Site must be located in the target area defined by the plan, and the Application must have a commitment of CDBG-DR funds. The plan (in its entirety) and a letter from a local government official with specific knowledge and oversight of implementing the plan are included in the Application and must:~~

~~(I) define specific target areas for redevelopment of housing that do not encompass the entire jurisdiction;~~

~~(II) be subject to administration in a manner consistent with an approved Fair Housing Activity Statement-Texas (FHAST);~~

~~(III) be subject to administration in a manner consistent with the findings of an Analysis of Impediments approved or accepted by HUD within the last three (3) calendar years or an approved Fair Housing Activity Statement-Texas (FHAST), approved by the Texas General Land Office;~~

~~(IV) certify that the plan and the Application are consistent with the adopting municipality or county's plan to affirmatively further fair housing under the Fair Housing Act; and~~

~~(V) be in place prior to the Full Application Final Delivery Date.~~

~~(B)~~ For Developments located in a Rural Area.

~~(i) An Application may qualify for up to four (4) points for meeting the criteria under subparagraph (B) of this paragraph if located outside of Region 3 (with the exception of being located in an Urban Area); or~~

(ii) The requirements for **communityconcerted** revitalization in a Rural Area are distinct and separate from the requirements related to **communityconcerted** revitalization in an Urban Area in that the requirements in a Rural Area relate primarily to growth and expansion indicators. An Application may qualify for up to four (4) points if the city, county, state, or federal government has approved expansion of basic infrastructure or projects, as described in this paragraph. Approval cannot be conditioned upon the award of tax credits or on any other event (zoning, permitting, construction start of another development, etc.) not directly associated with the particular infrastructure expansion. The Applicant, Related Party, or seller of the Development Site cannot contribute funds for or finance the project or infrastructure, except through the normal and customary payment of property taxes, franchise taxes, sales taxes, impact fees and/or any other taxes or fees traditionally used to pay for or finance such infrastructure by cities, counties, state or federal governments or their related subsidiaries. The project or expansion must have been completed no more than twelve (12) months prior to the beginning of the Application Acceptance Period or have been approved and is projected to be completed within twelve (12) months from the beginning of the Application Acceptance Period. An Application is eligible for two (2) points for one of the items described in subclauses (I) - (V) of this clause or four (4) points for at least two (2) of the items described in subclauses (I) - (V) of this clause:

(I) New paved roadway (may include paving an existing non-paved road but excludes overlays or other limited improvements) or expansion of existing paved roadways by at least one lane (excluding very limited improvements such as new turn lanes or restriping), in which a portion of the new road or expansion is within one half (1/2) mile of the Development Site;

(II) New water service line (or new extension) of at least 500 feet, in which a portion of the new line is within one half (1/2) mile of the Development Site;

(III) New wastewater service line (or new extension) of at least 500 feet, in which a portion of the new line is within one half (1/2) mile of the Development Site;

(IV) Construction of a new law enforcement or emergency services station within one (1) mile of the Development Site that has a service area that includes the Development Site; and

(V) Construction of a new hospital or expansion of an existing hospital's capacity by at least 25 percent within a five (5) mile radius of the Development Site and ambulance service to and from the hospital is available at the Development Site. Capacity is defined as total number of beds, total number of rooms or total square footage of the hospital.

(ii) To qualify under clause (i) of this subparagraph, the Applicant must provide a letter from a government official with specific knowledge of the project (or from an official with a private utility company, if applicable) which must include:

(I) the nature and scope of the project;

(II) the date completed or projected completion;

(III) source of funding for the project;

(IV) proximity to the Development Site; and

(V) the date of any applicable city, county, state, or federal approvals, if not already completed.

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) An Application may qualify to receive a maximum of eighteen (18) points for this item. To qualify for points, a 15-year pro forma itemizing all projected income including Unit rental rate assumptions, operating expenses and debt service, and specifying the underlying growth assumptions and reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party construction or permanent lender. In addition to the signed pro forma, a lender approval letter must be submitted. An acceptable form of lender approval letter may be obtained in the Uniform Multifamily Application Templates. ~~is found in the application.~~ If the letter evidences review of the Development alone it will receive sixteen (16) points. If the letter evidences review of the Development and the Principals, it will receive eighteen (18) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(~~HF~~); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on either the Building Cost or the Hard Costs per square foot of the proposed Development, as originally submitted in the Application. For purposes of this paragraph, Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule.

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

(i) the Development is elevator served, meaning it is either a ~~Qualified~~-Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;

(ii) the Development is more than 75 percent single family design;

(iii) the Development is Supportive Housing; or

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

(B) Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:

(i) The Building Cost per square foot is less than \$70 per square foot;

(ii) The Building Cost per square foot is less than \$75 per square foot, and the Development meets the definition of a high cost development;

(iii) The Hard Cost per square foot is less than \$90 per square foot; or

(iv) The Hard Cost per square foot is less than \$100 per square foot, and the Development meets the definition of high cost development.

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

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

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

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

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

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

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

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

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

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

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

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

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted during the Pre-Application Acceptance Period. Applications that meet the requirements described in subparagraphs (A) - (G) of this paragraph will qualify for six (6) points:

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

(B) The designation of the proposed Development as Rural or Urban remains the same;

(C) The proposed Development serves the same Target Population;

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than six (6) points from what was reflected in the pre-application self score;

(F) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application; and

(G) The pre-application met all applicable requirements.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least five (5) percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph:

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 9 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

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

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

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

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred. Where costs or financing change after completion of underwriting or

award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

~~(5) Extended Affordability or Historic Preservation. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) An Application may qualify to receive up to four (4) points for this scoring item.~~

~~(A) In accordance with the Code, each Development is required to maintain its affordability for a 15-year eCompliance pPeriod and, subject to certain exceptions, an additional 15-year eExtended uUse pPeriod. Development Owners that agree to extend the aAffordability pPeriod for a Development to thirty-five (35) years total may receive two (2) points. ~~;~~ ~~or~~~~

~~(6B) Historic Preservation. (§2306.6725(a)(5)) An Application includes a tax credit request amounting to less than or equal to \$7,000 per HTC unit, that has received a letter from the Texas Historical Commission determining preliminary eligibility for historic (rehabilitation) tax credits and is proposing the use of historic (rehabilitation) tax credits (whether federal or state credits) may qualify to receive four (4) points. At least seventy-five percent of the residential units shall reside within the Certified Historic Structure and one existing building that will be part of the Development must reasonably be expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609. The Application must include either documentation from the Texas Historical Commission that the property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status. ~~An Application may qualify to receive four (4) points under this provision.~~~~

~~(76) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Texas Government Code, §2306.6726 and the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).~~

~~(87) Funding Request Amount. An Application may qualify to receive one (1) point if the Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission, of no more than 100% of the amount available within the sub-region or set-aside as determined by the application of the regional allocation formula on or before ~~estimated by the Department as of~~ December 1, 20154.~~

(f) Point Adjustments.

Staff will recommend to the Board and the Board may make a deduction of up to five (5) points for any of the items listed in paragraph (1) of this subsection, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of deduction by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions. (§2306.6710(b)(2))

(1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10 percent Test deadline(s) or has requested an extension of the Carryover submission deadline, the 10 percent Test deadline (relating to either submission or expenditure).

(2) If the Developer or Principal of the Applicant violates the Adherence to Obligations.

(3) Any deductions assessed by the Board for paragraph (1) or (2) of this subsection based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

§11.10. Third Party Request for Administrative Deficiency for ~~Challenges of~~ Competitive HTC Applications.

The purpose of the Third Party Request for Administrative Deficiency process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request the staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. Staff will consider the request and proceed as it deems appropriate under the applicable rules including, if the Application in question is determined by staff to not be a priority Application, not reviewing the matter further. As a practical consideration, the Department expects that such requests be received by June 1. Requests made after this date may not be reviewed by staff.
~~The Department will address challenges received from unrelated entities to a specific active Application. The Department will utilize a preponderance of the evidence standard, and determinations made by the Department concerning challenges cannot be appealed by a party unrelated to the Applicant that is the subject of the challenge. The challenge process is reflected in paragraphs (1) – (13) of this section. A matter, even if raised as a challenge, that staff determines should be treated as an Administrative Deficiency will be treated and handled as an Administrative Deficiency, not as a challenge.~~

~~(1) Challenges to Applications (excluding Site Challenges) must be received by the Department no later than the Application Challenges Deadline as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) and must be accompanied by the corresponding non-refundable challenge processing fee as described in §10.901 of this title (relating to Fee Schedule). Challenges related to Undesirable Site Features and Undesirable Neighborhood Characteristics are due no later than the Site Challenges Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). Unless the required fee is received with the challenge, no challenge will be deemed to have been submitted, and the challenge fee must be paid for each Application challenged by a challenger.~~

~~(2) A challenge must be clearly identified as such, and it must state the specific identity of and contact information for the person making the challenge and, if they are acting on behalf of anyone else, on whose behalf they are acting.~~

~~(3) ChallengersRequestors must provide, at the time of filing the challenge, all briefings, documentation, and other information that the requestor~~challenger~~ offers in support of the challenged~~deficiency~~. ChallengersRequestors must provide sufficient credible evidence that, if confirmed, would substantiate the challenged~~deficiency~~ request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered.~~

~~(4) Challenges to the financial feasibility of the proposed Development are premature unless final underwriting reports on the challenged Application have been posted to the Department's website.~~

~~(5) Challenges relating to undesirable site features and undesirable neighborhood characteristics as described in §§10.101(a)(3) and (4) of this title (relating to Site and Development Requirements and Restrictions) are due by the Site Challenges Delivery Date and may relate to a failure to disclose characteristics described in §10.101(a)(4)(B) of this title or the presence of other characteristics that may deem the Site ineligible.~~

~~(6) Challengers are encouraged to be prudent in identifying issues to challenge, realizing that most issues will be identified and addressed through the routine review and Administrative Deficiency process;~~

~~(7) Once a challenge to an Application has been submitted, subsequent challenges on the same Application from the same challenger will not be accepted;~~

~~(8) The Department shall promptly post all items received and purporting to be challenges and any pertinent information to its website;~~

~~(9) The Department shall notify the Applicant that a challenge was received within seven (7) days of receipt of the challenge;~~

~~(10) Where, upon review by staff, an issue is not clearly resolved, staff may send an Applicant an Administrative Deficiency notice to provide the Applicant with a specific issue in need of clarification and time to address the matter in need of clarification as allowed by the rules related to Administrative Deficiencies;~~

~~(11) The Applicant may provide a response regarding the challenge and any such response must be provided within fourteen (14) days of their receipt of the challenge;~~

~~(12) The Department shall promptly post its determinations of all matters submitted as challenges. Because of statutory requirements regarding the posting of materials to be considered by the Board, staff may be required to provide information on late received items relating to challenges as handouts at a Board meeting; and~~

~~(13) Staff determinations regarding all challenges will be reported to the Board.~~

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 11, §§11.1 – 11.10, concerning the 2015 Housing Tax Credit Qualified Allocation Plan. The purpose of the repeal is to replace the sections with a new rule that encompasses requirements for all applications applying for housing tax credit funding through the Department.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will involve the replacement of sections within the rule with a new rule that encompasses requirements for all applications applying for housing tax credit funding through the Department. There is no change in economic cost to any individuals required to comply with the repeal. The average cost of filing an application is between \$15,000 and \$30,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small or micro-businesses. The average cost of filing an application is between \$15,000 and \$30,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 18, 2015 to October 15, 2015, to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Kathryn Saar, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-0764, attn: Kathryn Saar. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M.OCTOBER 15, 2015.**

STATUTORY AUTHORITY. The repealed sections are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the repeal is proposed pursuant to Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new sections affect Chapter 2306 of the Texas Government Code, including subchapter DD, concerning the Low Income Housing Tax Credit Program.

11.1 General

11.2 Program Calendar for Competitive Housing Tax Credits

11.3 Housing De-Concentration Factors

11.4 Tax Credit Request and Award Limits

11.5 Competitive HTC Set-Asides

11.6 Competitive HTC Allocation Process

11.7 Tie Breaker Factors

11.8 Pre-Application Requirements (Competitive HTC Only)

11.9 Competitive HTC Selection Criteria

11.10 Challenges of Competitive HTC Applications

Preliminary
Public Comment Received



City of Austin

Steve Adler, Mayor

301 W. 2nd St., Austin, TX 78701
(512) 978-2100, Fax (512) 978-2120
steve.adler@austintexas.gov

August 26, 2015

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
P. O. Box 13941
Austin, TX 78711

Dear Mr. Irvine:

I wanted to take this opportunity to write you personally and offer recommendations for the 2016 Qualified Allocation Plan (QAP) regarding Permanent Supportive Housing (PSH) and scoring for developments near transit.

Supportive Housing Scoring for Qualified Non-Profits

The City of Austin is committed to helping eliminate chronic homelessness and has a goal of developing 400 PSH units, including 200 PSH units under the “Housing First” model by 2018.

In October 2014, the Austin City Council passed a resolution which states, in part, “Permanent Supportive Housing will be the primary intervention to end chronic homelessness in Austin.” Resolution 20141002-043 directs that a coordinated, community-wide effort be undertaken over the next four years to reach this goal. In order to reach this goal, there must be capital available for housing, and the Low Income Housing Tax Credit program provides an important source of private capital to be used as equity for developing affordable housing.

As Austin strives to meet local goals specific to housing our most vulnerable citizens, creative financial partnerships at the local, regional, and national levels will be crucial. It will also require a regulatory environment that maximizes participation. Specifically, in the 2015 QAP, in order for non-profit organizations to qualify for a scoring advantage for supportive housing, a majority of its board of directors must have their principal residences within 90 miles of a proposed development site.

It is in the best interest of municipalities to be able to select appropriate development partners, including non-profits with the capacity and experience to develop PSH, irrespective of the residential location of board members. We encourage TDHCA to allow Qualified Non Profits, as defined under §42(h)(5) of the Internal Revenue Code, that have the capacity and experience to develop Permanent Supportive Housing to be able to capture all point advantages in the QAP.

Mr. Tim Irvine
August 26, 2015
Page Two

Proximity of Developments to Public Transportation

In addition, the City of Austin requests that proposed developments near public transportation be added as a tie breaker factor under section 11.7 in the QAP. The Opportunity Index is utilized in section 11.9(c)(2)(A); 11.9(c)(4); 11.9(d)(7); and 11.9(e)(2)(A)(iv); however, transit is not considered anywhere in the QAP, even though access to transit is one of the best ways to improve access to opportunity. Equitable access to transit is a significant part of opportunity, as transit enables transit dependent households to access employment opportunities, a larger range of housing options, and health care, which may not be assessable in high opportunity areas without a car.

The City of Austin's Analysis of Impediments to Fair Housing Choice recommended that the City enact policies to acquire and preserve apartments on and near transit corridors because proximity to transit is essential for many members of protected classes as it provides access to opportunities that would not be possible without transit.

In February 2014, the Austin City Council passed a resolution which states, in part, "...the City Council wishes to express its desire to have the state scoring system prioritize access to public transportation for projects that receive state tax credits." Resolution 20140227-047 recognizes that a large body of research shows transportation is commonly a household's second largest expense and that some projects have received high scores without access to public transportation.

As Austin and many other cities in Texas strive to address both their affordability and transportation challenges, it would be a win-win-win to help households in need live in locations that offer access to opportunity (such as high performing schools) and public transportation choices while supporting development that helps communities mitigate traffic congestion.

Thank you for giving me the opportunity to provide input which I hope will be helpful as your staff and the TDHCA Board of Directors consider revisions for the 2016 QAP.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Adler". The signature is fluid and cursive, with a large initial "S" and "A".

Steve Adler

August 20, 2015

TDHCA Board Members
 P.O. BOX 13941
 Austin, TX 78711

Re: QAP and Supportive Housing

Dear TDHCA Board Members,

Thank you for the opportunity to provide recommendations for Supportive Housing developments for the 2016 Qualified Allocation Plan (QAP).

Supportive Housing, Nonprofit Set-Aside: Currently, the QAP provides opportunity for Supportive Housing to receive additional points only if the development qualifies under the Nonprofit Set-Aside or is participating in the City of Houston PSH Program.

The Nonprofit Set-Aside requires the majority of board members to live within 90 miles of the development community (§2306.6706). It is generally accepted that the intent of the Nonprofit Set-Aside was to support local nonprofits.

The below data suggests that the Nonprofit Set-Aside is heavily subscribed, awarded and sufficiently meets the intended purpose of Texas Code without further providing a point advantage for local non-profits doing Supportive Housing developments.

Year	Total Ceiling	10% Non-Profit Set-Aside	Non-profit Allocations	Supportive Housing Allocations	Non-profit Less S.H. Allocations
2013	\$60,409,798	\$6,040,980	\$13,438,321	\$717,000	\$12,721,321
2014	\$61,797,310	\$6,179,731	\$16,974,840	\$2,230,500	\$14,744,340
2015	\$63,535,055	\$6,353,506	\$18,558,881	\$1,033,296	\$17,525,585

Volunteers of America recommends that any development built and operated under the definition of Supportive Housing by a Qualified Non-Profit (§42(h)(5) of the Internal Revenue Code) be able to receive additional points associated with these projects. We suggest that applicants for Supportive Housing should not be required to meet the definition of Non-profit Set aside (local non-profit) to gain additional points for the following reasons:

- a. Supportive Housing is a unique product type that is very dependent on the provider’s experience. Texas communities that do not have a qualified local

non-profit should be encouraged to bring in a more experienced state, regional, or national non-prounintentionally discourage experienced and quality state, regional and national non-profits from pursuing Supportive Housing projects in Texas;

c. Awarding Supportive Housing projects points based on the location of their board members as opposed to the merit of the project or project participants may not best serve TDHCA's mission.

Supportive Housing, Supportive Services: In order for Supportive Housing to most effectively stabilize at-risk populations, we further recommend that Supportive Housing developments be required to provide comprehensive services on site. Comprehensive shall n three or more of the following service programs provided on site:

- Mental health or counseling services
- Behavioral health or counseling services
- Physical healthcare
- Educational assistance programs
- Substance abuse counseling
- Financial Literacy/ Credit counseling
- Nutrition/Wellness counseling
- Job training and or placement assistance
- Life skills training

We appreciate the opportunity to provide comments and would be happy to provide any additional information.

Sincerely

Angela King
President/CEO
Volunteers of America, Texas

De-Concentration

We support the Department's efforts to deconcentrate affordable housing. We suggest a combination of revisions in order to further this policy effort, including Housing De-Concentration Factors, Tie Breaker Factors, and Underserved Area. Relating to De-Concentration Factors, we suggest that the Department implement a one mile same year limitation on all counties with populations under 1 million. This limitation is less restrictive than the statutory Two Mile Same Year Rule, and furthers the goal of de-concentration by ensuring that smaller markets do not receive more than one tax credit award in a given year within one mile of one another.

Next, we suggest a revision to the tiebreaker criteria in order to evaluate distance of a development from the nearest tax credit development serving the same population type. We also suggest that a 16 unit minimum be applied by TDHCA when evaluating the distance of an existing development from a proposed development, as 16 units is the minimum development size under the Multifamily Rules. See suggested language under the "Tie Breaker" section below.

Regarding the Underserved Area scoring item, we suggest a tiered system that recognizes different levels of de-concentration. For example, a census tract that has never received a tax credit award will receive maximum points, while a census tract that has previously received an award for a different population type than the proposed development will receive points but at a lower level. We also suggest that only existing developments with a minimum of 16 units be counted for the purpose of this scoring item, as described above.

Also, because Colonias and Economically Distressed areas do not directly relate to the dispersion of housing tax credit developments we suggest a separate scoring item for developments located in those statutorily-recognized areas.

11.3 Housing De-Concentration Factors, One Mile Same Year

(f) One Mile Same Year (Competitive HTC only). Staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population of one million or less if the proposed Development Site is also located less than one linear mile from the proposed Development Site of another Application within said county that is awarded in the same calendar year.

11.9(c) Criteria to Serve and Support Texans Most in Need

(6) Colonia or Economically Distressed Area. (§2306.127) An Application may qualify to receive one (1) point if the Development Site is located in one of the areas described in subparagraphs (A) - (B) of this paragraph

(A) A Colonia;

(B) An Economically Distressed Area

(7) Underserved Area. (§§2306.6725(b)(2); ~~2306.127~~, 42(m)(1)(C)(ii)) An Application may qualify to receive up to three (3) ~~two (2)~~ points for general population or Supportive Housing Developments if the Development Site is located in one of the areas described in subparagraphs (A) - (D) of this paragraph.

(A) A Colonia;

(B) An Economically Distressed Area;

(A) A census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development with 16 or more units that remains an active tax credit development. (3 points); or

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~~(B) For Rural Areas only, A census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development with 16 or more units that remains an active tax credit development serving the same Target Population. (2 points); or~~

~~(C) A census tract that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development with 16 or more units that remains an active tax credit development serving the same Target Population within the past 10 years. (1 point); or~~

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

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

At-Risk Award Limits

We suggest that the \$1.5 million award limit that is applicable to non-At-Risk developments also apply to At-Risk developments. This would result in a greater number of awarded developments within the At-Risk Set-Aside and provide much needed rehabilitation and reconstruction to more developments throughout the state.

11.4 Tax Credit Request and Award Limits

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

Tie Breaker

We suggest two revisions to the tie breaker factors. First, community assets in proximity to a development site are more indicative of a development's quality than is the distance from the nearest existing tax credit development. Therefore we suggest a tie breaker that gives priority to developments with a higher score on Marke's proposed new scoring item, Quality of Real Estate. Additionally, we suggest a revision to the tiebreaker criteria in order to evaluate distance of a development from the nearest tax credit development serving the same population type and with a minimum of 16 units, as described above. Suggested language:

11.7 Tie Breaker Factors

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

(2) Applications scoring higher on the Quality of Real Estate selection criteria under §11.9(b)(3) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

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(2) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development with a minimum of 16 units and serving the same population type. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.

Quality of Schools

In 2014 the average statewide index 1 average was 77. In 2015, the average is now 76. To maintain consistency in methodology for standards within TDHCA rules, we suggest that all references to a 77 index 1 score be changed to 76.

Additionally, staff has discussed a new requirement for public schools to which a development is zoned to have a Texas Education Agency (TEA) Met Standard rating. We support this idea and suggest that developments are required to be located within the attendance zone of an elementary school with a Met Standard rating, subject to the following. First, Rehabilitation (including Reconstruction) developments should be exempt in order to allow for the needed improvement of existing developments in communities in need of revitalization. Additionally, we suggest a pre-clearance process for new construction developments in areas that are part of a community revitalization plan area. The metrics to be evaluated should be area growth, increases in property values, neighborhood revitalization activities taking place, and alternative public school offerings in the area.

Community Assets / Amenities

Having quality amenities in close proximity to a site positively impacts residents' daily lives. All sites should meet a basic threshold requirement for proximity to the most essential amenities. In addition, sites that offer superior proximity to high quality amenities should be rewarded within the scoring system. With that in mind, we suggest requiring that sites be in proximity to a full-service grocery store and a pharmacy. Additionally, we suggest that additional amenities qualify developments for priority within the scoring system as suggested below.

Uniform Multifamily Rules

Subchapter B – Site and Development Requirements and Restrictions

10.101(a)(2) Mandatory Community Assets. Development Sites must be located within a two-mile radius (three-mile radius for Developments located in a Rural Area) of a full service grocery store and a pharmacy. Development Sites must be located within a one mile radius (two mile radius for Developments located in a Rural Area), unless otherwise required by the specific asset as noted below, of at least six (6) community assets listed in subparagraphs (A) – (T) of this paragraph. Supportive Housing Developments located in an Urban Area must meet the requirement in subparagraph (T) of this paragraph. Only one community asset of each type listed will count towards the number of assets required. A map must be included identifying the Development Site and the location of each of the community assets by name. All assets must exist or, if under construction, must be under active construction, post pad (e.g. framing the structure) by the date the Application is submitted:

~~(A) full service grocery store;~~

~~(B) pharmacy;~~

~~(C) convenience store/mini-market;~~

~~(D) department or retail merchandise store;~~

~~(E) bank/credit union;~~

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~~(F) restaurant (including fast food, but not including establishments that are primarily bars and serve food as an incidental item);~~
~~(G) indoor public recreation facilities, such as, community centers and libraries accessible to the general public;~~
~~(H) outdoor public recreation facilities such as parks, golf courses, and swimming pools accessible to the general public;~~
~~(I) medical office (physician, dentistry, optometry) or hospital/medical clinic;~~
~~(J) public schools (only eligible for Developments that are not Qualified Elderly Developments);~~
~~(K) senior center accessible to the general public;~~
~~(L) religious institutions;~~
~~(M) community, civic or service organizations, such as Kiwanis or Rotary Club;~~
~~(N) child care center (must be licensed—only eligible for Developments that are not Qualified Elderly Developments);~~
~~(O) post office;~~
~~(P) city hall;~~
~~(Q) county courthouse;~~
~~(R) fire station;~~
~~(S) police station;~~
~~(T) Development Site is located within 1/4 mile of a designated public transportation stop at which public transportation (not including “on demand” transportation) stops on a regular, scheduled basis; a site’s eligibility for on demand transportation does not meet this requirement. However, accessible transportation provided at no cost to the tenant when the Property Management Office is open, such as cab vouchers or a specialized van on site, to a bus or other public transit stop, does qualify.~~

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11.9(b) Selection Criteria Promoting the Development of High Quality Housing

~~(3) Quality of Real Estate. An Application may qualify to receive up to four (4) points for a Development Sites located within a one mile radius (two-mile radius for Developments located in a Rural Area) of any of the following community assets, unless otherwise required by the specific asset as noted below. Only one community asset of each type listed will count towards the number of points awarded. A map must be included identifying the Development Site and the location of each of the community assets by name. All assets must exist or, if under construction, must be under active construction, post pad (e.g. framing the structure) by the date the Application is submitted:~~

- ~~(A) full service grocery store (0.5 points);~~
- ~~(B) pharmacy (0.5 points);~~
- ~~(C) bank/credit union (0.25 points);~~
- ~~(D) indoor public recreation facilities, such as, community centers and libraries accessible to the general public at no charge (0.25 points);~~
- ~~(E) outdoor public recreation facilities such as parks, golf courses, and swimming pools accessible to the general public at no charge (0.25 points);~~
- ~~(F) medical office (physician, dentistry, optometry) or hospital/medical clinic (0.25 points);~~
- ~~(G) public schools whose attendance zone includes the development site (only eligible for Developments that are not Qualified Elderly Developments) (0.25 points);~~
- ~~(H) community college / university (0.25 points);~~
- ~~(I) senior center accessible to the general public at no charge (only eligible for Developments that are Qualified Elderly Developments) (0.25 points);~~
- ~~(J) religious institutions (0.25 points);~~

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~~(KA) child care center (must be licensed - only eligible for Developments that are not Qualified Elderly Developments) (0.25 points);~~
~~(L) shopping center anchored by at least one regional or national retail chain (0.25 points);~~
~~(M) post office (0.25 points);~~
~~(NP) city hall (0.25 points);~~
~~(OQ) county courthouse (0.25 points);~~
~~(PR) fire station (0.25 points);~~
~~(QS) police station (0.25 points);~~
~~(R) Development Site is located within ½ mile of a designated public transportation stop at which public transportation (not including “on demand” transportation) stops on a regular, scheduled basis; a site’s eligibility for on demand transportation does not meet this requirement. However, accessible transportation provided at no cost to the tenant when the Property Management Office is open, such as cab vouchers or a specialized van on site, to a bus or other public transit stop, does qualify (0.25 points).~~

Opportunity Index for Urban Areas

We suggest that the criteria for opportunity index be revised to recognize that sites located in both 1st and 2nd quartile census tracts provide equally strong opportunities for residents. We believe that the use of high performing schools as a differentiating factor between sites is appropriate, and is more meaningful than the difference between 1st and 2nd quartile census tracts. And rather than differentiate scoring based on 1st versus 2nd quartile census tracts, we believe that proximity to amenities should be evaluated to determine sites’ relative quality. The Opportunity Index scoring criteria can be used in conjunction with the new scoring item suggested above, Quality of Real Estate, to more accurately evaluate the quality of sites, based on location in areas of economic opportunity, and proximity to quality schools and quality amenities that directly contribute to the quality of residents’ daily lives. Suggested language:

11.9(c)(4)(A) Urban Area

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

(i) ~~the Development targets the general population or Supportive Housing,~~ the Development Site is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 7677 or greater on index 1 of the performance index, related to student achievement (7 points);

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

(iii) ~~any Development, regardless of population served, if~~ the Development Site is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (3 points).~~;~~

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

Local Government Support

We suggest a revision to the 2015 language in order to allow jurisdictions the opportunity to choose one development that most significantly contributes to local goals, similar to the Community Revitalization Plan selection criteria. This gives local jurisdictions a greater ability to influence which development is eventually constructed within their jurisdiction. This also addresses the problem of flat scoring. Suggested language:

11.9(d)(1)

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

(i) ~~sixteenseventeen (1617)~~ points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

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

~~(iii) one (1) point for a resolution from the Governing Body of that municipality that explicitly states that the Development contributes most significantly to local policy objectives. A municipality may only identify one single Development during each Application Round for the additional points under this subclause. If multiple Applications submit resolutions under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points.~~

(B) Within the extraterritorial jurisdiction of a municipality, the Application may receive points under clause (i) and (ii) of this subparagraph as described below: under clause (i) or (ii) of this subparagraph and under clause (iii) or (iv) of this subparagraph and clause (v) of this subparagraph:

(i) Resolution from the municipality. The Application may receive points under clause (I) or (II) of this subparagraph and under clause (III) of this subparagraph:

~~(i) eight and one-half (8.5)~~ points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

~~(ii) seven (7)~~ points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; and

(III) one half (0.5) point for a resolution from the Governing Body of that municipality that explicitly states that the Development contributes most significantly to local policy objectives. A municipality may only identify one single Development during each Application Round for the additional points under this subclause. If multiple Applications submit resolutions under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points.

(ii) Resolution from the county. The Application may receive points under clause (I) or (II) of this subparagraph and under clause (III) of this subparagraph:

~~(i) eight and one-half (8.5)~~ points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

~~(ii) seven (7)~~ points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(III) one half (0.5) point for a resolution from the Governing Body of that county that explicitly states that the Development contributes most significantly to local policy objectives. A county may only identify one single Development during each Application Round for the

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additional points under this subclause. If multiple Applications submit resolutions under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points.

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

(i) ~~sixteen~~~~seventeen~~ (16~~17~~) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(ii) fourteen (14) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(iii) one (1) point for a resolution from the Governing Body of that county that explicitly states that the Development contributes most significantly to local policy objectives. A county may only identify one single Development during each Application Round for the additional points under this subclause. If multiple Applications submit resolutions under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points.

Community Support from State Representative

Securing support from the State Representative is important to the competitiveness of an application. Unfortunately, as developers have worked to achieve TDHCA's goal to place housing in high opportunity areas, many legislators have used their opportunity for input to block housing within these high income areas, at times despite local support for the development. In an effort to prevent this NIMBY-based input from legislators, we suggest that points assigned to opposition letters be adjusted, and also that clear reasons for opposition must be described. Suggested language:

11.9(d)(5)

(5) Community Support from State Representative. (§2306.6710(b)(1)(F); §2306.6725(a)(2)) Applications may receive up to eight (8) points or have deducted up to ~~oneeight~~ (1~~8~~) points for this scoring item. To qualify under this paragraph letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and clearly state support for or opposition to the specific Development. In order for an opposition letter to qualify, the letter must provide specific grounds for the opposition. If an opposition letter is received for a development that is awarded points under 11.9(d)(1) Local Government Support, the State Representative's letter must explicitly state reasons for opposition in the face of local support or lack of objection. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. Neutral letters or letters that do not specifically refer to the Development or specifically express support or opposition will receive zero (0) points. A letter that does not directly express support but expresses it indirectly by inference (e.g. "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral letter. If no letter is received, the development will be awarded six (6) points.

Community Revitalization Plan for Rural Areas

In 2015 the maximum points available to rural developments was 4 points, as opposed to 6 points for urban developments. This puts rural developments at a disadvantage to urban developments within the

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At-Risk Set-Aside. We suggest that the maximum points available to rural developments be increased to 6 points for Rehabilitation developments (including Reconstruction), subject to satisfaction of additional criteria. Suggested language:

11.9(d)(7)(C)

(C) For Developments located in a Rural Area.

(i) An Application may qualify for up to ~~sixfour~~ (64) points for meeting the criteria under subparagraph (B) of this paragraph if located outside of Region 3 (with the exception of being located in an Urban Area); or

(ii) The requirements for community revitalization in a Rural Area are distinct and separate from the requirements related to community revitalization in an Urban Area in that the requirements in a Rural Area relate primarily to growth and expansion indicators. An Application may qualify for up to ~~sixfour~~ (64) points if the city, county, state, or federal government has approved expansion of basic infrastructure or projects, or economic development projects which create new jobs, as described in this paragraph. Approval cannot be conditioned upon the award of tax credits or on any other event (zoning, permitting, construction start of another development, etc.) not directly associated with the particular infrastructure expansion or economic development project. The Applicant, Related Party, or seller of the Development Site cannot contribute funds for or finance the project or infrastructure, except through the normal and customary payment of property taxes, franchise taxes, sales taxes, impact fees and/or any other taxes or fees traditionally used to pay for or finance such infrastructure by cities, counties, state or federal governments or their related subsidiaries. The project or expansion must have been completed no more than twelve (12) months prior to the beginning of the Application Acceptance Period or have been approved and is projected to be completed within twelve (12) months from the beginning of the Application Acceptance Period. An Application is eligible for two (2) points for one of the items described in subclauses (I) - (V) of this clause, ~~or four~~ (4) points for at least two (2) of the items described in subclauses (I) - (V) of this clause, or six (6) points for at least three (3) of the items described in subclauses (I) - (V) of this clause:

(I) New paved roadway (may include paving an existing non-paved road but excludes overlays or other limited improvements) or expansion of existing paved roadways by at least one lane (excluding very limited improvements such as new turn lanes or restriping), in which a portion of the new road or expansion is within one half (1/2) mile of the Development Site;

(II) New water service line (or new extension) of at least 500 feet, in which a portion of the new line is within one half (1/2) mile of the Development Site;

(III) New wastewater service line (or new extension) of at least 500 feet, in which a portion of the new line is within one half (1/2) mile of the Development Site;

(IV) Construction of a new law enforcement or emergency services station within one (1) mile of the Development Site that has a service area that includes the Development Site; and

(V) Construction of a new hospital or expansion of an existing hospital's capacity by at least 25 percent within a five (5) mile radius of the Development Site and ambulance service to and from the hospital is available at the Development Site. Capacity is defined as total number of beds, total number of rooms or total square footage of the hospital.

(VI) Construction of or commencement of a new business operation within a five (5) mile radius of the Development Site that results in the creation of at least 50 new jobs.

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Field Code Changed



August 17, 2015

Teresa Morales
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Dear Ms. Morales,

As experienced developers and owners of tax credit properties across the country and more recently in Texas, Pedcor Investments would like to submit language to be considered to be incorporated into the Texas Department of Housing and Community Affairs ("Department") staff draft of the 2016 Uniform Multifamily Rules. We appreciate that the formal public comment period does not begin until after the staff draft is published and approved by the Department's Governing Board, and we do intend to participate in the informal online forum. However, we appreciate your consideration of the specific revisions below.

§11.3(e) Additional Phase

The rule currently precludes Applications proposing Developments that are adjacent to "an existing tax credit Development serving the same Target Population" from being eligible unless the existing Development has been completed and has maintained certain occupancy requirements for a certain period of time. Although "existing tax credit Development" is not defined in the Rules, it is our understanding that Department staff's interpretation of the rule is that a development awarded tax credits and currently under construction would be considered an "existing tax credit Development." Because developments under construction clearly cannot meet the occupancy requirements needed to qualify for the exception to the rule, this rule effectively precludes development of two phases within any time frame much less than 3 years between the construction starts. This ultimately delays putting units on the ground, and particularly so in growing markets where there is substantial need for affordable housing. In addition, the rule as currently written does not distinguish between what would typically be considered an additional phase (one that has affiliate ownership) and a development merely being proposed on an adjacent site to another tax credit development. We propose the following:

Adjacent Sites and Additional Phase. This subsection does not apply to Applications proposing the Rehabilitation or replacement of existing federally-assisted affordable housing units or federally-assisted affordable housing units demolished on the same site within two years of the beginning of the Application Acceptance Period. For purposes of this subsection, an existing tax credit Development is one that is subject to a Land Use Restriction Agreement or has received a tax credit award, regardless of the status of construction.

(1) Applications proposing an additional phase of an existing tax credit Development serving the same Target Population, or Applications proposing Developments that are adjacent to or on a contiguous site with an existing

tax credit Development ~~and that propose to serving-serve~~ the same Target Population, ~~or Applications that are proposing a Development serving the same Target Population on a contiguous site to another Application awarded in the same program year,~~ shall be considered ineligible unless the ~~other existing~~ Developments ~~or phase(s) of the Development have-~~ has been completed and ~~have-has~~ maintained physical occupancy of at least 90 percent for a minimum six (6) month period as ~~reflected-evidenced~~ in the ~~submitted rent roll~~ Application. ~~The six (6) month period to be considered must have taken place within the twelve (12) months prior to submission of the Application for the proposed Development.~~

(2) Applications proposing a Development as an additional phase to an existing tax credit Development that has not reached construction completion and that serves the same Target Population will only be considered eligible if the proposed Development is outside a Rural Area and the Gross Capture Rate for the proposed Development does not exceed 9 percent for the total proposed units. For purposes of this subsection, an additional phase is a proposed Development that is adjacent to or on a contiguous site with an existing tax credit Development and that has as its proposed owner an Affiliate of the existing Development. A statement from the owner of the existing Development attesting to the affiliation and confirming that the proposed Development is an additional phase must be included with the Application.

~~If the Application proposes the Rehabilitation or replacement of existing federally-assisted affordable housing units or federally-assisted affordable housing units demolished on the same site within two years of the beginning of the Application Acceptance Period, this provision does not apply~~

§10.101(b)(5) Common Amenities

This suggestion is made with respect to just one of the choices from the list of possible common amenities to be used to qualify for enough points to meet the requirements of the general rule. We have found that, even at larger developments of over 200 units, that there is typically not demand for more than 5 computers in a business center. We suggest the following revision to §10.101(b)(5)(C)(xi):

Equipped and functioning business center or equipped computer learning center. Must be equipped with 1 computer for every ~~30-40~~ Units loaded with basic programs (maximum of 5 computers needed to qualify for points), 1 laser printer for every 3 computers (minimum of one printer) and at least one scanner which may be integrated with printer (2 points)

We appreciate your taking the time to consider these suggestions and look forward to participating in the forum and in the formal comment process. Please feel free to contact me if you have any questions or comments.

Sincerely,



Craig H. Lintner
Senior Vice President

RRHATX Comments for 2016 QAP

Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, TX 78701

Dear Mr. Irvine,

The Rural Rental Housing Association of Texas (RRHATX) would like to take this opportunity to comment on the 2016 QAP. RRHATX members include 701 projects and more than 25,000 units in rural Texas, the majority of which were constructed prior to 1990. Tax Credits have become the major source of funding for preservation of the USDA 515 properties and we recommend the following changes as necessary to preserve the portfolio.

The Association is asking that the 5% Set-Aside that USDA be exempt from the Opportunity Index, and from Educational Excellence. The reason for this request is because some viable properties are often unable to score sufficient points in these two categories and to be competitive. The result in many of the small rural communities is exclusion, and redlining—of the entire town—the points are just not available in these two categories when communities are served by only one set of schools that are rated below 77 on Index 1 of the performance index, related to student achievement, and one census tract often serves the entire place and may be in the 3rd or 4th quartile.

Other measures used by Rural Development, and TDHCA are in place to make sure good owners and feasible, deserving properties receive credits. We believe these measures sufficiently guard against concerns we all have of rewarding owners who have not maintained their property in the past, or for granting credits to properties that are no longer serving a community as intended. If a project falls below 80% occupancy, TDHCA requires a market study to confirm the capture rate and population demand. USDA has similar regulations in place for properties with high vacancy. USDA may require a “D”-rated property owner to transfer the property to a new owner, and TDHCA underwriting will weed out properties that are financially unfeasible. We believe this is sufficient check on both the property and the ownership to warrant the requested consideration for opportunity index and for educational excellence.

We propose the following changes to the 2015 QAP:

(4) Opportunity Index. (B): For Developments located in a Rural Area, ***except for the USDA At-Risk Set-Aside***, an application may qualify to receive.....

(5) Educational Excellence: An application ***other than an application in the USDA Set-Aside***, may qualify to receive up to.....

We additionally ask that ***TDHCA maintain the rural eligibility for all USDA 515 properties*** when implementing the amended definition of rural in the 2016 QAP.

Thank you for this opportunity to provide comments. If you have any questions, we are happy to answer them.

RRHATX Comments for 2016 QAP

Regards,

Angie Ruddock
President, RRHA

TX-CAD 2016 QAP and MF Rules Comments

The Texas Coalition of Affordable Developers (TX-CAD) is pleased to submit our initial comments for the 2016 QAP. TX-CAD is a coalition of Developers and consultants who have come together for the purpose of focusing on the improvement of affordable housing policy in Texas. The members of this group represent over 200 years of affordable housing development/policy and approximately 35,000 units of affordable housing in Texas.

General Statement

It is understood that the remaining issues with regard the State addressing disparate impact are statutory items in the QAP – specifically the legislative letters, local government support resolutions, and neighborhood input points. We believe that in the absence of an ability to change legislation before the next legislative session, TDHCA should make every attempt to minimize the impact of local and legislative opposition for developments in high opportunity areas. The courts have made it clear that TDHCA’s Board has and should use its discretion to minimize the impact of policies that result in preventing affordable housing options in higher income areas. Many areas of the state have essentially been red-lined through the manipulation of these scoring items and TDHCA has an obligation to implement changes through the QAP to address these issues.

Below are suggestions that we believe fit within the statutory guidelines, but at the same time show a continued attempt to meet the intent of the remedial plan, the Supreme Court decision, and the new fair housing initiatives from HUD.

Legislative letters

The refusal of a large number of legislators to write support letters for developments in high opportunity areas, regardless of local support, has resulted in high opportunity sites with excellent schools being deemed essentially uncompetitive. Additionally, we are seeing neighborhood organizations working with legislators to oppose deals that are not within their boundaries and in many cases are up to five or more miles away from a proposed development. We understand that affordable housing engenders NIMBY, but the existing timeframes of the QAP help exacerbate the issues as well.

Understanding that the State Rep letters are legislatively required and until such time as that can be changed, we propose the following interim fixes to minimize the impact of NIMBY on the success rate of getting a legislative support letter.

1. **State Rep letters due at the same time as full application (or pre application):** The month between application submission and legislative letter due date gives local communities a significant amount of time to lobby for letters of opposition. This would be consistent with the goal of the pre application to minimize application costs to the development community as developers will know much earlier whether their application will be competitive.

2. **City support due at full application date:** This would prevent legislators from deferring until city support is received and leaving this vital scoring item until long after an application has already expended money and submitted.
3. **Have City Support and State Rep letters as a separate by grouped scoring item:** This would allow for both items to be scored as required, yet minimize the problem of local support being overturned by legislative opposition. For example the scoring item could be called “Local Support” and have a maximum score of 20 points. This would allow state Reps to let the city make their determination. Those who choose to not write letters can defer, and those who oppose can still impact the scoring.

City Support:

20 points city support
12 points city no objection
0 points city opposition or nothing

State Rep Support:

8 points for rep support
0 for no letter
-1 for negative letter

Additionally, support from a city should not have to be in the form of a resolution. A letter from an authorized entity from the city should suffice for support.

4. **Change score for letters of opposition from State Rep for high opportunity areas:** Adjust the negative points to less than -8. Use -1 or -2. Additionally make neutral or no letters only 1 to 2 points below a positive letter. This will lessen the impact of not receiving a letter of support in high opportunity areas.
5. **Implement process for letters of opposition:** For a letter of opposition to be accepted by TDHCA for negative points, the legislator should be required to meet with the developer in person and explain reasons for opposition. Proof of meeting along with the topics discussed should be submitted to the Department with the letter of opposition.

Understanding that statute currently requires a written letter with regard to support, we encourage the TDHCA Board to use their discretion to allow Q1 sites to not require a letter of support from a legislator or that no letter is to be deemed as support if the city is on record being in support of the development. There could be an additional outreach requirement to the legislator to ensure that they indeed know about the development, but it would prevent a legislator from having to be on record publicly supporting a development.

Sites that are zoned appropriately for a proposed development should not require additional proof of local support, as the zoning itself should be sufficient proof of support of the type of development for the proposed site.

Additional Scoring Items (to help reduce ties)

1. **Create two levels of community assets:** One for threshold like we have now but expand out to 2-3 miles and a second one more narrowly defined for “bonus points”.
 - More narrowly defined items would be of a primary service nature (possible suggestions: grocery, school, park, part of master planned community, community center) for items within ¼ mile or up to 1 mile – a distance that would be considered walkable.
 - Threshold services could be double counted – once for threshold and again for “bonus points” as well if they met both sets of criteria.
 - Bonus services would be worth 1 to 2 points only. Two levels may allow more areas to be competitive.
2. **Award points for the level of investment in an area or for high growth area.** Possibly negative points for declining growth areas.
3. **Schools**- Met standard to be a threshold item for any new construction site.

Nonprofit letters

Eliminate nonprofit letters as a point item. Is item was originally instituted to offset the scoring impact of neighborhood letters, but has become just another opportunity for there to be NIMBY impact in higher income areas. Anything that gives additional opportunity for opposition to developments in HOAs is not in the spirit of encouraging developments in those areas. If site is within the boundary of a neighborhood association then a letter of support should still be required, but if not in an association then an application automatically gets the points. These letters are a waste of time, effort and energy, and are meaningless to the development.

Dispersing Projects

By the time a development reaches underwriting it is too late to deal with market concentration with a single year award list. The goal is to increase the distance between projects awarded in one year. Smaller markets continue to have multiple applications with no ability to minimize the concentration.

1. **Two miles, same year rule:** Currently this only applies to applications in counties of populations over 1M – change to statewide. Provide an exception for rehab and at risk deals as they are already occupied and do not impact concentration of an area.
2. **One mile, three years rule:** Make this rule apply statewide. Currently the exception by city resolution is for counties of over 1M, the exception by city resolution should be for any deal.

Revitalization Plans

The goal is to have a true revitalization plan. Currently revitalization deals require the plan, a letter, and a resolution of adoption. Multiple deals failed on issues dealing with revitalization plans, and in particular the letter required and the language needed.

1. **Require revitalization plans to be in place prior to opening of the application cycle (up to six months).** This will prevent the creation of a plan that is actually property specific rather than a true city motivated plan.
2. **Submittal in application should be the plan, highlighted for required items along with proof of adoption by City.**

3. **Revitalization plan requirements are outlined in the remedial plan.** The QAP has moved away from the requirements in the remedial plan. Examples are below. While there was not consensus on exactly how all of these items should be addressed, there was consensus that TDHCA should review the remedial plan again in light of the 2016 QAP and follow the remedial plan requirements.
 1. The remedial plan requires a certification of adoption from the city for QCT's only, non-QCT areas do not require such a certification. Discussion – create a form for cities to sign or allow a letter for that certification.
 2. The remedial plan provides that a revitalization plan can be approved even if missing a component of the plan.
 3. The remedial plan does not require a letter in addition to the plan – requirement for a letter should be removed from application.
 4. The remedial plan does not have a funding threshold. The QAP should track the remedial plan and remove the \$6M requirement or at a minimum not be a one size fits all amount for all cities in Texas.
 5. Should revitalization plans be allowed in high opportunity areas? The remedial plan seems to suggest otherwise.

Points for good portfolio score

At the QAP roundtable there was discussion about whether there should be points for having a Texas portfolio with a good overall compliance score. We disagree with this and believe there should be no reward for doing what you committed to do from the beginning. Continue with penalty system for those bad actors. Additionally, anything that is based on CMTS needs to be carefully reviewed as the last two years have shown that there are issues with data contained within CMTS.

Non QAP/MF Comments

Board meetings

- **Board Motions:** Several years ago there was a significant change to meeting procedure with respect to how comments on agenda items are received. Specifically the requirement that there must be a motion on the floor prior to comment and discussion. Understanding that statute outlines this order, we still feel that this requirement is prejudicial to the outcome of the vote. Additionally, it gives the impression the TDHCA, and more specifically the Board, does not actually consider public comment in their deliberation. This should revert back to allowing comment from the public prior to the motion. At a minimum, TDHCA should request that this be changed in the next legislative session.
- **General Public Comment:** General comments from the public should be allowed at the beginning of the meeting rather than at the end. The public should not have to sit through an entire meeting to have their say on items that are not agenda specific. TDHCA should encourage public participation -- forcing the public to wait for hours to address a Board that is often fatigued from long complicated meetings is not public friendly.

(v) The Development is a Qualified Elderly Development and the Development Site is located within 1.5 linear miles of a senior center (2 points); and/or

(vi) The Development Site is located within 1.5 linear miles of a health related facility (1 point).

(C) An elementary school attendance zone for the Development Site does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary schools that may possibly be attended by the tenants. In districts with "choice" programs, where students can select one or more schools in the district that they wish to attend, an Applicant may use the district rating. The applicable school rating will be the 2014 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions.

(5) Educational Excellence. An Application for a Development Site that targets the general population or supportive housing may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools that have achieved a 77 or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency, provided that the schools also have a Met Standard rating. Public charter schools that have priority enrollment for children living at the proposed Development Site may be used to claim Educational Excellence points. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary, middle, or high schools, respectively, which may possibly be attended by the tenants. In districts with "choice" programs, where students can select one or more schools in the district that they wish to attend, an Applicant may use the district rating. The applicable school rating will be the 2014 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with the appropriate rating. For Developments in Region 11, the middle school and high school must achieve an Index 1 score of at least 70 to be eligible for these points (3 points); or

(B) The Development Site is within the attendance zone of an elementary school and either a middle school or high school with the appropriate rating. For Developments in Region 11, the middle school or high school must achieve an Index 1 score of at least 70 to be eligible for these points (1 point); or

(iv) The Development Site must be located in one of the following areas: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Dallas-Fort Worth-Arlington MSA; El Paso MSA; Houston-The Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA.

(C) Applications proposing Developments that do not meet all of the requirements of clauses (i) – (iv) of subparagraph (A) of this paragraph may qualify for two (2) points for meeting the requirements of this subparagraph. In order to qualify for points, Applicants must agree to set-aside at least 5 percent of the total Units for Persons with Special Needs. For purposes of this subparagraph, Persons with Special Needs is defined as households where one individual has alcohol and/or drug addictions, Colonia resident, Persons with Disabilities, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Needs, but will be required to continue to affirmatively market Units to Persons with Special Needs.

(8) Aging in Place Elements. An Application for a Development Site that will serve the elderly and encourage aging in place may qualify for up to three (3) points.

(A) Two (2) will be awarded to Applications that provide the following services and proximity to services:

- (i) On-site, full-time resident service coordinator; and
- (ii) Monthly transportation service available to tenants. Transportation must be available at no cost to residents and the expense must be reflected in operating expenses; and
- (iii) Site is within one (1) linear mile for projects located in urban areas and two (2) linear miles for projects located in rural areas of a full service health clinic.

(B) One (1) point will be awarded for selecting any three (3) of the following additional amenities:

- (i) Movie Theater
- (ii) Community Gardens with accessible and raised bed
- (iii) Fitness Center
- (iv) 100% of the units are accessible.

(d) Criteria promoting community support and engagement.

(1)**Local Government Support.** An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) - (C) of this paragraph, as applicable. The resolution(s) must be dated prior to Final Input from Elected Officials Delivery Date and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any FFAST form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

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



August 26, 2015

Ms. Kathryn Saar
Director of Tax Credits
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

RE: 2016 QAP Comments

Dear Ms. Saar:

I am writing to express additional thoughts about the upcoming QAP for the 2016 LIHTC cycle. We have two comments discussed below.

Opportunity Index for Urban

We recommend combining 1st and 2nd quartiles. By giving the same weight to the top 2 income quartiles the supply of competitive sites will increase significantly while still meeting the intent of distributing projects into high income areas. Please note that the way TDHCA rounds real income ranges are actually much higher than the 50% mark. This rounding further bolsters your policy of creating housing in higher income areas.

Underserved

As you know, State statute 2306.6710 requires that HTC developments serve traditionally underserved areas. This is already being accomplished through both Regional Allocation and Tie Breaker methodology by awarding projects the farthest from an existing deal. Awarding 2 points in areas without any existing deals fosters an environment where developers chase points instead of sound real estate development principles. The negatives are twofold: 1) sufficient demand does not exist and typically not discovered until underwriting, and 2) projects are located without any regard to *high fiscal opportunities* for the residents – access to jobs.

To address the market and access to jobs issue, we recommend a requiring a 1:10 job requirement, 1 HTC unit:10 jobs. We suggest that employment opportunity is a better criterion to locate new housing in lieu of places without any tax credit deals. Other states like Georgia use the [US Census OnTheMap tool](#) to objectively define job opportunities. With a few clicks, the quantity of jobs by income level within a specified radius is shown. We recommend that the Department substitute the 2 points via measuring the number of jobs earning \$3,333 per month or less that are within a 1 mile radius (Urban)

1.5 mile radius (Rural) and that quantity must exceed the number of HTC units 10 times.

Thank you for considering these recommendations. Please contact me at 512/698-3369 or sarah@structuredevelopment.com should you have questions or require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah H. Andre", with a long horizontal stroke extending to the right.

Sarah H. Andre,
Consultant to the Project



August 25, 2015

Ms. Kathryn Saar
Director of Tax Credits
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

RE: 2016 QAP Comments

Dear Ms. Saar:

I am writing to express our ideas about the upcoming QAP for the 2016 LIHTC cycle. We have three comments discussed below.

Opportunity Index for At Risk Deals

We believe that employment is a better way to measure high opportunity for At Risk projects than the current criteria. The most important geographical asset for persons seeking upward mobility in an existing community is access to jobs. Please consider substituting access to jobs in lieu of the income criteria. Other states like Georgia use the [US Census OnTheMap tool](#) to objectively define income opportunities. With a few clicks, the quantity of jobs by income level within a specified radius is shown. I recommend that the Department assess high opportunity in At-Risk deals by measuring the number of jobs earning \$3,333 per month or less that are within a 1 mile radius and that quantity must exceed the number of HTC units 10 times. Sample text below.

QAP §11.9.Competitive HTC Selection Criteria (c)(4) (D)

For At-Risk Developments, if the proposed Development Site is located within an 1.0 mile radius area containing jobs earning up to \$3,333 of at least 10 times the number of HTC units as reported by the US Census [OnTheMap](#) an Application may qualify to receive up to seven (7) points..

Historic Preservation

There are financial, social, and cultural opportunities available by coupling HTCs and historic preservation. The benefits include downtown revitalization, blight transformation, saving tax dollars on utilizing existing infrastructure, reducing waste, tourism, as well as instilling cultural pride in Texas. To bring historic preservation up to a competitive level as expressed by the Texas Legislature in SB 1316, I recommend that it receive six (6) points as outlined below and uncouple from Extended Affordability. Sample text below.

QAP §11.9.Competitive HTC Selection Criteria (e)

(5) Historic Preservation. (§§2306.6725 (a)(6)) An Application may qualify to receive up to six (6) points for an Application proposing to rehabilitate or perform an adaptive reuse of a certified historic structure, as defined by Section 171.901 (1) Tax Code, as part of the development. A minimum of seventy-five (75) percent of the residential units shall reside within the certified historic structure.

Rules §10.204.

(15) Certified Historic Structure. (§2306.6725 (a)(6)) Acceptable evidence of a Certified Historic Structure for all Developments must include one of subparagraphs (A) - (B) of this paragraph.

(A) Historic Certification in Effect. The Application must include documentation from the Texas Historical Commission that the property is currently a Certified Historic Structure;

(B) Requesting Historic Certification. The Application must include documentation from the Texas Historical Commission determining preliminary eligibility for to be a Certified Historic Structure. Documentation of application for Certified Historic Structure status must be submitted to the Department by Commitment. Documentation of Certified Historic Structure status must be submitted to the Department by Cost Certification

HVAC Requirements for Existing Construction

Please consider allowing Packaged Terminal Air Conditioning (PTAC) units in At-Risk and Rehabilitation deals. Many older apartments have low ceilings or are made of concrete block and central air conditioning is not a cost effective solution. High efficiency PTAC units are adequate for small units such as efficiencies and one bedroom units found in many preservation projects. Permitting PTAC units saves valuable resources for other more measurable and meaningful improvements.

Thank you for considering these recommendations. I look forward to continuing our mutual quest to build homes and strengthen communities. Please contact me at 512/698-3369 or sarah@structuredevelopment.com should you have questions or require additional information.

Sincerely,



Sarah H. Andre,
Consultant to the Project

6c

**BOARD ACTION REQUEST
REAL ESTATE ANALYSIS
SEPTEMBER 3, 2014**

Presentation, Discussion, and Possible Action on the proposed repeal of 10 TAC Chapter 10 Subchapter D, concerning Underwriting and Loan Policies, and a proposed new 10 TAC Chapter 10 Subchapter D, concerning Underwriting and Loan Policy, and directing their publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, pursuant to Chapter 2306 of the Texas Government Code, the Department is provided the authority to adopt rules governing the administration of the Department and its programs;

WHEREAS, staff proposes clarifications and changes to the existing rules to better serve the underwriting of applications submitted under various Department programs;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 10 Subchapter D Underwriting and Loan Policy and proposed new 10 TAC Chapter 10, Subchapter D, concerning Underwriting and Loan Policy together with the preamble presented to this meeting, are approved for publication in the *Texas Register* for public comment; and

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

BACKGROUND

The draft 2016 Underwriting and Loan Policy rule presented herein *reflect staff's recommended modifications to the 2015 rule for the Board's consideration. The proposed changes to the rule resulted from both public and staff input. Some modifications are necessary for consistency with proposed changes to other Department rules. Significant changes to specific sections are*

summarized below. Other changes that are clarifying in nature or simply expand on the descriptions of current methodologies are not specifically discussed.

Upon Board approval, the draft rules will be posted to the Department's website and published in the Texas Register. Public comment will be accepted between September 18th and October 15th and there will be a consolidated public hearing held. The draft rules after consideration of public comment will be brought before the Board in November for final approval.

§10.302 Underwriting Rules and Guidelines

§10.302(d)(1)(A)(i) Market Rents (page 2 of 25). The change to this section will produce more conservative market rent assumptions when a development has only a few market rate units. Staff believes that market rent premiums above the 60% rent level are unlikely unless a development has a significant number of market units. Staff has recently seen transactions where break-even feasibility on these properties is dependent upon achieving very high premiums (\$150 per unit to \$250 per unit in some instances) over the 60% rent levels. Many times these are generally smaller developments in secondary or tertiary markets. However the situation also exists in submarkets in large metropolitan primary markets. To limit the risk associated with not achieving the higher market rents, the rule proposes that for developments proposed with 15% or fewer market or unrestricted units, the rents for the market rate units will be capped at the maximum 60% rent level for analysis purposes.

§10.302(d)(1)(A)(ii) – (v) Rental Income (page 2 of 25). Changes to this section provide additional clarity of the methodology and calculations used by the Underwriter to determine collected rents for each unit type. The methodology itself is not changed.

§10.302(d)(2)(K) Tenant Services (page 5 of 25). Changes to this section describe a new methodology for determining whether the cost of tenant services will be included as an operating expense. The cost of these services will not be included unless there is a documented obligation to provide the services by a unit of state or local government or where the applicant demonstrates a history of providing similar services at similar costs on affiliated properties. If there are tenant service expenses underwritten at application, a minimum of this dollar amount will be used at cost certification regardless if actually incurred. This provision does not preclude an owner for providing services even if not included as an operating expense. It simply determines whether tenant service expenses will be included for calculation of debt coverage.

§10.302(e)(7)(A) Developer Fee (page 9 of 25). Proposed language will increase the Developer Fee percentage to 20% on tax-exempt bond transactions when a public housing authority is converting a public housing development under the HUD Rental Assistance Demonstration (“RAD”) program. The increase in fee has been requested stating the

complexity of the RAD program and the additional risk assumed by the housing authority. Also, the additional tax credit equity due to the increased eligible fee provides additional gap funds which help the housing authority preserve other funds for other activities.

§10.302(e)(7)(F) Developer Fee (page 10 of 25). This new provision would fix the developer fee at the amount determined at initial underwriting. The amount of developer fee for a transaction is based on 15% of the total eligible cost at application. Under the current rule, any increase or decrease to eligible costs allows for an increase or decrease to the developer fee. This new provision would fix the amount of developer fee for a transaction regardless of whether development costs increase or decrease. The concept is that if a developer is willing to do a transaction for the fee stated at application, then changes to the development costs over time should not have an impact on the amount of the fee earned.

Staff has seen instances where total development costs increased dramatically after initial underwriting. Some increases as much as 18% to 32% (\$4.5M to \$6M). These are not the result of market cost increases. The increases are usually the result of the developer having to significantly change development design for local code reasons or other developmental conditions that typically should or could have been known at the time of application. Many times it is the lack of due diligence on the site conditions that produces the largest variances. Sometimes increases are simply the result of poor cost estimation even if the design itself does not materially change.

Increases in cost as a result of documented circumstances outside the control of the applicant and in the form of a material amendment to the application would be eligible for increased fee if the circumstances required considerable work or risk. But changes in costs associated with major changes in design/specifications, soft costs or cost of financing that should have been known by the developer prior to submitting the application would not be eligible for additional fee.

§10.302(i)(1)(E) Gross Capture Rate and Individual Unit Capture Rate (page 12 of 25) and §10.303(d)(11)(G) Individual Unit Capture Rate (page 18 of 25).

These new provisions working in tandem would deem a development infeasible if any unit type (bedroom size and rent restriction) shows an individual unit capture rate greater than 100%. The capture rate is calculated by dividing the demand for a unit type by the un-stabilized supply of comparable unit types in the market area. An individual unit capture rate would be considered high in the 10% to 20% range depending on the size of the market in terms of population and area. Staff has recently experienced transactions, primarily in rural areas, where the individual unit capture rates range from 300% to 400% with some as high as 600%. While 100% is likely unattainable, the 100% limit allows for situations where total

demand is not quantifiable or where anecdotal information exists to support potential additional demand not taken into account in the demographic data.

§10.307(b)(1) Construction Start on Direct Loans (page 25 of 25). This provision shortens the construction start timing from twelve (12) months after the HUD Commitment to a specific local project to six (6) months. The shortened timeframe ensures timely expenditure of HOME dollars and provides ample time to recommit if necessary.

Attachment B: Preamble and Proposed new 10 TAC, Chapter 10, Subchapter D, §§10.301 – 10.307, Underwriting and Loan Policy for public comment and publication in the *Texas Register*.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC, Chapter 10, Subchapter D, §§10.301 – 10.307.

FISCAL NOTE. Mr. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will enhance the State’s ability to provide decent, safe, sanitary and affordable housing. There is no change to the cost to any individual required to comply with the new rules.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 18, 2015 to October 15, 2015 to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Pam Cloyde, or by email to pcloyde@tdhca.state.tx.us, or by FAX to (512) 475-4420. ALL COMMENTS MUST BE RECEIVED BY 5:00 PM on OCTOBER 20, 2014.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government code §2306.053, which authorizes the Department to adopt rules. The proposed sections and amendments affect no other code, article or statute.

Subchapter D – Underwriting and Loan Policy

§10.301. General Provisions.

(a) **Purpose.** This subchapter applies to the underwriting, Market Analysis, appraisal, Environmental Site Assessment, Property Condition Assessment, and Direct Loan standards employed by the Department. This subchapter provides rules for the underwriting review of an affordable housing Development's financial feasibility and economic viability that ensures the most efficient allocation of resources while promoting and preserving the public interest in ensuring the long-term health of the Department's portfolio. In addition, this subchapter guides staff in making recommendations to the Executive Award and Review Advisory Committee (the "Committee"), Executive Director, and the Board to help ensure procedural consistency in the determination of Development feasibility (Texas Government Code, §§2306.081(c), 2306.185, and 2306.6710(d)). Due to the unique characteristics of each Development, the interpretation of the rules and guidelines described in this subchapter is subject to the discretion of the Department and final determination by the Board.

(b) **Appeals.** Certain programs contain express appeal options. Where not indicated, §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)) includes general appeal procedures. In addition, the Department encourages the use of Alternative Dispute Resolution ("ADR") methods, as outlined in §10.904 of this chapter (relating to Alternative Dispute Resolution (ADR) Policy).

§10.302. Underwriting Rules and Guidelines.

(a) **General Provisions.** Pursuant to Texas Government Code, §2306.148 and §2306.185(b), the Board is authorized to adopt underwriting standards as set forth in this section. Furthermore, for Housing Credit Allocation, §42(m)(2) of the Internal Revenue Code of 1986 (the "Code"), requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. The rules adopted pursuant to the Texas Government Code and the Code are developed to result in a Credit Underwriting Analysis Report ("Report") used by the Board in decision making with the goal of assisting as many Texans as possible by providing no more financing than necessary based on an independent analysis of Development feasibility. The Report generated in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development.

(b) **Report Contents.** The Report provides a synopsis and reconciliation of the Application information submitted by the Applicant. For the purpose of this subchapter the term Application includes additional documentation submitted after the initial award of funds that is relevant to any subsequent reevaluation. The Report contents will be based ~~solely~~ upon information that is provided in accordance with and within the timeframes set forth in the current Qualified Allocation Plan ("QAP") (10 TAC Chapter 11) or a Notice of Funds Availability ("NOFA"), as applicable, and the Uniform Multifamily Rules (10 TAC Chapter 10, Subchapters A – E and G).

(c) **Recommendations in the Report.** The conclusion of the Report includes a recommended award of funds or Housing Credit Allocation Amount and states any feasibility or other conditions to be placed on the award. The award amount is based on the lesser of the following: amount calculated by the program limit method, if applicable, gap/debt coverage ratio ("DCR") method, or the amount requested by the Applicant as further described in paragraphs (1) – (3) of this subsection, and states any feasibility conditions to be placed on the award.

- (1) **Program Limit Method.** For ~~Applicants requesting a~~ Housing Credit Allocations, this method is based upon calculation of Eligible Basis after applying all cost verification measures and program limits as described in this section. The Applicable Percentage used is ~~as~~ defined in §10.3 of this chapter (relating to Definitions). For ~~Applicants requesting funding through a~~ Department programs other than Housing Tax Credits, this method is based upon calculation of the funding limit ~~based on the~~in current program rules or NOFA at the time of underwriting.
- (2) **-Gap/DCR Method.** This method evaluates the amount of funds needed to fill the gap created by Total Housing Development Cost less total non-Department-sourced funds or Housing Tax Credits. In making this determination, the Underwriter resizes any anticipated deferred developer fee downward (but not less than zero) before reducing the amount of Department funds or Housing Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate

to determine the amount of Housing Tax Credits. In making this determination and based upon specific conditions set forth in the Report, the Underwriter may assume adjustments to the financing structure (including treatment of cash flow loans as if fully amortizing over its term) or make adjustments to any Department financing, such that the cumulative [Debt Coverage Ratio \("DCR"\)](#) conforms to the standards described in this section. For Housing Tax Credit Developments at cost certification, timing adjusters may be considered as a reduction to equity proceeds for this purpose. Timing adjusters must be consistent with and documented in the original partnership agreement (at admission of the equity partner) but relating to causes outside of the Developer's or Owner's control. The equity partner must provide a calculation of the amount of the adjuster to be used by the Underwriter.

- (3) **The Amount Requested.** The amount of funds that is requested by the Applicant, [For Housing Tax Credit Developments \(exclusive of Tax-Exempt Bond Developments\) this amount is limited to the amount requested as reflected](#) in the original Application documentation.

(d) **Operating Feasibility.** The operating ~~financial~~ feasibility of ~~a Development~~ [developments](#) funded by the Department is tested by [analyzing its Net Operating Income \("NOI"\) to determine the Development's ability to pay debt service and meet other financial obligations throughout the Affordability Period. NOI is determined by subtracting operating expenses, including replacement reserves and taxes, from rental and other income sources, to determine Net Operating Income. The annual Net Operating Income is divided by the cumulative annual debt service required to be paid to determine the Debt Coverage Ratio \("DCR"\). The Underwriter characterizes a Development as infeasible from an operational standpoint when the DCR does not meet the minimum standard set forth in paragraph \(4\)\(D\) of this subsection. The Underwriter may model adjustments to the financing structure, which could result in a re-characterization of the Development as feasible based upon specific conditions set forth in the Report.](#)

- (1) **Income.** In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's income ~~estimate pro forma~~ by determining the appropriate rental rate per unit based on [subsidy contracts](#), program ~~limitations including but not limited to utility allowances, actual rents supported by rent rolls and market~~ [Market Rents and other market conditions](#) factors. Miscellaneous income, vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are ~~applied~~ [used](#) unless well-documented support is provided [and independently verified by the Underwriter](#).

(A) **Rental Income.** [The Underwriter will review the Applicant's proposed rent schedule and determine if it is consistent with the representations made throughout the Application. The](#) Underwriter will independently calculate ~~the a~~ Pro Forma Rent for comparison to the Applicant's estimate in the Application.

(i) [Market Rents.](#) The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §10.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market [Analyst](#) and other market data sources. [For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Net Program Rent at 60% AMI.](#)

(ii) [Gross Program Rents.](#) ~~The Underwriter reviews the Applicant's proposed rent schedule and determines if it is consistent with the representations made in the remainder of the Application.~~ The Underwriter [will use](#) the Gross Program Rents for the year that is most current at the time the underwriting begins, ~~and uses the most current utility information available.~~ When underwriting for a simultaneously funded competitive round, all Applications are underwritten with the Gross Program Rents for the same year. If Gross Program Rents are adjusted by the Department after the close of the Application Acceptance Period, but prior to publication of the Report, the Underwriter may adjust the [Effective Gross Income \("EGI"\)](#) to account for any increase or decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.

(iii) [Contract Rents.](#) [The Underwriter will review rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The Underwriter will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the](#)

Applicant's proposed rents may be used as the Pro Forma Rent, with the recommendations of the Report conditioned upon receipt of final approval of such an increase.

(iv) Utility Allowances. The Underwriter will review Utility allowances calculated for individually metered tenant paid utilities considered to reflect a tenant's actual consumption. Methodologies for calculating Utility allowances can be found in Subchapter F, §10.614. The Underwriter generally uses the most current Public Housing Authority ("PHA") utility allowance schedule. Should HUD issue guidance requiring a different methodology for Direct Loan Programs, that methodology will be followed.

(v) Net Program Rents. Gross Program Rent less Utility Allowance.

(vi) Actual Rents for existing Developments will be reviewed as supported by a current rent roll. For Unstabilized Developments, actual rents will be based on the most recent units leased with occupancy and leasing velocity considered. Actual rents may be adjusted by the Underwriter to reflect lease-up concessions and other market considerations.

(vii) Collected Rent. Represents the monthly rent amount collected for each Unit Type. For rent-assisted units, the Contract Rent is used. In absence of a Contract Rent, the lesser of the Net Program Rent, Market Rent or actual rent is used.

(B) **Miscellaneous Income.** All ancillary fees and miscellaneous secondary income, including, but not limited to late fees, storage fees, laundry income, interest on deposits, carport and garage rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a \$5 to \$20 per Unit per month range. Exceptions may be made at the discretion of the Underwriter and must be supported by either the normalized operating history of the Development or other existing comparable properties within the same market area. ~~for garage income, pass-through utility payments, pass-through water, sewer and trash payments, cable fees, congregate care/assisted living/elderly facilities, and child care facilities.~~

~~(i) Exceptions must be justified by operating history of existing comparable properties.~~

~~(ii)(i)~~ (i) The Applicant must show that ~~the a~~ tenant will not be required to pay the additional fee or charge as a condition of renting a Unit and must show that the tenant has a reasonable alternative.

~~(iii)(ii)~~ (ii) The Applicant's operating expense schedule should reflect an itemized offsetting ~~cost line-item~~ associated with miscellaneous income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.

~~(iv)(iii)~~ (iii) Collection rates of exceptional fee items will generally be heavily discounted.

~~(v)(iv)~~ (iv) If an additional fee is charged for the optional use of an amenity, any cost associated with the construction, acquisition, or development of the hard assets needed to produce the additional fee for such amenity must be excluded from Eligible Basis.

(C) **Vacancy and Collection Loss.** The Underwriter generally uses a normalized vacancy rate of 7.5 percent (5 percent vacancy plus 2.5 percent for collection loss). The Underwriter may use other assumptions based on conditions in the immediate market area. ~~Qualified Elderly Developments and~~ 100 percent project-based rental subsidy developments and other well documented cases may be underwritten at a combined 5 percent at the discretion of the Underwriter if the immediate market area's historical performance reflected in the Market Analysis is consistently higher than a 95 percent occupancy rate.

(D) **Effective Gross Income ("EGI").** EGI is the total of Collected Rent for all units plus Miscellaneous Income less Vacancy and Collection Loss. ~~The Underwriter independently calculates EGI.~~ If the Applicant's pro forma EGI ~~estimate provided by the Applicant~~ is within 5 percent of the EGI independently calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating the underwritten DCR the Underwriter's pro forma will be used unless the Applicant's pro forma meets the requirements of paragraph (3) of this subsection.

(2) **Expenses.** In determining the first year stabilized operating expense pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate ~~by line item comparisons~~ based upon the specific characteristics of each ~~transaction~~ Development, including the ~~Development location, utility structure,~~ type, the size and number of ~~the~~ Units, and the Applicant's management plan expectations as reflected in their pro forma. Historical, stabilized and certified financial statements of ~~the an existing~~ Development or Third Party quotes specific to ~~the a~~ Development will reflect the strongest data points to predict future performance. The Underwriter may review actual operations on the Applicant's other properties monitored by the Department, if any, or review the proposed management company's comparable properties. The Department's Database of properties located in the same ~~location market area~~ or region as the proposed Development also provides ~~heavily relied upon~~ data points; expense data from the Department's Database is available on the

Department's website. Data from the Institute of Real Estate Management's ("IREM") most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as ~~Public Housing Authority ("PHA")~~ Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. ~~Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.~~ Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor. ~~Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.~~ Well documented information provided in the Market Analysis, Appraisal, the Application, and other sources may be considered.

- (A) **General and Administrative Expense** ("G&A")--~~Expense for operational a~~Accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. G&A does not include partnership related expenses such as asset management, accounting or audit fees. Costs of tenant services are not included in G&A.
- (B) **Management Fee.** Fee paid to the property management company to oversee the operation of the Property and is most often based upon a percentage of ~~Effective Gross Income~~EGI as documented in an existing property management agreement or proposal. Typically, 5 percent of ~~the Effective Gross Income~~EGI is used, though higher percentages for rural transactions may be used. Percentages as low as 3 percent may be used if well documented.
- (C) **Payroll Expense.** ~~Expense for direct on-site staff payroll~~Compensation, insurance benefits, and payroll taxes ~~including payroll expenses for repairs and maintenance typical of a comparable development for on-site office, leasing and maintenance staff. It Payroll~~ does not, ~~however,~~ include ~~direct Third-Party security payroll or additional tenant services payroll~~contracts. Staffing specific to tenant services, security or other staffing not related to customary property operations should be itemized and included in other expenses or tenant services expense.
- (D) **Repairs and Maintenance Expense.** Materials and supplies for the ~~Expense for~~ repairs and maintenance of the Development including; Third-Party maintenance contracts, ~~and supplies. It should~~This line-item does not include costs that are customarily capitalized ~~expenses~~ that would result from major replacements or renovations. ~~Direct payroll for repairs and maintenance activities are included in payroll expense.~~
- (E) **Utilities Expense.** ~~Utilities expense includes all gas~~Gas and electric energy expenses paid by the Development. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.
- (F) **Water, Sewer, and Trash Expense** ("WST"). Includes all water, sewer and trash expenses paid by the Development.
- (G) **Insurance Expense.** Cost of Insurance ~~expense includes any insurance~~coverage for the buildings, contents, and general liability, but not health or workman's compensation insurance.
- (H) **Property Tax.** Includes real property and personal property taxes but not payroll taxes.
 - (i) An assessed value will be calculated based on the capitalization rate published by the county taxing authority. If the county taxing authority does not publish a capitalization rate, a capitalization rate of 10 percent or a comparable assessed value may be used.
 - (ii) If the Applicant proposes a property tax exemption~~probability~~ the Application must include an attorney statement and documentation supporting the amount, basis for qualification and the reasonableness of achieving the exemption under the Property Tax Code . A Proposed Payment In Lieu Of Tax ("PILOT") agreement must be documented as being reasonably achievable. ~~At the discretion of the Underwriter, a property tax exemption that meets known federal, state and local laws may be applied based on the tax-exempt status of the Development Owner and its Affiliates.~~
- (I) **Replacement Reserves.** ~~An annual reserve replacements of~~Periodic deposits to a reserve account to pay for the future replacement or major repair of building systems and components (generally items considered capitalized costs). ~~capital expenses and any ongoing operating reserve requirements.~~The Underwriter ~~includes will use a~~ minimum reserves of \$250 per Unit for New Construction and Reconstruction Developments and \$300 per Unit for all other Developments. The Underwriter may require an amount above \$300 for the Development based on information provided in the Property Condition Assessment ("PCA"). The Applicant's assumption for reserves may be adjusted by the Underwriter if the amount provided by the Applicant is insufficient to fund capital needs as documented

by the PCA during the first fifteen (15) years of the long term pro forma. Higher reserves may be used if documented by a primary lender or syndicator.

- (J) **Other Operating Expenses.** The Underwriter will include other reasonable, customary and documented property-level operating expenses. These include expenses such as audit fees, ~~tenant services,~~ security expense, telecommunication expenses (tenant reimbursements must be reflected in EGI) and TDHCA's compliance fees. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees. ~~The most common other expenses are described in more detail in clauses (i)–(iv) of this subparagraph.~~

(K) Tenant Services. Tenant services are not included as an operating expense or included in the DCR calculation unless:

(i) There is a documented financial obligation on behalf of the Owner with a unit of state or local government to provide tenant supportive services at a specified dollar amount. The financial obligation must be identified by the permanent lender in their term sheet and the dollar amount of the financial obligation must be included in the DCR calculation on the permanent lender's 15-year pro forma at Application. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred; or,

(ii) The Applicant demonstrates a history of providing comparable supportive services and expenses at existing affiliated properties within the local area. Except for Supportive Housing Developments, the estimated expense of supportive services must be identified by the permanent lender in their term sheet and included in the DCR calculation on the 15-year pro forma. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred;

(iii) On-site staffing or pro ration of staffing for coordination of services only, not provision of services, can be included as a supportive services expense without permanent lender documentation.

~~(i) **Tenant Services.** Cost to the Development of any non-traditional tenant benefit such as payroll for instruction or activities personnel and associated operating expenses. Tenant services expenses are considered in calculating the DCR.~~

~~(ii) **Security Expense.** Contract or direct payroll expense for policing the premises of the Development.~~

~~(iii) **Compliance Fees.** Include only compliance fees charged by the Department and are considered in calculating the DCR.~~

~~(iv) **Cable Television Expense.** Includes fees charged directly to the Development Owner to provide cable services to all Units. The expense will be considered only if a contract for such services with terms is provided and income derived from cable television fees is included in the projected EGI. Cost of providing cable television in only the community building should be included in G&A as described in subparagraph (A) of this paragraph.~~

~~(K) The Underwriter may request additional documentation supporting some, none or all expense line items. If a rationale acceptable to the Underwriter for the difference is not provided, the discrepancy is documented in the Report.~~

(L) Total Operating Expenses. The total of expense items described above. If the Applicant's total expense estimate is within 5 percent of the final total expense figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR, the Underwriter's independent calculation will be used unless the Applicant's first year stabilized pro forma meets the requirements of paragraph (3) of this subsection.

- (3) **Net Operating Income ("NOI").** The difference between the EGI and total operating expenses. If the Applicant's first year stabilized NOI figure provided by the Applicant is within 5 percent of the NOI calculated by the Underwriter, the Applicant's ~~figure~~ NOI is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR, the Underwriter's ~~will maintain and use his independent~~ calculation of NOI will be used; unless the Applicant's first year stabilized EGI, total operating expenses, and NOI are each within 5 percent of the Underwriter's estimates. For Housing Tax Credit Developments at cost certification, actual NOI will be used as adjusted for stabilization of rents and extraordinary lease-up expenses. Permanent lender and equity partner stabilization requirements documented in the loan and partnership agreements will be considered in determining the appropriate adjustments and the NOI used by the Underwriter.

- (4) **Debt Coverage Ratio.** DCR is calculated by dividing NOI by the sum of scheduled loan principal and interest payments for all permanent debt sources of funds. If executed loan documents do not exist, Loan-loan terms

including principal and/or interest payments are calculated based on the terms indicated in the most current term sheet(s). ~~for financing submitted in the Application. Otherwise, actual terms indicated in the executed loan documents will be used. Term sheet(s) must indicate the DCR required by the lender for initial underwriting as well as for stabilization purposes.~~ Unusual or non-traditional financing structures may also be considered.

- (A) **Interest Rate.** The rate documented in the term sheet(s) or loan document(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide a breakdown of the rate index and any component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate assumption, or the Applicant must submit a separate statement from the lender with an estimate of the interest rate as of the date of such statement. At initial underwriting, ~~The~~ Underwriter may adjust the underwritten interest rate assumption based on market data collected on similarly structured transactions or rate index history. Private Mortgage Insurance premiums and similar fees are not included in the interest rate but calculated on outstanding principal balance and added to the total debt service payment.
- (B) **Amortization Period.** For purposes of calculating DCR, The Department generally requires the permanent lender's amortization period will be used if an amortization of not less than thirty (30) years, and not more than forty (40) years. Up to (fifty (50) years may be used for federally sourced or insured loans); For permanent lender debt with amortization periods less than thirty (30) years, thirty (30) years will be used. For permanent lender debt with amortization periods greater than forty (40) years, forty (40) years will be used. or an adjustment to the amortization is made for the purposes of the analysis and recommendations. In For non-Housing Tax Credit transactions a lesser amortization period may be used if the Department's funds are fully amortized over the same period as the primary senior debt.
- (C) **Repayment Period.** For purposes of projecting the DCR over a thirty (30)-year period for developments with permanent financing structures with balloon payments in less than thirty (30) years, the Underwriter will carry forward debt service based on a full amortization at the interest rate stated in the term sheet(s).
- (D) **Acceptable Debt Coverage Ratio Range.** Except as set forth in clauses (i) or (ii) of this subparagraph, the acceptable first year stabilized pro forma DCR for all priority or foreclosable lien financing plus the Department's proposed financing must be between a minimum of 1.15 and a maximum of 1.35 (maximum of 1.50 for Housing Tax Credit Developments at cost certification).
- (i) ~~For Developments other than HOPE VI and USDA transactions, if~~ the DCR is less than the minimum, the recommendations of the Report may be based on an assumed reduction to debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause subject to a Direct Loan NOFA and program rules:
- (I) a reduction of the interest rate or an increase in the amortization period for Direct Loans;
 - (II) a reclassification of Direct Loans to reflect grants, ~~if permitted by program rules;~~
 - (III) a reduction in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet(s) as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.
- (ii) If the DCR is greater than the maximum, the recommendations of the Report may be based on an assumed increase to debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause subject to a Direct Loan NOFA and program rules:
- (I) reclassification of Department funded grants to reflect loans, ~~if permitted by program rules;~~
 - (II) an increase in the interest rate or a decrease in the amortization period for Direct Loans;
 - (III) an increase in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.
- (iii) For Housing Tax Credit Developments, a reduction in the recommended Housing Credit Allocation Amount may be made based on the gap/DCR method Gap Method described in subsection (c)(2) of this section as a result of an increased debt assumption, if any.

(iv) ~~Although adjustments in The Underwriter may limit total debt service that is senior to a Direct Loan may become a condition of the Report, future changes in income, expenses, and financing terms could allow for~~ to produce an acceptable DCR on the Direct Loan.

- (5) **Long Term Pro forma.** The Underwriter will create a 30-year operating pro forma using the following:
- (A) The Underwriter's or Applicant's first year stabilized pro forma ~~is utilized unless the Applicant's first year stabilized EGI, operating expenses, and NOI are each within 5 percent of the Underwriter's estimates as determined by paragraph (3) of this subsection.~~
 - (B) A 2 percent annual growth factor is utilized for income and a 3 percent annual growth factor is utilized for operating expenses except for management fees that are calculated based on a percentage of each year's EGI.
 - (C) Adjustments may be made to the long term pro forma if satisfactory support documentation is provided by the Applicant or as independently determined by the Underwriter.

(e) **Total Housing Development Costs.** ~~The Development's need for permanent funds and, when applicable, the Development's Eligible Basis is based upon the projected Total Housing Development Cost.~~ The Department's estimate of the Total Housing Development Cost will be based on the Applicant's development cost schedule to the extent that ~~it~~ costs can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For New Construction Developments, the Underwriter's total cost estimate will be used unless the Applicant's Total Housing Development Cost is within 5 percent of the Underwriter's estimate. The Department's estimate of the Total Housing Development Cost for ~~acquisition/~~Rehabilitation Developments will be based in accordance with ~~on~~ the ~~PCA's~~ estimated cost provided in the PCA for the scope of work as defined by the Applicant and §10.306(a)(5) of this chapter (relating to PCA Guidelines). If the Applicant's cost estimate is utilized and the Applicant's line item costs are inconsistent with documentation provided in the Application or program rules, the Underwriter may make adjustments to the Applicant's Total Housing Development Cost.

- (1) **Acquisition Costs.** The underwritten acquisition cost is verified with Site Control document(s) for the Property.
- (A) **Excess Land Acquisition.** In cases where more land is to be acquired (by the Applicant or a Related Party) than will be utilized as the Development Site and the remainder acreage is not accessible for use by tenants or dedicated as permanent and maintained green space, the value ascribed to the proposed Development Site will be prorated based on acreage from the total cost reflected in the Site Control document(s). An appraisal containing segregated values for the total acreage, the acreage for the Development Site and the remainder acreage, or tax assessment value may be used by the Underwriter in making a proration determination based on relative value; however, the Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).
 - (B) **Identity of Interest Acquisitions.**
 - (i) An acquisition will be considered an identity of interest transaction when the seller is an Affiliate of, a Related Party to, any owner at any level of the Development Team or a Related Party lender; and
 - (I) is the current owner in whole or in part of the Property; or
 - (II) has or had within the prior 36 months, legal or beneficial ownership of the property or any portion thereof or interest therein prior to the first day of the Application Acceptance Period.
 - (ii) In all identity of interest transactions the Applicant is required to provide:
 - (I) the original acquisition cost evidenced by an executed settlement statement or, if a settlement statement is not available, the original asset value listed in the most current financial statement for the identity of interest owner; and
 - (II) if the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost stated in the application:
 - (-a-) an appraisal that meets the requirements of §10.304 of this chapter (relating to Appraisal Rules and Guidelines); and
 - (-b-) any other verifiable costs of owning, holding, or improving the Property, excluding seller financing, 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 to unrelated Third Party lender(s), capitalized costs of any physical improvements, the cost of zoning, platting, and any off-site costs to provide utilities or improve access to the Property. All allowable holding and improvement costs must directly benefit the proposed Development by a reduction to hard or soft costs. Additionally, an annual return of 10 percent may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost is incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered.

(-2-) For transactions which include existing buildings that will be rehabilitated or otherwise retained 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, and in the case of USDA financed Developments 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. Additionally, an annual return of 10 percent may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost was incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered. For any period of time during which the existing buildings are occupied or otherwise producing revenue, holding costs may not include capitalized costs, operating expenses, including, but not limited to, property taxes and interest expense.

(iii) In no instance will the acquisition cost utilized by the Underwriter exceed the lesser of the original acquisition cost evidenced by clause (ii)(I) of this subparagraph plus costs identified in clause (ii)(II)(-b-) of this subparagraph, or if applicable the "as-is" value conclusion evidenced by clause (ii)(II)(-a-) of this subparagraph. Acquisition cost is limited to appraised land value for transactions which include existing buildings that will be demolished. The resulting acquisition cost will be referred to as the "Adjusted Acquisition Cost."

(C) **Eligible Basis on Acquisition of Buildings.** Building acquisition cost will be included in the underwritten Eligible Basis if the Applicant provided an appraisal that meets the Department's Appraisal Rules and Guidelines as described in §10.304 of this chapter. The underwritten eligible building cost will be the lowest of the values determined based on clauses (i) - (iii) of this subparagraph:

- (i) the Applicant's stated eligible building acquisition cost;
- (ii) the total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), prorated using the relative land and building values indicated by the applicable appraised value;
- (iii) total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), less the appraised "as-vacant" land value; or
- (iv) the Underwriter will use the value that best corresponds to the circumstances presently affecting the Development and that will continue to affect the Development after transfer to the new owner in determining the building value. Any value of existing favorable financing will be attributed prorata to the land and buildings.

(2) **Off-Site Costs.** The Underwriter will only consider costs of Off-Site Construction that are well documented and certified to by a Third Party engineer on the required Application forms ~~and~~ with supporting documentation.

(3) **Site Work Costs.** The Underwriter will only consider costs of Site Work that are well documented and certified to by a Third Party engineer on the required Application forms ~~and~~ with supporting documentation.

(4) **Building Costs.**

(A) **New Construction and Reconstruction.** The Underwriter will use the Marshall and Swift Residential Cost Handbook, other comparable published Third-Party cost estimating data sources, historical final cost certifications of previous Housing Tax Credit developments and other acceptable cost data available to the Underwriter to estimate Building Cost. Generally, the "Average Quality" multiple, townhouse, or

single family costs, as appropriate, from the Marshall and Swift Residential Cost Handbook or other comparable published Third-Party data source, will be used based upon details provided in the Application and particularly building plans and elevations. The Underwriter will consider amenities, specifications and development types not included in the Average Quality standard. [The Underwriter may consider a sales tax exemption for nonprofit General Contractors.](#)

(B) **Rehabilitation and Adaptive Reuse.**

- (i) The Applicant must provide a detailed narrative description of the scope of work for the proposed rehabilitation.
- (ii) The Underwriter will use cost data provided [by the PCA on the PCA Cost Schedule Supplement](#). ~~In the case where the PCA is inconsistent with the Applicant's estimate as proposed in the Total Housing Development Cost schedule and/or the Applicant's scope of work, the Underwriter may request a supplement executed by the PCA provider reconciling the Applicant's estimate and detailing the difference in costs. If the Underwriter determines that the reasons for the initial difference in costs are not well documented, the Underwriter utilizes the initial PCA estimations.~~

(5) **Contingency.** ~~All contingencies identified in the Applicant's project cost schedule~~ [Total contingency](#), including any soft cost contingency, will be limited to a maximum of 7 percent of Building Cost plus Site Work and off-sites for New Construction and Reconstruction Developments, and 10 percent of Building Cost plus Site Work and off-sites for Rehabilitation and Adaptive Reuse Developments. For Housing Tax Credit Developments, the percentage is applied to the sum of the eligible Building Cost, eligible Site Work costs and eligible off-site costs in calculating the eligible contingency cost. ~~The Applicant's estimate is used by the Underwriter if less than the 7 percent or 10 percent limit, as applicable, but in no instance less than 5 percent.~~

(6) **General Contractor Fee.** [General](#) Contractor fees include general requirements, contractor overhead, and contractor profit. General requirements include, but are not limited to, on-site supervision or construction management, off-site supervision and overhead, jobsite security, equipment rental, storage, temporary utilities, and other indirect costs. [General](#) Contractor fees are limited to a total of 14 percent on Developments with Hard Costs of \$3 million or greater, the lesser of \$420,000 or 16 percent on Developments with Hard Costs less than \$3 million and greater than \$2 million, and the lesser of \$320,000 or 18 percent on Developments with Hard Costs at \$2 million or less. For tax credit Developments, the percentages are applied to the sum of the Eligible Hard Costs in calculating the eligible contractor fees. For Developments also receiving financing from USDA, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or USDA requirements. Additional fees for ineligible costs will be limited to the same percentage of ineligible Hard Costs but will not be included in Eligible Basis.

(7) **Developer Fee.**

(A) For Housing Tax Credit Developments, the Developer ~~Fee fees and Development Consultant fees~~ included in Eligible Basis cannot exceed 15 percent of the project's eligible costs, less Developer fees, for Developments proposing fifty (50) Units or more and 20 percent of the project's eligible costs, less Developer fees, for Developments proposing forty-nine (49) Units or less. [For Public Housing Authority Developments for conversion under the HUD Rental Assistance Demonstration \("RAD"\) program that will be financed using tax-exempt mortgage revenue bonds, the Developer Fee cannot exceed 20 percent of the project's eligible cost less Developer Fee.](#)

(B) Any additional Developer fee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs (15 percent for Developments with fifty (50) or more Units, or 20 percent for Developments with forty-nine (49) or fewer Units). Any Developer fee above this limit will be excluded from Total Housing Development Costs. All fees to Affiliates and/or Related Parties for work or guarantees determined by the Underwriter to be typically completed or provided by the Developer or Principal(s) of the Developer will be considered part of Developer fee.

(C) In the case of a transaction requesting acquisition Housing Tax Credits:

- (i) the allocation of eligible Developer fee in calculating Rehabilitation/New Construction Housing Tax Credits will not exceed 15 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing fifty (50) Units or more and 20 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing forty-nine (49) Units or less; and
- (ii) no Developer fee attributable to an identity of interest acquisition of the Development will be included.

(D) Eligible Developer fee is multiplied by the appropriate Applicable Percentage depending whether it is attributable to acquisition or rehabilitation basis.

(E) For non-Housing Tax Credit developments, the percentage can be up to 15 percent, but is based upon Total Housing Development Cost less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in paragraph (8) of this subsection, reserves, and any identity of interest acquisition cost.

(F) The amount of Developer Fee will be determined based on the original underwriting at application. The amount of Developer Fee will be fixed at the dollar amount underwritten through any subsequent evaluation including cost certification. Increases in eligible cost as a result of documented circumstances outside the control of the applicant may be eligible for increased Developer but fees greater than 15% will be reviewed for undue enrichment.

- (8) **Financing Costs.** All fees required by the construction lender, permanent lender and equity partner must be indicated in the term sheets. Eligible construction period interest is limited to the lesser of actual eligible construction period interest, or the interest on one (1) year's fully drawn construction period loan funds at the construction period interest rate indicated in the term sheet(s). For tax-exempt bond transactions up to twenty four (24) months of interest may be included. Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related Party construction loans is not included in Eligible Basis.
- (9) **Reserves.** Except for the underwriting of a Housing Tax Credit Development at cost certification, ~~The~~ the Underwriter will utilize the amount described in the Applicant's project cost schedule if it is within the range of two (2) to six (6) months of stabilized operating expenses plus debt service. Alternatively, the Underwriter may consider a greater amount proposed by the first lien lender or syndicator if the detail for such greater amount is found by the Underwriter to be both reasonable and well documented. Reserves do not include capitalized asset management fees, guaranty reserves, tenant services reserves or other similar costs. Lease up reserves, exclusive of initial start-up costs, funding of other reserves and interim interest, may be considered with documentation showing sizing assumptions acceptable to the Underwriter. In no instance at initial underwriting will total reserves exceed twelve (12) months of stabilized operating expenses plus debt service (including transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Pursuant to §10.404(c) and for the underwriting of a Housing Tax Credit Development at cost certification, operating reserves that will be maintained for a minimum period of five years and documented in the Owner's partnership agreement and/or the permanent lender's loan documents will be included as a development cost.
- (10) ~~**Other Soft Costs.** For Housing Tax Credit Developments, all other soft costs are divided into eligible and ineligible costs.~~ Eligible soft costs are ~~defined by the Code, but~~ generally ~~are~~ costs that can be capitalized in the basis of the Development for tax purposes. ~~Ineligible costs are those that tend to fund future operating activities and operating reserves.~~ The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Code. ~~If the Underwriter questions the amount or eligibility of any soft costs, the Applicant will be given an opportunity to clarify and address the concern prior to completion of the Report.~~ Generally the Applicant's costs are used however the Underwriter will use comparative data to determine the reasonableness of all soft costs.
- (11) **Additional Tenant Amenities.** For Housing Tax Credit Developments and after submission of the cost certification package, the Underwriter may consider costs of additional building and site amenities (suitable for the tenant population being served) proposed by the Owner in an amount not to exceed 1.5% of the originally underwritten Hard Costs. The additional amenities may be included in the LURA.
- (12) **Special Reserve Account.** For Housing Tax Credit Developments at cost certification, the Underwriter may include a deposit of up to \$2,500 per Unit into a Special Reserve Account [pursuant to §10.404(d)] as a Development Cost.

(f) Development Team Capacity and Development Plan.

- (1) The Underwriter will evaluate and report on the overall capacity of the Development Team by reviewing aspects, including but not limited to those identified in subparagraphs (A) - (D) of this paragraph:
- (A) personal credit reports for development sponsors, Developer fee recipients and those individuals anticipated to provide guarantee(s). The Underwriter will evaluate the credit report and identify any bankruptcy, state or federal tax liens or other relevant credit risks for compliance with eligibility and debarment requirements in this chapter;

- (B) quality of construction, Rehabilitation, and ongoing maintenance of previously awarded housing developments by review of construction inspection reports, compliance on-site visits, findings of UPCS violations and other information available to the Underwriter;
 - (C) for Housing Tax Credit Developments, repeated or ongoing failure to timely submit cost certifications, requests for and clearance of final inspections, and timely response to deficiencies in the cost certification process;
 - (D) adherence to obligations on existing or prior Department funded developments with respect to program rules and documentation.
- (2) While all components of the development plan may technically meet the other individual requirements of this section, a confluence of serious concerns and unmitigated risks identified during the underwriting process will result in an Application being referred to the Committee. The Committee will review any recommendation made under this subsection to deny an Application for a Grant, Direct Loan and/or Housing Credit Allocation prior to completion of the Report and posting to the Department's website.

(g) Other Underwriting Considerations. The Underwriter will evaluate additional feasibility elements as described in paragraphs (1) - (3) of this subsection.

- (1) **Floodplains.** The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:
 - (A) the Applicant must pursue and receive a Letter of Map Amendment ("LOMA") or Letter of Map Revision ("LOMR-F"); or
 - (B) the Applicant must identify the cost of flood insurance for the buildings and for the tenant's contents for buildings within the 100-year floodplain and certify that the flood insurance will be obtained; and
 - (C) the Development must be [proposed to be](#) designed to comply with the QAP, ~~or NOFA as proposed.~~
- (2) **Proximity to Other Developments.** The Underwriter will identify in the Report any developments funded or known and anticipated to be eligible for funding within one linear mile of the subject. Distance is measured in a straight line from nearest boundary point to nearest boundary point.
- (3) **Supportive Housing.** The unique development and operating characteristics of Supportive Housing Developments may require special consideration in these areas:
 - (A) **Operating Income.** The extremely-low-income tenant population typically targeted by a Supportive Housing Development may include deep-skewing of rents to well below the 50 percent AMGI level or other maximum rent limits established by the Department. The Underwriter should utilize the Applicant's proposed rents in the Report as long as such rents are at or below the maximum rent limit proposed for the units and equal to any project based rental subsidy rent to be utilized for the Development;
 - (B) **Operating Expenses.** A Supportive Housing Development may have significantly higher expenses for payroll, management fee, security, resident support services, or other items than typical affordable housing developments. The Underwriter will rely heavily upon the historical operating expenses of other Supportive Housing Developments [provided by affiliated with](#) the Applicant or otherwise available to the Underwriter. [Expense estimates must be categorized as outlined in subsection \(d\)\(2\) of this section;](#)
 - (C) **DCR and Long Term Feasibility.** Supportive Housing Developments may be exempted from the DCR requirements of subsection (d)(4)(D) of this section if the Development is anticipated to operate without conventional or "must-pay" debt. Applicants must provide evidence of sufficient financial resources to offset any projected 15-year cumulative negative Cash Flow. Such evidence will be evaluated by the Underwriter on a case-by-case basis to satisfy the Department's long term feasibility requirements and may take the form of one or a combination of: executed subsidy commitment(s); set-aside of Applicant's financial resources to be substantiated by current financial statements evidencing sufficient resources; and/or proof of annual fundraising success sufficient to fill anticipated operating losses. If either a set aside of financial resources or annual fundraising are used to evidence the long term feasibility of a Supportive Housing Development, a resolution from the Applicant's governing board must be provided confirming their irrevocable commitment to the provision of these funds and activities; and/or
 - (D) **Total Housing Development Costs.** For Supportive Housing Developments designed with only Efficiency Units, the Underwriter may use "Average Quality" dormitory costs, or costs of other

appropriate design styles from the Marshall & Swift Valuation Service, with adjustments for amenities and/or quality as evidenced in the Application, as a base cost in evaluating the reasonableness of the Applicant's Building Cost estimate for New Construction Developments.

(h) **Work Out Development.** Developments that are underwritten subsequent to Board approval in order to refinance or gain relief from restrictions may be considered infeasible based on the guidelines in this section, but may be characterized as "the best available option" or "acceptable available option" depending on the circumstances and subject to the discretion of the Underwriter as long as the option analyzed and recommended is more likely to achieve a better financial outcome for the property and the Department than the status quo.

(i) **Feasibility Conclusion.** An infeasible Development will not be recommended for a Grant, Direct Loan or Housing Credit Allocation unless the Underwriter can determine an alternative structure and/or conditions the recommendations of the Report upon receipt of documentation supporting an alternative structure. A Development will be characterized as infeasible if paragraph (1) or (2) of this subsection applies. The Development will be characterized as infeasible if one or more of paragraphs (3) - (5) of this subsection applies unless paragraph (6)(B) of this subsection also applies.

- (1) **Gross Capture Rate and Individual Unit Capture Rate.** The method for determining ~~the Gross Capture Rate~~ capture rates for a Development is defined in §10.303 ~~(d)(11)(F)~~ of this chapter. The Underwriter will independently verify all components and conclusions of the ~~Gross Capture Rate~~ capture rates and may, at their discretion, use independently acquired demographic data to calculate demand and may make a determination of the ~~effective Gross Capture Rate~~ capture rates based upon an analysis of the Sub-market. The Development:
 - (A) is characterized as a Qualified Elderly Development and the Gross Capture Rate exceeds 10 percent for the total proposed Units; or
 - (B) is outside a Rural Area and targets the general population, and the Gross Capture Rate exceeds 10 percent for the total proposed Units; or
 - (C) is in a Rural Area and targets the general population, and the Gross Capture Rate exceeds 30 percent; or
 - (D) is Supportive Housing and the Gross Capture Rate exceeds 30 percent; or
 - (E) has an Individual Unit Capture Rate for any Unit Type greater than 100 percent.~~(E)~~ Developments meeting the requirements of subparagraph (A), (B), (C), (D) or ~~(D)~~ of this paragraph may avoid being characterized as infeasible if clause (i) or (ii) of this subparagraph apply.
 - (i) Replacement Housing. The proposed Development is comprised of affordable housing which replaces previously existing affordable housing within the Primary Market Area as defined in §10.303 of this chapter on a Unit for Unit basis, and gives the displaced tenants of the previously existing affordable housing a leasing preference.
 - (ii) Existing Housing. The proposed Development is comprised of existing affordable housing which is at least 50 percent occupied and gives displaced existing tenants a leasing preference as stated in a relocation plan.
- (2) **Deferred Developer Fee.** Applicants requesting an allocation of tax credits where the estimated deferred Developer Fee, based on the ~~Underwriter's recommended financing~~ underwritten capitalization structure, is not repayable from Cash Flow within the first fifteen (15) years of the long term pro forma as described in subsection (d)(5) of this section.
- (3) **Pro Forma Rent.** The Pro Forma Rent for Units with rents restricted at 60 percent of AMGI is less than the Net Program Rent for Units with rents restricted at or below 50 percent of AMGI unless the Applicant accepts the Underwriter's recommendation, if any, that all restricted units have rents and incomes restricted at or below the 50 percent of AMGI level.
- (4) **Initial Feasibility.**
 - (A) Except when underwritten at cost certification, the first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68 percent for Rural Developments 36 Units or less and 65 percent for all other Developments.
 - (B) The first year DCR is below 1.15 (1.00 for USDA Developments).
- (5) **Long Term Feasibility.** The Long Term Pro forma, as defined in subsection (d)(5) of this section, reflects a Debt Coverage Ratio below 1.15 or negative cash flow at any time during years two through fifteen.
- (6) **Exceptions.** The infeasibility conclusions may be excepted when: ~~where either of the criteria apply.~~

- (A) ~~The requirements in this subsection may be waived~~ Waived by the Executive Director of the Department or by the Committee if documentation is submitted by the Applicant to support unique circumstances that would provide mitigation.
- (B) Developments not meeting the requirements of one or more of paragraphs (3), (4)(A) or (5) of this subsection will be re-characterized as feasible if one or more of clauses (i) - (v) of this subparagraph apply.
 - (i) The Development will receive Project-based Section 8 Rental Assistance or the HUD Rental Assistance Demonstration Program for at least 50 percent of the Units and a firm commitment, with terms including Contract Rent and number of Units, is submitted at Application.
 - (ii) The Development will receive rental assistance for at least 50 percent of the Units in association with USDA financing.
 - (iii) The Development will be characterized as public housing as defined by HUD for at least 50 percent of the Units ~~, or HOPE VI financed transactions.~~
 - (iv) The Development will be characterized as Supportive Housing for at least 50 percent of the Units and evidence of adequate financial support for the long term viability of the Development is provided.
 - (v) The Development has other long term project based restrictions on rents for at least 50 percent of the Units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10 percent lower than both the Net Program Rent and Market Rent.

§10.303. Market Analysis Rules and Guidelines.

(a) **General Provision.** A Market Analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The analysis must determine the feasibility of the subject Property rental rates or sales price and state conclusions as to the impact of the Property with respect to the determined housing needs. The Market Analysis must include a statement that the report preparer has read and understood the requirements of this section.

(b) **Self-Contained.** A Market Analysis prepared for the Department must allow the reader to understand the market data presented, the analysis of the data, and the conclusions derived from such data. All data presented should reflect the most current information available and the report must provide a parenthetical (in-text) citation or footnote describing the data source. The analysis must clearly lead the reader to the same or similar conclusions reached by the Market Analyst. All steps leading to a calculated figure must be presented in the body of the report.

(c) **Market Analyst Qualifications.** A Market Analysis submitted to the Department must be prepared and certified by an approved Qualified Market Analyst. (§2306.67055) The Department will maintain an approved Market Analyst list based on the guidelines set forth in paragraphs (1) - (3) of this subsection.

- (1) The approved Qualified Market Analyst list will be updated and published annually on or about October 1st. If not listed as an approved Qualified Market Analyst by the Department, a Market Analyst may request approval by submitting items in subparagraphs (A) - (F) of this paragraph at least thirty (30) days prior to the first day of the competitive tax credit Application Acceptance Period or thirty (30) days prior to submission of any other application for funding for which the Market Analyst must be approved.
 - (A) Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships).
 - (B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis.
 - (C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis.
 - (D) General information regarding the firm's experience including references, the number of previous similar assignments and timeframes in which previous assignments were completed.
 - (E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the Application Round in which each Market Analysis is submitted.

(F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted.

An already approved Qualified Market Analyst will remain on the list so long as at least one (1) Market Analysis has been submitted to the Department in the previous 12 months or items (A),(B),(C) and (E) are submitted prior to October 1st. Otherwise, the Market Analyst will automatically be removed from the list.

- (2) During the underwriting process each Market Analysis will be reviewed and any discrepancies with the rules and guidelines set forth in this section may be identified and require timely correction. Subsequent to the completion of the Application Round and as time permits, staff or a review appraiser will re-review a sample set of submitted market analyses to ensure that the Department's Market Analysis Rules and Guidelines are met. If it is found that a Market Analyst has not conformed to the Department's Market Analysis Rules and Guidelines, as certified to, the Market Analyst will be notified of the discrepancies in the Market Analysis and will be removed from the approved Qualified Market Analyst list.
 - (A) In and of itself, removal from the list of approved Market Analysts will not invalidate a Market Analysis commissioned prior to the removal date and at least ninety (90) days prior to the first day of the applicable Application Acceptance Period.
 - (B) To be reinstated as an approved Qualified Market Analyst, the Market Analyst must amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the updated or new sample Market Analysis is submitted.
- (3) The list of approved Qualified Market Analysts will be posted on the Department's web site no later than November 1st.

(d) **Market Analysis Contents.** A Market Analysis for a rental Development prepared for the Department must be organized in a format that follows a logical progression and must include, at minimum, items addressed in paragraphs (1) - (13) of this subsection.

- (1) **Title Page.** Include Property address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of Market Analyst.
- (2) **Letter of Transmittal.** The date of the letter must be the date the report was completed. Include Property address or location, description of Property, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject Property, and signatures of all Market Analysts authorized to work on the assignment. Include a statement that the report preparer has read and understood the requirements of this section.
- (3) **Table of Contents.** Number the exhibits included with the report for easy reference.
- (4) **Market Analysis Summary.** Include the Department's Market Analysis Summary exhibit.
- (5) **Assumptions and Limiting Conditions.** Include a description of all assumptions, both general and specific, made by the Market Analyst concerning the Property.
- (6) **Identification of the Property.** Provide a statement to acquaint the reader with the Development. Such information includes street address, tax assessor's parcel number(s), and Development characteristics.
- (7) **Statement of Ownership.** Disclose the current owners of record and provide a three (3) year history of ownership for the subject Property.
- (8) **Secondary Market Area.** A SMA is not required, but may be defined at the discretion of the Market Analyst to support identified demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one SMA definition. The entire PMA, as described in this paragraph, must be contained within the SMA boundaries. The Market Analyst must adhere to the methodology described in this paragraph when determining the Secondary Market Area. (§2306.67055)
 - (A) The SMA will be defined by the Market Analyst with:
 - (i) size based on a base year population of no more than 250,000 people inclusive of the PMA; and
 - (ii) boundaries based on U.S. census tracts, ~~ZIP codes, or place, as defined by the U.S. Census Bureau.~~
 - (B) The Market Analyst's definition of the SMA must include:
 - (i) a detailed description of why the subject Development is expected to draw a significant number of tenants or homebuyers from the defined SMA;
 - (ii) a complete demographic report for the defined SMA; and

- (iii) a scaled distance map indicating the SMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order, ~~ZIP codes or places~~ with labels as well as the location of the subject Development and all comparable Developments.
- (9) **Primary Market Area.** All of the Market Analyst's conclusions specific to the subject Development must be based on only one PMA definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)
- (A) The PMA will be defined by the Market Analyst as:
 - (i) size based on a base year population of no more than 100,000 people;
 - (ii) boundaries based on U.S. census tracts, ~~ZIP codes, or place, as defined by the U.S. Census Bureau;~~ and
 - (iii) the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract ~~or ZIP code, and if the PMA is defined by census tract or ZIP code.~~
 - (B) The Market Analyst's definition of the PMA must include:
 - (i) a detailed description of why the subject Development is expected to draw a majority of its prospective tenants or homebuyers from the defined PMA;
 - (ii) a complete demographic report for the defined PMA; and
 - (iii) a scaled distance map indicating the PMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order, ~~ZIP codes or places~~ with labels as well as the location of the subject Development and all comparable Developments. The map must indicate the total square miles of PMA.
 - (C) **Comparable Units.** Identify Developments in the PMA with Comparable Units. In PMAs lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable location adjustments. Provide a data sheet for each Development consisting of:
 - (i) development name;
 - (ii) address;
 - (iii) year of construction and year of Rehabilitation, if applicable;
 - (iv) property condition;
 - (v) Target Population;
 - (vi) unit mix specifying number of Bedrooms, number of baths, Net Rentable Area; and
 - (I) monthly rent and Utility Allowance; or
 - (II) sales price with terms, marketing period and date of sale;
 - (vii) description of concessions;
 - (viii) list of unit amenities;
 - (ix) utility structure;
 - (x) list of common amenities; ~~and~~
 - (xi) narrative comparison of its proximity to employment centers and services relative to targeted tenant population of the subject property; and.
 - ~~(xii)~~ for rental developments only, the occupancy and turnover.
- (10) **Market Information.**
- (A) For each of the defined market areas, identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph; the data must be clearly labeled as relating to either the PMA or the SMA, if applicable:
 - (i) total housing;
 - (ii) rental developments (all multi-family);
 - (iii) Affordable housing;
 - (iv) Comparable Units;
 - (v) Unstabilized Comparable Units; and
 - (vi) proposed Comparable Units.
 - (B) **Occupancy.** The occupancy rate indicated in the Market Analysis may be used to support both the overall demand conclusion for the proposed Development and the vacancy rate assumption used in underwriting the Development described in §10.302(d)(1)(C) of this chapter (relating to Underwriting Rules and Guidelines). State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:
 - (i) number of Bedrooms;
 - (ii) quality of construction (class);

- (iii) Target Population; and
 - (iv) Comparable Units.
- (C) **Absorption.** State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.
- (D) **Demographic Reports.**
- (i) All demographic reports must include population and household data for a five (5) year period with the year of Application submission as the base year;
 - (ii) All demographic reports must provide sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations;
 - (iii) For Developments targeting seniors, all demographic reports must provide a detailed breakdown of households by age and by income; and
 - (iv) A complete copy of all demographic reports relied upon for the demand analysis, including the reference index that indicates the census tracts ~~or ZIP codes~~ on which the report is based.
- (E) **Demand.** Provide a comprehensive evaluation of the need for the proposed housing for the Development as a whole and each Unit type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available.
- (i) **Demographics.** The Market Analyst should use demographic data specific to the characteristics of the households that will be living in the proposed Development. For example, the Market Analyst should use demographic data specific to elderly population for a Qualified Elderly Development, if available, and should avoid making adjustments from more general demographic data. If adjustment rates are used based on more general data for any of the criteria described in subclauses (I) - (V) of this clause, they should be clearly identified and documented as to their source in the report.
 - (I) Population. Provide population and household figures, supported by actual demographics, for a five (5) year period with the year of Application submission as the base year.
 - (II) Target. If applicable, adjust the household projections for the Qualified Elderly targeted by the proposed Development.
 - (III) Household Size-Appropriate. Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit type by number of Bedrooms proposed and rent restriction category based on 1.5 persons per Bedroom (round up).
 - (IV) Income Eligible. Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit Type by number of Bedrooms proposed and rent restriction category with:
 - (-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 35 percent for the general population and 50 percent for Qualified Elderly households; and
 - (-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for Efficiency Units.
 - (V) Tenure-Appropriate. Adjust the income-eligible household projections for tenure (renter or owner). If tenure appropriate income eligible target household data is available, a tenure appropriate adjustment is not necessary.
 - (ii) **Gross Demand.** Gross Demand is defined as the sum of Potential Demand from the PMA, Demand from Other Sources, and Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25 percent of Gross Demand.
 - (iii) **Potential Demand.** Potential Demand is defined as the number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placed in service date.
 - (I) Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for Efficiency Units.
 - (II) For Developments targeting the general population:
 - (-a-) minimum eligible income is based on a 35 percent rent to income ratio;

- (-b-) appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and
 - (-c-) the tenure-appropriate population for a rental Development is limited to the population of renter households.
 - (III) For Developments consisting solely of single family residences on separate lots with all Units having three (3) or more Bedrooms:
 - (-a-) minimum eligible income is based on a 35 percent rent to income ratio;
 - (-b-) appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and
 - (-c-) Gross Demand includes both renter and owner households.
 - (IV) For Qualified Elderly Developments or Supportive Housing:
 - (-a-) minimum eligible income is based on a 50 percent rent to income ratio; and
 - (-b-) Gross Demand includes all household sizes and both renter and owner households.
- (iv) **Demand from Secondary Market Area:**
 - (I) Potential Demand from an SMA should be calculated in the same way as Potential Demand from the PMA;
 - (II) Potential Demand from an SMA may be included in Gross Demand to the extent that SMA demand does not exceed 25 percent of Gross Demand; and
 - (III) the supply of proposed and unstabilized Comparable Units in the SMA must be included in the calculation of the capture rate at the same proportion that Potential Demand from the SMA is included in Gross Demand.
- (v) **Demand from Other Sources:**
 - (I) the source of additional demand and the methodology used to calculate the additional demand must be clearly stated;
 - (II) consideration of Demand from Other Sources is at the discretion of the Underwriter;
 - (III) Demand from Other Sources must be limited to households that are not included in Potential Demand; and
 - (IV) if households with Section 8 vouchers are identified as a source of demand, the Market Study must include:
 - (-a-) documentation of the number of vouchers administered by the local Housing Authority; and
 - (-b-) a complete demographic report for the area in which the vouchers are distributed.
- (F) **Employment.** Provide a comprehensive analysis of employment trends and forecasts in the Primary Market Area.
- (11) **Conclusions.** Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served by the Development in terms of items in subparagraphs (A) - (I) of this paragraph. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.
 - (A) **Unit Mix.** Provide a best possible unit mix conclusion based on the occupancy rates by Bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate household demand by unit type and income type within the PMA.
 - (B) **Rents.** Provide a separate Market Rent conclusion for each proposed Unit Type by number of Bedrooms and rent restriction category. Conclusions of Market Rent below the maximum Net Program Rent limit must be well documented as the conclusions may impact the feasibility of the Development under §10.302(i) of this chapter. In support of the Market Rent conclusions, provide a separate attribute adjustment matrix for each proposed Unit Type by number of Bedrooms and rental restriction category.
 - (i) The Department recommends use of HUD Form 92273.
 - (ii) A minimum of three developments must be represented on each attribute adjustment matrix.
 - (iii) Adjustments for concessions must be included, if applicable.
 - [\(iv\) Adjustments for proximity to employment centers and services narrated in the Comparable Unit description must be included.](#)
 - (v) Total adjustments in excess of 15 percent must be supported with additional narrative.
 - (vi) Total adjustments in excess of 25 percent indicate the Units are not comparable for the purposes of determining Market Rent conclusions.

- (C) **Effective Gross Income.** Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.
- (D) **Demand:**
- (i) state the Gross Demand for each Unit Type by number of Bedrooms proposed and rent restriction category (e.g. one-Bedroom Units restricted at 50 percent of AMGI; two-Bedroom Units restricted at 60 percent of AMGI); and
 - (ii) state the Gross Demand for the proposed Development as a whole. If some households are eligible for more than one Unit Type due to overlapping eligible ranges for income or household size, Gross Demand should be adjusted to avoid including households more than once.
- (E) **Relevant Supply.** The Relevant Supply of proposed and unstabilized Comparable Units includes:
- (i) the proposed subject Units;
 - (ii) Comparable Units in an Application with priority over the subject pursuant to §10.201(6) of this chapter.
 - (iii) Comparable Units in previously approved but Unstabilized Developments in the PMA; and
 - (iv) Comparable Units in previously approved but Unstabilized Developments in the SMA, in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.
- (F) **Gross Capture Rate.** The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand. ~~The Market Analyst must calculate a Gross Capture Rate for the subject Development as a whole, as well as for each Unit Type by number of Bedrooms and rent restriction categories, and market rate Units, if applicable.~~ Refer to §10.302(i) of this chapter for feasibility criteria.
- (G) Individual Unit Capture Rate. For each Unit Type by number of Bedrooms and rent restriction categories, the individual unit capture rate is defined as the Relevant Supply of proposed and unstabilized Comparable Units divided by the eligible demand for that Unit. [Some households are eligible for multiple Unit Types. In order to calculate individual unit capture rates, the Underwriter will make assumptions such that each household is included in the capture rate for only one Unit Type.]
- (H) A complete demand and capture rate analysis is required in every Market Study, regardless of the current occupancy level of an existing Development.
- (I) **Absorption.** Project an absorption period for the subject Development to achieve Breakeven Occupancy. State the absorption rate.
- (J) **Market Impact.** Provide an assessment of the impact the subject Development, as completed, will have on existing Developments supported by Housing Tax Credits in the Primary Market. (§2306.67055)
- (12) **Photographs.** Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. An aerial photograph is desirable but not mandatory.
- (13) **Appendices.** Any Third Party reports including demographics relied upon by the Market Analyst must be provided in appendix form. A list of works cited including personal communications also must be provided, and the Modern Language Association (MLA) format is suggested.
- (14) **Qualifications.** Current Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships) and any changes to items listed in §10.303(c)(1)(B) and (C) of this chapter.

(e) The Department reserves the right to require the Market Analyst to address such other issues as may be relevant to the Department's evaluation of the need for the subject Development and the provisions of the particular program guidelines.

(f) In the event that the PMA for a subject Development overlaps the PMA's of other proposed or unstabilized comparable Developments, the Underwriter may perform an extended Sub-Market analysis considering the combined PMA's and all proposed and unstabilized Units in the extended Sub-Market Area; the Gross Capture Rate from such an extended Sub-Market Area analysis may be used as the basis for a feasibility conclusion.

(g) All Applicants shall acknowledge, by virtue of filing an Application, that the Department shall not be bound by any such opinion or Market Analysis, and may substitute its own analysis and underwriting conclusions for those submitted by the Market Analyst.

§10.304. Appraisal Rules and Guidelines.

(a) **General Provision.** An appraisal prepared for the Department must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation. The appraisal must include a statement that the report preparer has read and understood the requirements of this section.

(b) **Self-Contained.** An appraisal prepared for the Department must describe sufficient and adequate data and analyses to support the final opinion of value. The final value(s) must be reasonable, based on the information included. Any Third Party reports relied upon by the appraiser must be verified by the appraiser as to the validity of the data and the conclusions.

(c) **Appraiser Qualifications.** The qualifications of each appraiser are determined on a case-by-case basis by the Director of Real Estate Analysis or review appraiser, based upon the quality of the report itself and the experience and educational background of the appraiser. At minimum, a qualified appraiser must be appropriately certified or licensed by the Texas Appraiser Licensing and Certification Board.

(d) **Appraisal Contents.** An appraisal prepared for the Department must be organized in a format that follows a logical progression. In addition to the contents described in USPAP Standards Rule 2, the appraisal must include items addressed in paragraphs (1) - (12) of this subsection.

- (1) **Title Page.** Include a statement identifying the Department as the client, acknowledging that the Department is granted full authority to rely on the findings of the report, and name and address of person authorizing report.
- (2) **Letter of Transmittal.** Include reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, effective date of appraisal, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, and signatures of all appraisers authorized to work on the assignment including the appraiser who inspected the property. Include a statement indicating the report preparer has read and understood the requirements of this section.
- (3) **Table of Contents.** Number the exhibits included with the report for easy reference.
- (4) **Disclosure of Competency.** Include appraiser's qualifications, detailing education and experience.
- (5) **Statement of Ownership of the Subject Property.** Discuss all prior sales of the subject Property which occurred within the past three (3) years. Any pending agreements of sale, options to buy, or listing of the subject Property must be disclosed in the appraisal report.
- (6) **Property Rights Appraised.** Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered. The appropriate interest must be defined in terms of current appraisal terminology with the source cited.
- (7) **Site/Improvement Description.** Discuss the site characteristics including subparagraphs (A) - (E) of this paragraph.
 - (A) **Physical Site Characteristics.** Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the Development Site. Include a plat map and/or survey.
 - (B) **Floodplain.** Discuss floodplain (including flood map panel number) and include a floodplain map with the subject Property clearly identified.
 - (C) **Zoning.** Report the current zoning and description of the zoning restrictions and/or deed restrictions, where applicable, and type of Development permitted. Any probability of change in zoning should be discussed. A statement as to whether or not the improvements conform to the current zoning should be included. A statement addressing whether or not the improvements could be rebuilt if damaged or destroyed, should be included. If current zoning is not consistent with the highest and best use, and zoning changes are reasonable to expect, time and expense associated with the proposed zoning change should be considered and documented. A zoning map should be included.
 - (D) **Description of Improvements.** Provide a thorough description and analysis of the improvements including size (Net Rentable Area, gross building area, etc.), number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc. All applicable forms of depreciation should be addressed along with the remaining economic life.

- (E) **Environmental Hazards.** It is recognized appraisers are not experts in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential environmental hazards (such as discolored vegetation, oil residue, asbestos-containing materials, lead-based paint etc.) noted during the inspection.
- (8) **Highest and Best Use.** Market Analysis and feasibility study is required as part of the highest and best use. The highest and best use analysis should consider paragraph (7)(A) - (E) of this subsection as well as a supply and demand analysis.
- (A) The appraisal must inform the reader of any positive or negative market trends which could influence the value of the appraised Property. Detailed data must be included to support the appraiser's estimate of stabilized income, absorption, and occupancy.
- (B) The highest and best use section must contain a separate analysis "as if vacant" and "as improved" (or "as proposed to be improved/renovated"). All four elements (legally permissible, physically possible, feasible, and maximally productive) must be considered.
- (9) **Appraisal Process.** It is mandatory that all three approaches, Cost Approach, Sales Comparison Approach and Income Approach, are considered in valuing the Property. If an approach is not applicable to a particular property an adequate explanation must be provided. A land value estimate must be provided if the Cost Approach is not applicable.
- (A) **Cost Approach.** This approach should give a clear and concise estimate of the cost to construct the subject improvements. The source(s) of the cost data should be reported.
- (i) Cost comparables are desirable; however, alternative cost information may be obtained from Marshall & Swift Valuation Service or similar publications. The section, class, page, etc. should be referenced. All soft costs and entrepreneurial profit must be addressed and documented.
- (ii) All applicable forms of depreciation must be discussed and analyzed. Such discussion must be consistent with the description of the improvements.
- (iii) The land value estimate should include a sufficient number of sales which are current, comparable, and similar to the subject in terms of highest and best use. Comparable sales information should include address, legal description, tax assessor's parcel number(s), sales price, date of sale, grantor, grantee, three (3) year sales history, and adequate description of property transferred. The final value estimate should fall within the adjusted and unadjusted value ranges. Consideration and appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) of this clause should be made when applicable.
- (I) Property rights conveyed.
- (II) Financing terms.
- (III) Conditions of sale.
- (IV) Location.
- (V) Highest and best use.
- (VI) Physical characteristics (e.g., topography, size, shape, etc.).
- (VII) Other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).
- (B) **Sales Comparison Approach.** This section should contain an adequate number of sales to provide the reader with a description of the current market conditions concerning this property type. Sales data should be recent and specific for the property type being appraised. The sales must be confirmed with buyer, seller, or an individual knowledgeable of the transaction.
- (i) Sales information should include address, legal description, tax assessor's parcel number(s), sales price, financing considerations and adjustment for cash equivalency, date of sale, recordation of the instrument, parties to the transaction, three (3) year sale history, complete description of the Property and property rights conveyed, and discussion of marketing time. A scaled distance map clearly identifying the subject and the comparable sales must be included.
- (ii) The method(s) used in the Sales Comparison Approach must be reflective of actual market activity and market participants.
- (I) Sale Price/Unit of Comparison. The analysis of the sale comparables must identify, relate, and evaluate the individual adjustments applicable for property rights, terms of sale, conditions of sale, market conditions, and physical features. Sufficient narrative must be included to permit the reader to understand the direction and magnitude of the individual adjustments, as well as a unit of comparison value indicator for each comparable.
- (II) Net Operating Income/Unit of Comparison. The Net Operating Income statistics or the comparables must be calculated in the same manner. It should be disclosed if reserves for

replacement have been included in this method of analysis. At least one other method should accompany this method of analysis.

- (C) **Income Approach.** This section must contain an analysis of both the actual historical and projected income and expense aspects of the subject Property.
- (i) **Market Rent Estimate/Comparable Rental Analysis.** This section of the report should include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental Units. The comparables must indicate current research for this specific property type. The comparables must be confirmed with the landlord, tenant or agent and individual data sheets must be included. The individual data sheets should include property address, lease terms, description of the property (e.g., Unit Type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics of the property, and location of the comparables. Analysis of the Market Rents should be sufficiently detailed to permit the reader to understand the appraiser's logic and rationale. Adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc. must be considered.
 - (ii) **Comparison of Market Rent to Contract Rent.** Actual income for the subject along with the owner's current budget projections must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. The Contract Rents should be compared to the market-derived rents. A determination should be made as to whether the Contract Rents are below, equal to, or in excess of market rates. If there is a difference, its impact on value must be qualified.
 - (iii) **Vacancy/Collection Loss.** Historical occupancy data and current occupancy level for the subject should be reported and compared to occupancy data from the rental comparables and overall occupancy data for the subject's Primary Market.
 - (iv) **Expense Analysis.** Actual expenses for the subject, along with the owner's projected budget, must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. Historical expenses should be compared to comparables expenses of similar property types or published survey data (such as IREM, BOMA, etc.). Any expense differences should be reconciled. Include historical data regarding the subject's assessment and tax rates and a statement as to whether or not any delinquent taxes exist.
 - (v) **Capitalization.** The appraiser should present the capitalization method(s) reflective of the subject market and explain the omission of any method not considered in the report.
 - (I) **Direct Capitalization.** The primary method of deriving an overall rate is through market extraction. If a band of investment or mortgage equity technique is utilized, the assumptions must be fully disclosed and discussed.
 - (II) **Yield Capitalization (Discounted Cash Flow Analysis).** This method of analysis should include a detailed and supportive discussion of the projected holding/investment period, income and income growth projections, occupancy projections, expense and expense growth projections, reversionary value and support for the discount rate.
- (10) **Value Estimates.** Reconciliation of final value estimates is required. The Underwriter may request additional valuation information based on unique existing circumstances that are relevant for deriving the market value of the Property.
- (A) All appraisals shall contain a separate estimate of the "as vacant" market value of the underlying land, based upon current sales comparables. The appraiser should consider the fee simple or leased fee interest as appropriate.
 - (B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value" inclusive of the value associated with the rental assistance. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.
 - (C) For existing Developments with rent restrictions, the appraisal must include the "as-is as-restricted" value. In particular, the restricted rents should be contemplated when deriving the value based on the income approach.
 - (D) For all other existing Developments, the appraisal must include the "as-is" value.

- (E) For any Development with favorable financing (generally below market debt) that will remain in place and transfer to the new owner, the appraisal must include a separate value for the existing favorable financing with supporting information.
- (F) If required the appraiser must include a separate assessment of personal property, furniture, fixtures, and equipment ("FF&E") and/or intangible items. If personal property, FF&E, or intangible items are not part of the transaction or value estimate, a statement to such effect should be included.
- (11) **Marketing Time.** Given property characteristics and current market conditions, the appraiser(s) should employ a reasonable marketing period. The report should detail existing market conditions and assumptions considered relevant.
- (12) **Photographs.** Provide good quality color photographs of the subject Property (front, rear, and side elevations, on-site amenities, interior of typical Units if available). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included. An aerial photograph is desirable but not mandatory.

(e) **Additional Appraisal Concerns.** The appraiser(s) must be aware of the Department program rules and guidelines and the appraisal must include analysis of any impact to the subject's value.

§10.305. Environmental Site Assessment Rules and Guidelines.

(a) **General Provisions.** The Environmental Site Assessments (ESA) prepared for the Department must be conducted and reported in conformity with the standards of the American Society for Testing and Materials ("ASTM"). The initial report must conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527- 13 or any subsequent standards as published). Any subsequent reports should also conform to ASTM standards and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The ESA shall be conducted by a Third Party environmental professional at the expense of the Applicant, and addressed to the Department as a User of the report (as defined by ASTM standards). Copies of reports provided to the Department which were commissioned by other financial institutions must either address Texas Department of Housing and Community Affairs as a co-recipient of the report or letters from both the provider and the recipient of the report may be submitted extending reliance on the report to the Department. The ESA report must also include a statement that the person or company preparing the ESA report will not materially benefit from the Development in any other way than receiving a fee for performing the ESA, and that the fee is in no way contingent upon the outcome of the assessment. The ESA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(b) In addition to ASTM requirements, the report must:

- (1) state if a noise study is recommended for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise;
- (2) provide a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the ESA or identified during the physical inspection;
- (3) provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map;
- ~~(4) if the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for asbestos containing materials would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;~~
- (54) if the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for Lead Based Paint and/or asbestos containing materials would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;
- (65) state if testing for lead in the drinking water would be required pursuant to local, state, and federal laws, or recommended due to any other consideration such as the age of pipes and solder in existing improvements;
- (76) assess the potential for the presence of Radon on the Property, and recommend specific testing if necessary;
- (87) identify and assess the presence of oil, gas or chemical pipelines, processing facilities, storage facilities or other potentially hazardous explosive activities on-site or in the general area of the site that could potentially adversely impact the Development. Location of these items must be shown on a drawing or map in relation to

the Development Site and all existing or future improvements. The drawing must depict any blast zones (in accordance with HUD guidelines) and include HUD blast zone calculations; and

(98) include a vapor encroachment screening in accordance with Vapor Intrusion E2600-10.

(c) If the report recommends further studies or establishes that environmental hazards currently exist on the Property, or are originating off-site, but would nonetheless affect the Property, the Development Owner must act on such a recommendation, or provide a plan for either the abatement or elimination of the hazard. Evidence of action or a plan for the abatement or elimination of the hazard must be presented upon Application submittal.

(d) For Developments in programs that allow a waiver of the Phase I ESA such as a USDA funded Development, the Development Owners are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(e) Those Developments which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms to the requirements of this section.

§10.306. Property Condition Assessment Guidelines.

(a) **General Provisions.** The objective of the Property Condition Assessment (PCA) for Rehabilitation Developments is to provide cost estimates for repairs and replacements, and new construction of additional buildings or amenities, which are: immediately necessary repairs and replacements; improvements proposed by the Applicant as outlined in a scope of work narrative submitted by the Applicant to the PCA provider that is consistent with the scope of work provided in the Application; and expected to be required throughout the term of the Affordability Period and not less than thirty (30) years. The PCA prepared for the Department should be conducted and reported in conformity with the American Society for Testing and Materials "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018") except as provided for in subsections (b) and (c) of this section. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section. The PCA must include the Department's PCA Cost Schedule Supplement which details all Rehabilitation costs and projected repairs and replacements through at least twenty (20) years. The PCA must also include discussion and analysis of:

- (1) **Useful Life Estimates.** For each system and component of the property the PCA should assess the condition of the system or component, and estimate its remaining useful life, citing the basis or the source from which such estimate is derived;
- (2) **Code Compliance.** The PCA should review and document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Applicant to ensure that the PCA adequately considers any and all applicable federal, state, and local laws and regulations which may govern any work performed to the subject Property. For transactions with Direct Loan funding from the Department, the PCA provider must also evaluate cost estimates to meet the International Existing Building Code and other property standards;
- (3) **Program Rules.** The PCA should assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, particular consideration being given to accessibility requirements [as outlines in Chapter 1 of this title](#), the Department's ~~Housing Quality Standards~~[Uniform Physical Condition Standards](#), and any scoring criteria for which the Applicant may claim points;
- (4) **Reconciliation of Scope of Work and Costs.** The PCA report must include an analysis, detailed and shown on the Department's PCA Cost Schedule Supplement, that reconciles the scope of work and immediate costs identified in the PCA with the Applicant's scope of work and costs (Hard Costs) as presented on the Applicant's development cost schedule; and
- (5) **Cost Estimates for Repair and Replacement.** It is the responsibility of the Applicant to ensure that the PCA provider is apprised of all development activities associated with the proposed transaction and consistency of the total immediately necessary and proposed repair and replacement cost estimates with the Total Housing Development Cost schedule and scope of work submitted as an exhibit of the Application.
 - (A) **Immediately Necessary Repairs and Replacement.** Systems or components which are expected to have a remaining useful life of less than one (1) year, which are found to be in violation of any applicable

codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards should be considered immediately necessary repair and replacement. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.

- (B) **Proposed Repair, Replacement, or New Construction.** If the development plan calls for additional repair, replacement, or New Construction above and beyond the immediate repair and replacement described in subparagraph (A) of this paragraph, such items must be identified and the nature or source of obsolescence or improvement to the operations of the Property discussed. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or new construction which is identified as being above and beyond the immediate need, citing the basis or the source from which such cost estimate is derived.
- (C) **Expected Repair and Replacement Over Time.** The term during which the PCA should estimate the cost of expected repair and replacement over time must equal the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the Property. The PCA must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The PCA must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred and no less than fifteen (15) years. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5 percent per annum.

(b) Any costs not identified and discussed in the PCA as part of subsection (a)(4), (5)(A) and (5)(B) of this section will not be included in the underwritten Total Development Cost in the Report.

(c) If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

- (1) Fannie Mae's criteria for Physical Needs Assessments;
- (2) Federal Housing Administration's criteria for Project Capital Needs Assessments;
- (3) Freddie Mac's guidelines for Engineering and Property Condition Reports;
- (4) USDA guidelines for Capital Needs Assessment.

(d) The Department may consider for acceptance reports prepared according to other standards which are not specifically named in subsection (b) of this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied.

(e) The PCA shall be conducted by a Third Party at the expense of the Applicant, and addressed to Texas Department of Housing and Community Affairs as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address Texas Department of Housing and Community Affairs as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to Texas Department of Housing and Community Affairs. The PCA report should also include a statement that the person or company preparing the PCA report will not materially benefit from the Development in any other way than receiving a fee for performing the PCA. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

§10.307. Direct Loan Requirements.

(a) Direct Loans through the Department must be structured according to the criteria as identified in paragraphs (1) - (5) of this subsection:

- (1) the interest rate may be as low as zero percent provided all applicable [NOFA and](#) program requirements are met as well as requirements in this subchapter;
- (2) unless structured only as an interim construction or bridge loan [and provided all NOFA and program requirements are met](#), the loan term shall be no less than fifteen (15) years and no greater than forty (40) years and the amortization schedule shall be no less than thirty (30) years and no greater than forty (40) years. The Department's debt will match within six (6) months of the shortest term or amortization of any senior debt so long as neither exceeds forty (40) years.
- (3) the loan shall be structured with a regular monthly payment beginning on the first day of the 25th full month following the actual date of loan closing and continuing for the loan term. If the first lien mortgage is a federally insured HUD or FHA mortgage, the Department may approve a loan structure with annual payments payable from surplus cash flow provided that the debt coverage ratio, inclusive of the loan, continues to meet the requirements in this subchapter. The Board may also approve, on a case-by-case basis, a cash flow loan structure provided it determines that the financial risk is outweighed by the need for the proposed housing;
- (4) the loan shall have a deed of trust with a permanent lien position that is superior to any other sources for financing including hard repayment debt that is less than or equal to the Direct Loan amount and for any other sources that have soft repayment structures, non-amortizing balloon notes, have deferred forgivable provisions or in which the lender has an identity of interest with any member of the Development Team. The Board may also approve, on a case-by-case basis, an alternative lien priority provided it determines that the financial risk is outweighed by the need for the proposed housing; and,
- (5) If the Direct Loan amounts to more than 50 percent of the Total Housing Development Cost, except for Developments also financed through the USDA §515 program, the Application must include the documents as identified in subparagraphs (A) - (B) of this paragraph:
 - (A) a letter from a Third Party CPA verifying the capacity of the Applicant, Developer or Development Owner to provide at least 10 percent of the Total Housing Development Cost as a short term loan for the Development; or
 - (B) evidence of a line of credit or equivalent tool equal to at least 10 percent of the Total Housing Development Cost from a financial institution that is available for use during the proposed Development activities.

(b) HOME Direct Loans through the Department must observe the following construction, occupancy, and repayment provisions in accordance with 24 CFR 92 and as included in the HOME Direct Loan documents:

- (1) Construction must begin no later than ~~twelve (12)~~[six \(6\)](#) months from the date of "Committing to a specific local project" as defined in 24 CFR Part 92 and must be completed within twenty-four (24) months of the actual date of loan closing as reflected by the development's certificate(s) of occupancy and Certificate of Substantial Completion (AIA Form G704). A final construction inspection request must be sent to the Department within 18 months of the actual loan closing date, with the repayment period beginning on the first day of the 25th month following the actual date of loan closing. Extensions to the construction or development period may only be made for good cause and approved by the Executive Director or authorized designee provided the start of construction is no later than twelve (12) months from the date of committing to a specific local project;
- (2) Initial occupancy by eligible tenants shall occur within six (6) months of project completion. Requests to extend the initial occupancy period must be accompanied by marketing information and a marketing plan which will be submitted by the Department to HUD for final approval;
- (3) repayment will be required on a per unit basis for units that have not been rented to eligible households within twenty-four (24) months of project completion; and
- (4) termination and repayment of the HOME award in full will be required for any development that is not completed within four (4) years of the date of funding commitment.

Attachment A: Preamble and Proposed repeal of 10 TAC Chapter 10, Subchapter D, concerning 2015 Underwriting and Loan Policies and a proposed new 10 TAC Chapter 10, Subchapter D, concerning 2016 Underwriting and Loan Policies for public comment and publication in the *Texas Register*.

The Texas Department of Housing and Community Affairs (the “Department”) proposes repeal of 10 TAC Chapter 10, Subchapter D, concerning 2015 Underwriting and Loan Policies.

FISCAL NOTE. Mr. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repealed section(s) are in effect, enforcing or administering the repealed section(s) does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal sections are in effect, the public benefit anticipated as a result of the repealed sections will be the adoption of new rules to enhance the State’s ability to provide decent, safe, sanitary and affordable housing. There will not be any economic cost anticipated to comply with the repealed sections.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 18, 2015 to October 15, 2015 to receive input on the repealed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Pam Cloyde, or by email to pcloyde@tdhca.state.tx.us, or by FAX to (512) 475-4420. ALL COMMENTS MUST BE RECEIVED BY 5:00 PM on OCTOBER 15, 2015.

STATUTORY AUTHORITY. The repealed sections are proposed pursuant to Texas Government code §2306.053, which authorizes the Department to adopt rules. The proposed repeals and amendments affect no other code, article or statute.

- 1.31. General Provisions.
- 1.32. Underwriting Rules and Guidelines.
- 1.33. Market Analysis Rules and Guidelines.
- 1.34. Appraisal Rules and Guidelines.
- 1.35. Environmental Site Assessment Rules and Guidelines.
- 1.36. Property Condition Assessment Guidelines.
- 1.37. Reserve for Replacement Rules and Guidelines.

6d

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 3, 2015

Presentation, Discussion, and Possible Action on the proposed repeal of 10 TAC Chapter 10 Uniform Multifamily Rules, Subchapter E concerning Post Award and Asset Management Requirements, and a proposed new 10 TAC Chapter 10 Uniform Multifamily Rules, Subchapter E concerning Post Award and Asset Management Requirements, and directing its publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, pursuant to Chapter 2306 of the Texas Government Code, the Department is provided the authority to adopt rules governing the administration of the Department and its programs and

WHEREAS, staff proposes clarifications and changes to the existing rules to implement legislative changes and better serve the post award and asset management requirements of multifamily developments awarded funds under various Department programs;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 10, Subchapter E concerning Post Award and Asset Management Requirements and a proposed new 10 TAC Chapter 10, Subchapter E concerning Post Award and Asset Management Requirements are hereby approved for publication in the *Texas Register* for public comment and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed repeal of and new 10 TAC Chapter 10, Subchapter E, Post Award and Asset Management Requirements, together with the preambles in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

At the November 13, 2014 meeting the TDHCA Board approved for publication in the Texas Register the final adoption of the new 10 TAC Chapter 10, Subchapter E concerning Post Award and Asset Management Requirements, §§10.400 – 10.408.

The Asset Management Division has been working under the adopted rule which now needs to be revised to implement recent legislative changes and further correct or clarify information provided

to the Development Owners on the processes and procedures related to Asset Management activities. Staff hosted a roundtable discussion with approximately 20 people in attendance on August 24, 2015, and discussed proposed changes and solicited feedback.

Staff has proposed changes to specific sections and a more detailed breakdown of the specific changes is included below.

Statutory Changes: Significant changes in the 2016 Draft Post Award and Asset Management Requirements include the incorporation of statutory changes made during the 84th Legislative session. These changes include the following:

- HB 3576- the House bill revises the provisions establishing procedures for the sale of certain housing tax credit developments and limits the applicability of those provisions to a right of first refusal that is memorialized in a land use restriction agreement (“LURA”). The bill establishes that the transfer of ownership of a development supported with tax credits does not subject the development to a Right of First Refusal if the transfer is made to an affiliated entity that was formed for the purpose of facilitating the Rehabilitation of a development using a state financing program.

Summary of Proposed Changes: This section outlines some of the more significant recommendations by staff. Citation and page references are indicated for each of reference.

1. **§10.402(g) – 10% Test** (Page 4 of 32). Staff proposes several clarifications and changes to this section, including clarification that the Development Site that the owner has documented at 10% Test to be under its ownership is identical to the Development Site that was submitted and approved at the time of Application or amendment. A change to the effective date for the Fair Housing certifications required at 10% Test was also made requiring certifications not older than one year from the date of the 10% Test submission. Staff also added language to clarify that guarantors identified at 10% Test, if changed from those identified at Application, must be addressed by a non-material amendment and the new guarantors and members must be reviewed in accordance with the Department’s Previous Participation rules. Finally, staff proposes that Development Owners provide information at 10% Test related to the Development’s construction schedule and prospective placed in service dates, and planned first year of the credit period. This change allows the Asset Management division to better oversee and monitor properties and the progress towards meeting federal placed in service deadlines.
2. **§10.402(h) – Construction Status Report** (Page 5 of 32). Staff proposes to change the submission of the initial report to be within 3 months of the 10% Test submission in order to more effectively track and monitor construction progress. Language is also proposed to clarify that any changes identified in the Construction Status Reports submitted to the Department as it relates to the Guarantors and members with potential control of a Development must be addressed by the Applicant submitting a non-material amendment request, and the new guarantors or members must be reviewed in accordance with the Department’s Previous Participation rules.

3. **§10.402(j) – Cost Certification** (Page 6 of 32). Staff clarifies that among the items certified to by the Development Owner at cost certification, the owner will further certify that any representation regarding unit or common amenities, size, number or configuration of buildings depicted or described in materials provided to any neighborhood group, local governmental body or state representative to secure support for that Application has not changed.
4. **§10.403 – Direct Loans** (Page 9 of 32). Staff proposes to reduce the amount of time required for closing on a loan provided by the Department under its Direct Loan Programs from 9 months to 6 months. Clarification was also added to state that if material changes are reflected in the budget or sources of funds provided to the Department at the time of loan closing, those changes will require Executive Director or Board approval.
5. **§10.404 – Reserve Accounts** (Page 12 of 32). Staff proposes changes to clarify the mandatory requirements of reserve accounts.
6. **§10.405(a) – Amendments and Extensions- Amendments to HTC Applications or Award Prior to LURA recording or amendments that do not result in a change to the LURA** (Page 16 of 32). Staff proposes language to clarify that if an Application provides any materials to neighborhood organizations, local governmental bodies or state representatives to secure support for an Application that any unit or common amenity(ies) depicted or described in such materials may not change. Further, the Applicant may not alter the size, number or configuration of buildings reflected in such materials without approval from Board. Staff also clarifies that any changes to the Developer(s) or Guarantor(s) of an Application will be subject to the Department’s Previous Participation Review requirements. Clarification was provided with respect to material alterations regarding modifications to density by at least 5 percent and that this type of change requires Board approval. Finally, staff proposes that any significant increases in development costs or changes in financing that may affect the financial feasibility of the Development or result in reductions of credit or changes in conditions such that a full re-evaluation and analysis by underwriting staff is required be added as a material alteration requiring Board approval.
7. **§10.405(b) – Amendments and Extensions- Amendments to the LURA** (Page 17 of 34). Staff seeks to clarify that a change regarding the removal of material participation of a HUB, which is currently allowed and described under §10.406, is subject to the requirements in this paragraph. Staff proposes that, consistent with the removal of material participation of a HUB, that material participation by a Nonprofit Organization be allowed pursuant to proposed changes in §10.406 and subject to the requirements in this paragraph. Finally, staff proposes language to implement HB3576 whereby a Development Owner who wishes to amend an existing LURA subject to a two-year Right of First Refusal may amend the LURA subject to the requirements in this paragraph to be consistent with recent amendments to §2306.6725 of the Texas Government Code.
8. **§10.405(c) – Amendments and Extensions- Amendments to Direct Loan Terms** (Page 18 of 34). Staff re-organized language in this section to provide clarity with respect to the specific types of loan modifications, prior to loan closing, that may be approved administratively by Executive Director, and that any other modifications not specifically described in this section must be approved by the Board. Additionally, staff proposes

clarification regarding loan modifications that are requested post loan closing and staff's authority to approve such modifications unless the post closing change could have been anticipated prior to closing as determined by staff.

9. **§10.406 – Ownership Transfers** (Page 19 of 34). Staff proposes language to clarify changes to the ownership structure that would not require a full ownership transfer approval process. Further clarification in this section that changes to Developers or Guarantors must be addressed as non-material amendments to the Application and subject to the Previous Participation rules was also added. For ownership transfers prior to issuance of IRS Forms 8609, staff has proposed language that would omit the need to provide a hardship to the Department and has proposed language that would allow an Applicant to amend its ownership structure to add participants that will be deemed to have control; however, the participants that were reflected in the Application as having control must remain in the ownership structure and retain such control unless otherwise approved by the Board. Language is also proposed to restrict a development sponsor, General Partner or Development Owner from selling the Development in whole or voluntarily end their control prior to the issuance of IRS Forms 8609. In response to feedback received by the development community, staff proposes adding language to allow for an exception to replacement of a Nonprofit Organization member of the ownership structure in cases where the Development is past its Compliance Period, the allocation was not made out of the Department's Non-Profit Set Aside and the same requirements that are allowed for HUB General Partners to be removed from an ownership structure apply. Staff also proposes to add language to allow a HUB member of the ownership of a Development, and its material participation as required by the LURA, to be removed in cases where the HUB is unable to maintain its HUB status but desires to maintain ownership in the Development.
10. **§10.407 – Right of First Refusal** (Page 23 of 34). Staff proposes language to implement recent legislative changes pursuant to HB3576 as it relates to the Right of First Refusal ("ROFR") provision. Specifically, statute was amended which provides that a ROFR is not triggered if a transfer is made to a newly formed entity that is under common control with the Development Owner and the primary purpose off the formation of that entity is to facilitate the financing of the rehabilitation of the Development using a state financing program (Housing Tax Credits). Staff also adds language to provide the administrative procedures required for the different ROFR posting periods (90 day period, 2 year period, and 180 day period).

Attachment A: Preamble and Proposed repeal of 10 TAC, Chapter 10, Subchapter E, §§10.400 – 10.408, General Provisions, Post Award and Asset Management Requirements for public comment and publication in the *Texas Register*.

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC, Chapter 10, Subchapter E, §§10.400 – 10.408 is being proposed concurrently with this repeal. The purpose of the repeal is to allow for clarification and correction of information in certain sections of the rule and to allow for the adoption of new sections that will ensure accurate processing of post award activities and communicate more effectively with multifamily development owners regarding their responsibilities after funding or award by the Department.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be to allow for the adoption of new rules to enhance the State's ability to provide decent, safe, sanitary and affordable housing. There will not be any economic cost to any individuals required to comply with the repeal.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 18, 2015 until October 15, 2015 to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Raquel Morales, or by email to raquel.morales@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 PM ON OCTOBER 15, 2015.

STATUORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. The proposed repeal affects no other code, article or statute.

§10.400. Purpose.

§10.401. General Commitment or Determination Notice Requirements and Documentation.

§10.402. Housing Tax Credit and Tax Exempt Bond Developments

§10.403. Direct Loans.

§10.404. Reserve for Replacement Requirements.

§10.405. Amendments and Extensions.

§10.406. Ownership Transfers (§2306.6713).

§10.407. Right of First Refusal.

§10.408. Qualified Contract Requirements.

Attachment B: Preamble and Proposed new 10 TAC Chapter 10, Subchapter E, §§10.400 – 10.408, Post Award and Asset Management Requirements for public comment and publication in the *Texas Register*.

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Subchapter E, §§10.400 – 10.408. The purpose of the new rule is to clarify and correct information in all sections of the adopted rule to ensure accurate processing of post award activities and communicate more effectively with multifamily development owners regarding their responsibilities after funding or award by the Department. Post award activities include requests for action to be considered on developments awarded funding from the Department through the end of the affordability period.

FISCAL NOTE. Mr. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will improve the State's ability to ensure that State resources used for affordable multifamily housing are efficient and result in viable developments. There will not be any new, increased economic cost to any individuation required to comply with the new sections in addition to the costs under current program rules.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small businesses or micro-businesses in addition to the costs under current program rules.

REQUEST FOR PUBLIC COMMENT. The public comment period will be September 18, 2015 until October 15, 2015, to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Raquel Morales, or by email to raquel.morales@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 PM on OCTOBER 15, 2015.

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

§10.400. Purpose. The purpose of this subchapter is to establish the requirements governing the post award and asset management activities associated with awards of multifamily development assistance pursuant to Texas Government Code, Chapter 2306 and its regulation of multifamily funding provided through the Texas Department of Housing and Community Affairs (the "Department") as authorized by the legislature. This subchapter is designed to ensure that Developers and Development Owners of low-income Developments that are financed or otherwise funded through the Department maintain safe, decent and affordable housing for the term of the affordability period. Therefore, unless otherwise indicated in the specific section of this subchapter, any uncorrected issues of noncompliance outside of the Corrective Action Period or outstanding fees (related to the Development subject to the request) owed to the Department, must be resolved satisfactorily to the Department, EARAC or excepted by the Board, as detailed in each subsection, before a request for any post award activity described in this subchapter will be completed.

§10.401. General Commitment or Determination Notice Requirements and Documentation.

- (a) 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.
- (b) All Commitments or Determination Notices, whether reflected in the Commitment or Determination Notice or not, are made subject to full compliance with all applicable provisions of law and rule, including but not limited to compliance with the Qualified Allocation Plan, the Uniform Multifamily Rules, the Multifamily Housing Revenue Bond Rules, all provisions of Commitment and Contract, satisfactory completion of underwriting, and satisfactory compliance with the results thereof, full and satisfactory addressing of any Administrative Deficiencies and conditions of award, Commitment, Contract and satisfactory resolution of any conditions of underwriting, award, and administrative deficiencies, or any other matters.
- (c) The Department shall notify, in writing, the mayor, chief county judge, or other appropriate official of the municipality or county, as applicable, in which the Development is located informing him/her of the Board's issuance of a Commitment or Determination Notice, as applicable.
- (d) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or completion of construction with respect to a Development and/or apply administrative penalties if:
 - (1) the Applicant, ~~or the~~ Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure, to meet any of the conditions of such Commitment, Determination Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Application process for the Development;
 - (2) any material statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;
 - (3) an event occurs with respect to the Applicant or the Development Owner which would have made the Application ineligible for funding pursuant to Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules ~~or Pre-Clearance for Applications~~) if such event had occurred prior to issuance of the Commitment, Determination Notice or Carryover Allocation; or
 - (4) the Applicant, ~~or the~~ Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure, to comply with this chapter or other applicable Department rules, ~~or the~~ procedures, or requirements of the Department.
- (e) Direct Loan Commitment. The Department shall execute, with the Development Owner, a Commitment which shall confirm that the Board has approved the loan and provide the loan terms. The Commitment may be abbreviated and will generally not express all terms and conditions that will be included in the loan documents.

Department staff may choose to issue an "Award Letter" and Loan Term Sheet in lieu of a Commitment in instances in which a Federal Commitment cannot be made until loan closing or until all financing is secured. An Award Letter is subject to all of the same terms and conditions as a Commitment except that it may not constitute a Federal Commitment. For HOME Direct Loans, an actual Federal Commitment may not occur in the HUD IDIS system until all financing is secured or loan closing, whichever comes first, at which time all terms and conditions will be included in the loan documents. The Award Letter shall list an expiration date no earlier than thirty (30) days from the date issued by the Department unless signed and returned. To the extent the terms reflected in an Award Letter are amended by the Department, a new Award Letter would be issued by the Department to govern the award.

§10.402.Housing Tax Credit and Tax Exempt Bond Developments.

- (a) **Commitment.** For Competitive HTC Developments, the Department shall issue a Commitment to the Development Owner which shall confirm that the Board has approved the Application and state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in Subchapter D of this chapter (relating to Underwriting and Loan Policy) and the determination that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §10.901 of this chapter (relating to Fee Schedule), and satisfies any conditions set forth therein by the Department. The Commitment expiration date may not be extended.
- (b) **Determination Notices.** For Tax Exempt Bond Developments, the Department shall issue a Determination Notice which shall confirm the Board's determination that the Development satisfies the requirements of this chapter as applicable and other applicable Department rules in accordance with the §42(m)(1)(D) of the Internal Revenue Code (the "Code"). The Determination Notice shall also state the Department's commitment to issue IRS Form(s) 8609 to the Development Owner in a specified amount, subject to the requirements set forth in the Department's rules, as applicable. The Determination Notice shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in §10.901 of this chapter, and satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended without prior Board approval for good cause. The Determination Notice will terminate if the Tax Exempt Bonds are not closed within the timeframe provided for by the Board on its approval of the Determination Notice or if the financing or Development changes significantly as determined by the Department pursuant to its rules and any conditions of approval included in the Board approval or underwriting report.
- (c) The amount of tax credits reflected in the IRS Form(s) 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 necessary by the Department, as required by §42(m)(2)(D) of the Code through the submission of the Cost Certification package. Increases to the amount of tax credits that exceed 110 percent of the amount of credits reflected in the Determination Notice must be approved by the Board. ~~are contingent upon approval by the Board.~~ Increases to the amount of tax credits that do not exceed 110 percent of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director and ~~in the amount~~ are subject to the Credit Increase Fee as described in §10.901 of this chapter.
- (d) **Documentation Submission Requirements at Commitment of Funds.** No later than the expiration date of the Commitment (or no later than December 31 for Competitive HTC Applications, whichever is earlier) or Determination Notice, the documentation described in paragraphs (1) - (6) of this subsection must be provided. Failure to provide these documents may cause the Commitment or Determination Notice to be rescinded:

- (1) for entities formed outside the state of Texas, evidence that the entity filed a Certificate of Application for foreign qualification in Texas, a Franchise Tax Account Status from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State. If the entity is newly registered in Texas and the Franchise Tax Account Status or Certificate of Fact are not available, a statement can be provided to that effect;
- (2) for Texas entities, a copy of the Certificate of Filing for the Certificate of Formation from the Office of the Secretary of State; a Certificate of Fact from the Secretary of State and a Franchise Tax Account Status from the Texas Comptroller of Public Accounts. If the entity is newly registered and the Certificate of Fact and the Franchise Tax Account Status are not available, a statement can be provided to that effect;
- (3) evidence that the signer(s) of the Commitment or Determination Notice have the authority to sign on behalf of the Applicant in the form of a corporate resolution which indicates the sub-entity in Control and that the Person(s) signing the Application constitute all Persons required to sign or submit such documents;
- (4) evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan;
- (5) evidence of satisfaction of any conditions identified in the ~~Real Estate~~Credit Underwriting Analysis ~~report~~Report or any other conditions of the award required to be met at Commitment or Determination Notice; and
- (6) documentation of any changes to representations made in the Application subject to §10.405 of this chapter (relating to Amendments and Extensions).

(e) Post Bond Closing Documentation Requirements.

- (1) Regardless of the issuer of the bonds, no later than sixty (60) calendar days following closing on the bonds, the Development Owner must submit:
 - (A) a Management Plan and an Affirmative Marketing Plan created in compliance with the Department's Affirmative Marketing Rule in §10.617 of Subchapter F;
 - (B) ~~a~~A training certificate from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager has attended at least five (5) hours of Fair Housing training within the last year;
 - (C) ~~a~~A training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended at least five (5) hours of Fair Housing training within the last year;
 - (D) evidence that the financing has closed, such as an executed settlement statement; and
 - ~~(E) if the Development has an existing LURA with the Department, a fully executed and recorded Owner's Certification of Agreement to Agreement of Assignment and Assumption of LURA (aka "Agreement to Comply"). Comply with the LURA.~~
 - (E) a confirmation letter from the Compliance Division evidencing receipt of the Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms pursuant to §10.607(a).
- (2) Certifications required under paragraph (1)(B) and (C) of this subsection must not be older than ~~two (2)~~one years from the date of the submission deadline.

(e)(f) Carryover (Competitive HTC Only). All Developments which received a Commitment, and will not be placed in service and receive IRS Form(s) 8609 in the year the Commitment was issued, must submit the Carryover documentation, in the form prescribed by the Department in the Carryover Manual, no later than the Carryover Documentation Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) of the year in which the Commitment is issued pursuant to §42(h)(1)(C) of the Code.

- (1) Commitments for credits will be terminated if the Carryover documentation has not been received by this deadline, unless an extension has been approved. This termination is final and not appealable, and immediately upon issuance of notice of termination, staff is directed to award the credits to other qualified Applicants ~~based~~ on the approved waiting list.
- (2) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be re-evaluated by the Department ~~for~~and a reduction of credit or change in conditions ~~may result~~.
- (3) All Carryover Allocations will be contingent upon the Development Owner providing evidence that they have and will maintain Site Control through the 10 Percent Test or through the anticipated closing date, whichever is earlier. For purposes of this paragraph, Site Control of the Development Site at Carryover must be identical to the Development Site that was submitted at the time of Application submission or last approved by amendment as determined by the Department.
- (4) Confirmation of the right to transact business in Texas, as evidenced by the Franchise Tax Account Status (the equivalent of the prior Certificate of Account Status) from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State must be submitted with the Carryover Allocation.

(f)(g) 10 Percent Test (Competitive HTC Only). No later than July 1 of the year following the submission of the Carryover Allocation Agreement, documentation must be submitted to the Department verifying that the Development Owner has expended more than 10 percent of the Development Owner's reasonably expected basis, pursuant to §42(h)(1)(E)(i) and (ii) of the Code (as amended by The Housing and Economic Recovery Act of 2008), and Treasury Regulations, §1.42-6. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (~~56~~) of this subsection, along with all information outlined in the Post ~~Carryover Award~~ Activities Manual. Satisfaction of the 10 Percent Test will be contingent upon the submission of the items described in paragraphs (1) - (~~56~~) of this subsection as well as all other conditions placed upon the Application in the Commitment. Requests for extension will be reviewed on a case by case basis as addressed in §10.405(d) of this chapter and a point deduction evaluation will be completed in accordance with Texas Government Code §2306.6710(b)(2) and §11.9(f) of this title. Documentation to be submitted for the 10 Percent Test includes:

- (1) an Independent Accountant's Report and Taxpayer's Basis Schedule form. The report must be prepared on the accounting firm's letterhead and addressed to the Development Owner or an Affiliate of the Development Owner. The Independent Accountant's Report and Taxpayers Basis Schedule form must be signed by the Development Owner.
- (2) evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site. The Development Site must be identical to the Development Site that was submitted at the time of Application submission or last approved by amendment as determined by the Department;
- (3) for New Construction, Reconstruction, and Adaptive Reuse Developments, a certification from a Third Party civil engineer or architect stating that all necessary utilities will be available at the Development Site and that there are no easements, licenses, royalties, or other conditions on or affecting the Development that would materially ~~or~~ adversely impact the ability to acquire, develop, and operate as set forth in the

Application. Copies of ~~such~~ supporting documents ~~will be provided upon request~~ may be required by the Department;

(4) For the Development Owner and on-site or regional property manager, a training certificate from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager attended at least five (5) hours of Fair Housing training. For architects and engineers, a training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineers responsible for certifying compliance with the Department's accessibility and construction standards has attended at least five (5) hours of Fair Housing training within the last year. Certifications required under this paragraph must not be older than one year from the date of the Training certificates must demonstrate training on or before the date the 10 Percent Test Documentation is submitted ~~submission deadline~~; and

(5) a Certification from the lender and syndicator identifying all known Guarantors. If identified Guarantors have changed from the Guarantors identified on the Org Charts submitted at the time of Application, a non-material amendment must be requested by the Applicant and the new Guarantors and members must be reviewed in accordance with §1.5 of this title Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews). ~~known at that time.~~

(6) a Development Owner's preliminary construction schedule or statement showing the prospective construction loan closing date, construction start and end dates, prospective placed in service date for each building, and planned first year of the credit period.

(g)(h) Construction Status Report. Within three (3) months of the ~~close of the construction loan or partnership agreement, whichever comes first,~~ 10 Percent Test submission and every quarter thereafter, all multifamily developments must submit a construction status report. The initial report shall consist of the items identified in paragraphs (1) - (4) of this subsection. All subsequent reports shall contain items identified in paragraphs (3) and (4) of this subsection and must include any changes or amendments to items in paragraphs (1) - (2) if applicable. Construction status reports shall be due by the tenth day of the month following each quarter's end (January, April, July, and October) and continue on a quarterly basis until the entire development is complete as evidenced by the final Application and Certificate for Payment (AIA Document G702 and G703) or equivalent form approved for submission by the construction lender and/or investor. The construction status report submission consists of:

(1) the executed partnership agreement with the investor (identifying all Guarantors) or, for Developments receiving an award only from the Department's Direct Loan Programs, other documents setting forth the legal structure and ownership. If Guarantors or members with potential control have been added to the Guarantors and members identified on the Org Charts submitted at the time of Application, a non-material amendment must be requested and the new Guarantors and members must be reviewed in accordance with §1.5 Chapter 1, Subchapter C of this title part (relating to Previous Participation Reviews);

(2) the executed construction contract and construction loan agreement. If the loan has not closed, the anticipated closing date must be provided and, upon closing, the agreement must be provided to the Department;

(3) the most recent Application and Certificate for Payment (AIA Document G702 and G703) certified by the Architect of Record (or equivalent form approved for submission by the construction lender and/or investor); and

(4) all Third Party construction inspection reports not previously submitted.

(i) **LURA Origination (Competitive HTC Only).** The Development Owner must request a copy of the HTC LURA as directed in the Post Award Activities Manual. The Department will draft a LURA for the Development Owner that will impose the income and rent restrictions identified in the Development's final underwriting report and other representations made in the Application, including but not limited to specific

commitments to provide tenant services, to lease to Persons with Disabilities, and/or to provide specific amenities. ~~After origination, t~~The Department executed LURA and all exhibits and addendums will be sent to the Development Owner ~~to whereupon the Development Owner will then execute and the LURA and have the fully executed document recorded~~ in the real property records for the county in which the Development is located. The original recorded LURA must be returned to the Department no later than the end of the first year of the Credit Period. In general, no Housing Tax Credits are allowed to be issued for a building unless there is a properly executed and recorded LURA in effect at the end of the first year of the Credit Period. Nothing in this section negates a Development Owner's responsibility for full compliance with §42(h)(6) of the Code. The Department will not issue IRS Form(s) 8609 until it receives the original, properly-recorded LURA, or has alternative arrangements which are acceptable to the Department and approved by the Executive Director. ~~In instances where the document is electronically, properly recorded LURAs provided to the Department will be acceptable in lieu of and the electronic recorded file is provided to the Department, the Development Owner will not be responsible for returning the original, recorded copy, and executed LURA in addition to the electronic version.~~

(j) **Cost Certification (Competitive and Non-Competitive HTC, and related activities Only)**. The Department conducts a feasibility analysis in accordance with §42(m)(2)(C)(i)(III) of the Code and Subchapter D of this chapter (relating to Underwriting and Loan Policy) to make a final determination on the allocation of Housing Tax Credits. The requirements for cost certification include those identified in paragraphs (1) - (3) of this subsection.

(1) Development Owners must file cost certification documentation no later than January 15 following the first year of the Credit Period, as defined in §42(f)(1) of the Code.

(2) The Department will evaluate the cost certification documentation and notify the Development Owner of any additional required documentation **needed to complete the review**. The Department reserves the right to request additional documents or certifications as it deems necessary or useful in the determination of the Development's eligibility for a final Housing Tax Credit allocation amount. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be sent to the syndicator.

(3) IRS Form(s) 8609 will not be issued until the conditions as stated in subparagraphs (A) - (H) of this paragraph have been met. The Development Owner has:

(A) provided evidence that all buildings in the Development have been placed in service by:

(i) December 31 of the year the Commitment was issued;

(ii) December 31 of the second year following the year the Carryover Allocation Agreement was executed; or

(iii) the approved Placed in Service deadline;

(B) provided a complete final cost certification package in the format prescribed by the Department. As used herein, a complete final cost certification package means a package that meets all of the Department's criteria with all required information and exhibits listed in clauses (i) - (xxxviii) of this subparagraph, and pursuant to the Post ~~Award Carryover~~ Activities Manual. If any item on this list is determined to be **unclear, deficient, or inconsistent** with the cost certification review completed by the Department, a Request for Information (RFI) will be sent to the Development Owner. Failure to respond to the requested information within a thirty (30) day period from the date of request may result in the termination of the cost certification review and request for 8609s and require a new request be submitted with a Cost Certification Extension Fee as described in Subchapter G of this chapter (relating to Fee Schedule, Appeals and Other Provisions). Furthermore, cost certification reviews that remain open for an extended period of time (more than 365 days) ~~will~~**may** be reported to the EARAC during any related party previous participation review conducted by the Department.

~~(i) Cost Certification Requirements List~~

~~(ii)~~ Owner's Statement of Certification that, among other things, any representations regarding unit or common amenities, size, number or configuration of buildings depicted or described in materials provided to the Department, any neighborhood group, a local governmental body or a state representative to secure support for an Application have not changed.

~~(iii)~~ Owner Summary & Organization Charts for the Owner, Developer, and Guarantors including TINs

~~(iv) Carryover or Determination Notice~~

~~(viii)~~ Evidence of Qualified Nonprofit and CHDO Participation

~~(vii)~~ Evidence of Historically Underutilized Business (HUB) Participation

~~(vi)~~ Development Team List

~~(v)~~ Development Summary with Architect's Certification

~~(xvii)~~ Development Change Documentation

~~(xviii)~~ As Built Survey

~~(xix)~~ Closing Statement

~~(x)~~ Title Policy

~~(xi)~~ Title Policy Update

~~(xixii)~~ Placement in Service

~~(xxiii)~~ Evidence of Placement in Service

~~(xiv)~~ Architect's Certification of Completion Date and Date Ready for Occupancy

~~(xii)~~ Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election

~~(xvi)~~ Independent Auditor's Report

~~(xixvii)~~ Independent Auditor's Report of Bond Financing

~~(xxviii)~~ Development Cost Schedule

~~(xixix)~~ Contractor's Application for Final Payment (G702/G703)

~~(xxii)~~ Additional Documentation of Offsite Costs

~~(xxi)~~ Rent Schedule

~~(xxixxxii)~~ Utility Allowances

~~(xxvxxiii)~~ Annual Operating Expenses

~~(xxvixxiv)~~ 15-30 Year Rental Housing Operating Pro Forma

~~(xxvi)~~ -Current Operating Statement

~~(xxvi)~~ Current Rent Roll

~~(xxixxxvii)~~ Summary of Sources and Uses of Funds

~~(xxxviii)~~ Financing Narrative

~~(xxixxxix)~~ Final Limited Partnership Agreement

~~(xxixxxx)~~ All Loan Agreements and Promissory Notes (except for Agreements and Notes issued directly by the Department)

~~(xxxii)~~ Architect's Certification of Fair Housing Requirements

~~(xxxiv)~~ Development Owner Assignment of Individual to Compliance Training

~~(xxxvxxiii)~~ TDHCA Compliance Training Certificate

~~(xxxvi)~~ ~~Recorded Land Use Restriction Agreement (LURA)~~

~~(xxxvixxxiv)~~ TDHCA Final Inspection Clearance Letter

~~(xxxviii)~~ ~~xxxv~~ Other Documentation as Required

(C) informed the Department of and received written approval for all amendments, extensions, and changes in ownership relating to the Development in accordance with §10.405 of this chapter (relating to Amendments and Extensions) and §10.406 of this chapter (relating to Ownership Transfers (§2306.6713));

(D) paid all applicable Department fees, including any past due fees;

(E) met all conditions noted in the Department underwriting report;

(F) corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject Development, as described in this chapter. Developments in the Corrective Action Period and/or with any uncorrected issues of noncompliance, outside of the Corrective Action Period, will not be issued IRS Form(s) 8609s until all events of noncompliance are corrected or otherwise approved by the Executive Award Review and Advisory Committee;

~~(G) received all required environmental clearances and met all mitigation requirements. Developments that received HOME funding from the Department will not be issued IRS Forms(s) 8609 until a certification has been received from the Architect or Engineer of record stating that all clearance and mitigation requests have been met; and~~

~~(GH) completion by the Department of completed~~ an updated underwriting evaluation in accordance with Subchapter D of this chapter based on the most current information at the time of the review.

§10.403. Direct Loans.

(a) **Loan Closing.** The loan closing must occur no more than ~~nine (9)~~six months from the date of the Conditional Commitment or similar document is executed, which may be extended in accordance with the provisions in this subchapter. In preparation for closing any Direct Loan, the Development Owner must submit the items described in paragraphs (1) – (7) of this subsection:

- (1) documentation of the prior or reasonable assurance of a concurrent closing with any superior lien holders or any other sources of funds determined to be necessary for the long-term financial feasibility of the Development and all due diligence determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department. Where the Department will have a first lien position and the Applicant provides documentation that closing on other sources is reasonably expected to occur within three (3) months, the Executive Director or authorized designee may approve a closing to move forward without the closing on other sources. The Executive Director as the authorized designee of the Department must require a personal guarantee, in form and substance acceptable to the Department, from a Principal of the Development Owner for the interim period;
- (2) when Department funds have a first lien position, assurance of completion of the Development in the form of payment and performance bonds in the full amount of the construction contract will be required or equivalent guarantee in the sole determination of the Department. Such assurance of completion will run to the Department as obligee. Development Owners also utilizing the USDA §515 program are exempt from this requirement but must meet the alternative requirements set forth by USDA;
- (3) Owner/General Contractor agreement and Owner/ Architect agreement;
- (4) survey of the Property that includes a certification to the Department, Development Owner, Title Company, and other lenders;
- (5) if layered with Housing Tax Credits, a fully executed limited partnership agreement between the General Partner and the tax credit investor entity (may be provided concurrent with closing);
- (6) a revised development cost schedule, sources and uses, operating proforma, planned cost categories for the use of Direct Loan funds, updated written financial commitments/term sheets and any additional budget schedules that have changed since the time of application. If the budget or sources of funds reflect material changes from what was approved by the Board that may affect the financial feasibility of the Development, the Department may request additional documentation to ensure that the Development continues to meet the requirements of Subchapter D of this chapter (relating to Underwriting and Loan Policy) and will be required to be approved by the Executive Director or the Board;
- (7) if required for the Direct Loan, prior to closing, the Development Owner must have received verification of:
 - (A) environmental clearance;
 - (B) verification of HUD Site and Neighborhood clearance;
 - (C) documentation necessary to show compliance with the Uniform Relocation Assistance and Property Act and any other relocation requirements that may apply; and
 - (D) any other documentation that is necessary or prudent to meet program requirements or state or federal law in the sole determination of the Department.

(b) **Loan Documents.** The Development Owner is required to execute all loan closing documents required by and in form and substance acceptable to the Legal Division including but not limited to a promissory note, deed of trust, construction loan agreement (if the proceeds of the loan are to be used for construction), LURA, HOME

contract, Architect and/or licensed engineer certification of understanding to complete environmental mitigation if such mitigation is identified in HUD's environmental clearance and by the Real Estate Analysis Division (REA) and assignment and security instruments whereby the Developer, the Development Owner, and/or any Affiliates (if applicable) grants the Department their respective right, title, and interest in and to other collateral, including without limitation the Owner/Architect agreement and the Owner/General Contractor agreement, to secure the payment and performance of the Development Owner's obligations under the loan documents. Repayment provisions will require repayment on a per unit basis for units that have not been rented to eligible households within eighteen (18) months of project completion; termination and repayment of the HOME award in full will be required for any development that is not completed within four (4) years of the date of funding commitment.

(c) Disbursement of Funds (including developer fees). The Development Owner must comply with the requirements in paragraphs (1) – (9) of this subsection for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Development Owner's compliance with these requirements may be required with a request for disbursement:

- (1) except for disbursement requests made for acquisition and closing costs or requests made for soft costs only, a down-date endorsement to the title policy not older than the Architect's certification date on AIA form G702 or sixty (60) calendar days, whichever is later. For release of retainage the down-date endorsement must be dated at least thirty (30) calendar days after the date of the construction completion as certified on the Certificate of Substantial Completion (AIA Form G704);
- (2) for hard construction costs, documentation of the total construction costs incurred and costs incurred since the last disbursement of funds must be submitted. Such documentation must be signed by the General Contractor and certified by the Development architect and is generally in the form of an AIA Form G702 or G703;
- (3) the Department will require that at least 50 percent of the funds be withheld from the initial disbursement to allow for periodic disbursements, or such lesser amount provided it meets all federal requirements. For HOME Direct Loans: The initial draw request for the development must be entered no later than ten business days prior to the one year anniversary of the commitment date (as defined in 24 CFR Part 92) or funds may be cancelled in HUD's IDIS system;
- (4) if applicable, up to 75 percent of Direct Loan funds may be drawn before providing evidence of Match. Thereafter, each Development Owner must provide evidence of Match in the form of a formal contract or commitment with the vendor clearly delineating the donated portion of the contract price, invoices showing the forgiven amount, or other equally verifiable third party documentation prior to release of the final 25 percent of funds. If funds are requested on the day of closing, an executed formal contract specifying the terms of the Match must be provided;
- (5) Developer fee disbursement shall be conditioned upon:
 - (A) for Developments in which the loan is secured by a first lien deed of trust against the Property, 75 percent shall be disbursed in accordance with percent of construction completed (i.e. 75 percent of the total allowable fee will be multiplied by the percent completion) as documented by the construction contract and as may be verified by an inspection by the Department. The remaining 25 percent shall be disbursed at the time of release of retainage; or
 - (B) for Developments in which the loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits, developer fees will not be reimbursed by the Department unless the other lenders and syndicator confirm in writing that they do not have an existing or planned agreement to govern the disbursement of developer fees and expect that Department funds shall be used to fund developer fees. Provided this requirement is met, developer fees shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

- (C) the Department may reasonably withhold any disbursement of developer fees if it is determines that the Development is not progressing as necessary to meet the benchmarks for the timely completion of construction of the Development that is set forth in the loan documents, or that cost overruns have put the Development Owner's ability to repay its Direct Loan or complete the construction of the Development Owner's ability to repay its Direct Loan or complete the construction of the Development in accordance with the terms of the loan documents and within budget at risk. Once a reasonable alternative that is deemed acceptable by the Department has been provided, disbursement of the remaining fee may occur;
- (6) expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure requested. The Department may request the Development Owner make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of Department funds to Development Owner as may be necessary or advisable for compliance with all program requirements. For HOME Direct Loans: Pre-award costs for predevelopment activities, as specified in the loan documents, are allowable only if they were incurred less than 24 months prior to the commitment date (as defined in 24 CFR Part 92) and were associated with the Application Round in which the project was awarded;
- (7) table funding requests will not be considered unless:
- (A) a "Commitment to a specific local project" as defined in 24 CFR Part 92 has been made, if applicable; and
- (B) ten (10) days prior to anticipated closing, all table funding draw documentation has been completed and submitted to the Department;
- (8) each Development Owner must request a progress inspection from Department staff once the property passes 25 percent construction completion based on the AIA G702-703. Up to 50 percent of the HOME award will be released prior to receipt of documentation that the progress inspection has occurred;
- (9) Following fifty percent construction completion, the remaining HOME funds will be released in accordance with the percentage of construction completion, not to exceed ninety percent of award, at which point funds will be held as retainage until the final draw request. Retainage will be held until all of the items described in subparagraphs (A) - (G) of this paragraph are received:
- (A) Certificate of Substantial Completion (AIA Form G704);
- (B) A down date endorsement dated at least 30 calendar days after the date of completion as certified on the Certificate of Substantial Completion (AIA Form G704);
- (C) For developments not layered with Housing Tax Credits, a Closed Final Development Inspection Letter from the Department;
- (D) For developments subject to the Davis-Bacon Act, evidence from the Senior Labor Standards Specialist that the final wage compliance report was received and approved; (E) Receipt of Certificates of Occupancy for New Construction or a Certificate of Substantial Completion (AIA Form G704); from the Development Architect for Rehabilitation;
- (F) Development completion reports which may include documentation of full compliance with the Uniform Relocation Act, Davis-Bacon Act, and Section 3 of the Housing and Urban Development Act of 1968, as applicable to the Development, and any other applicable requirement; and
- (G) If applicable to the Development, certification from Architect or a licensed engineer that all HUD and REA environmental mitigation conditions have been met.

§10.404. Reserve Accounts.

- (a) **Replacement Reserve Account (§2306.186).** The Department will require Development Owners to provide regular maintenance to keep housing sanitary, safe and decent by establishing and maintaining a reserve for replacement account for the Development in accordance with Texas Government Code, §2306.186. The reserve account must be established, in accordance with paragraphs (3), (4), (5), and (6) of this subsection, and maintained through annual or more frequent regularly scheduled deposit, for each Unit in a Development of 25 or more rental units regardless of the amount of rent charged for the Unit. If the Department is processing a request for loan modification or other ~~workout~~ request under this subchapter, and the Development does not have an existing replacement reserve account, or –sufficient funds in the reserve to meet future capital expenditure needs of the Development as determined by a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in this section, or as indicated by the number or cost of repairs included in a PCA, the Development Owner will be required to establish and maintain a replacement reserve account or review whether –the amount of regular deposits to the replacement reserve account can be increased, regardless of the number of units at the Development. The Department shall, through cooperation of its divisions responsible for asset management and compliance, ensure compliance with this section. The duties of the Development Owner under this section cease on the date of a change in ownership of the Development; however, the subsequent Development Owner of the Development is subject to the requirements of this section and any additional or revised requirements the Department may impose after reviewing a Development’s compliance history, a PCA submitted by the Owner, or the amount of reserves that will be transferred at the time of anythe property sale.-
- (1) The LURA requires the Development Owner to begin making annual deposits to the replacement reserve account on the later of the:
 - (A) date that occupancy of the Development stabilizes as defined by the First Lien Lender or, in the absence of a First Lien Lender other than the Department, the date the Property is at least 90 percent occupied; or
 - (B) the date when the permanent loan is executed and funded.
 - (2) The Development Owner shall continue making deposits into the replacement reserve account until the earliest of the:
 - (A) date on which the owner suffers a total casualty loss with respect to the Development or the date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored;
 - (B) date on which the Development is demolished;
 - (C) date on which the Development ceases to be used as a multifamily rental property; or
 - (D) end of the Affordability Period specified by the LURA, or if an Affordability Period is not specified and the Department is the First Lien Lender, then when the Department’s loan has been fully repaid the end of the repayment period of the first lien loan or as otherwise agreed by the Owner and Department.
 - (3) If the Department is the First Lien Lender with respect to the Development or if the establishment of a Reserve Account for repairs has not been required by the First Lien Lender or Bank Trustee, each Development Owner receiving Department assistance for multifamily rental housing shall deposit annually into a separate, Development-specific Reserve Account through the date described in paragraph (2) of this subsection.:-

- (A) For New Construction Developments, not less than \$250 per Unit. Withdrawals from such account will be restricted for up to five years following the date of award except in cases in which special written approval from the Department is obtained relating to casualty loss, natural disaster, reasonable accommodations (but not for the construction standards required by the NOFA or program regulations), or demonstrated financial hardship; or
- (B) For Adaptive Reuse, Rehabilitation and Reconstruction Developments, the greater of the amount per Unit per year either established by the information presented in a Property Condition Assessment in conformance with Subchapter D of this chapter (relating to Underwriting and Loan Policy) or \$300 per Unit per year.
- (4) For all Developments, a Property Condition Assessment ("PCA") ~~must will~~ be conducted at ~~appropriate~~ intervals that are consistent with requirements of the First Lien Lender, other than the Department. If the Department is the First Lien Lender, or the First Lien Lender does not require a Third Party PCA, a PCA ~~will must~~ be conducted at least once during each five (5) year period beginning with the eleventh (11th) year after the awarding of any financial assistance from the Department. PCAs conducted by the Owner at any time or for any reason other than as required by the Department in the year beginning with the eleventh (11th) year of award must be submitted to the Department for review within 30 days of receipt by the Owner.
- (5) Where there is a First Lien Lender other than the Department or a Bank Trustee as a result of a bond trust indenture or tax credit syndication, the Development Owner shall comply with the lesser of the replacement reserve requirements of the First Lien Lender or the requirements in paragraph (3) of this section. In addition, the Department should be listed as a party to receive notice under any replacement reserve agreement entered into by the Development Owner. The Development Owner shall submit on an annual basis, within the Department's required Development Owner's Financial Certification packet, requested a statement describing information regarding:
- (A) the reserve for replacement requirements under the first lien loan agreement (if applicable) referencing where those requirements are contained within the loan documents;
- (B) compliance with the first lien lender requirements outlined in paragraph (A) of this subsection; ~~and~~
- (C) if the Owner is not in compliance with the lender requirements, the Development Owner's plan of action to bring the Development in compliance with all established reserve for replacement requirements; and
- (D) whether a PCA has been ordered and the Owner's plans for any subsequent capital expenditures, renovations, repairs, or improvements. -
- (6) Where there is no First Lien Lender but the allocation of funds by the Department and Texas Government Code, §2306.186 requires that the Department oversee a Reserve Account, the Development Owner shall provide at their sole expense ~~for appointment of~~ an escrow agent acceptable to the Department to act as Bank Trustee as necessary under this section. The Department shall retain the right to replace the escrow agent with another Bank Trustee or act as escrow agent at a cost plus fee payable by the Development Owner due to breach of the escrow agent's responsibilities or otherwise with thirty (30) days prior notice of all parties to the escrow agreement.
- (7) Penalties and Non-Compliance. If the Development Owner fails to comply with the replacement reserve account requirements stated herein, and request for extension or waiver of these requirements is not approved by the Department, then a penalty of up to \$200 per dwelling Unit in the Development and/or characterization of the Development as being in default with this requirement, may be imposed:
- (A) a Reserve Account, as described in this section, has not been established for the Development;

- (B) the Department is not a party to the escrow agreement for the Reserve Account, if required;
- (C) money in the Reserve Account:
- (i) is used for expenses other than necessary repairs, including property taxes or insurance; or
 - (ii) falls below mandatory annual, monthly, or Department approved deposit levels;
- (D) Development Owner fails to make any required deposits;
- (E) Development Owner fails to obtain a Third-Party Property Condition Assessment as required under this section or submit a copy of a PCA to the Department within 30 days of receipt; or
- (F) Development Owner fails to make necessary repairs in accordance with the ~~third-Third party-Party property-Property condition-Condition assessment-Assessment~~ or §10.621 of this chapter (relating to Property Condition Standards).
- (8) Department-Initiated Repairs. The Department or its agent may make repairs to the Development within 30 days of written notice from the Department if the Development Owner fails to complete necessary repairs indicated in the submitted Property Condition Assessment or identified by Department physical inspection. Repairs may be deemed necessary if the Development Owner fails to comply with federal, state, and/or local health, safety, or building code requirements. Payment for necessary repairs must be made directly by the Development Owner or through a replacement Reserve Account established for the Development under this section. The Department or its agent will be allowed to produce a Request for Bids to hire a contractor to complete and oversee necessary repairs. On a case-by-case basis, the Department may determine that the money in the Reserve Account may be used for expenses other than necessary repairs, including property taxes or insurance, if:
- (A) Development income before payment of return to Development Owner or deferred developer fee is insufficient to meet operating expense and debt service requirements; ~~and the funds withdrawn from the Reserve Account are replaced as Cash Flow after payment of expenses, but before payment of return to Development Owner or Developer~~; or
 - (B) Development income after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is insufficient to fund the mandatory deposit levels; ~~and subsequent deposits to the Reserve Account exceed mandatory deposit levels as Cash Flow after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is available until the Reserve Account has been replenished to the mandatory deposit level less capital expenses to date.~~
- (C) In the event of A or B above, funds withdrawn must be replaced from Cash Flow after payment of Operating Expenses but before return to Development Owner or deferred developer fee until the mandatory deposit level is replenished. The Department reserves the right to re-evaluate payments to the reserve, ~~and~~ increase such payments or require a lump sum deposit to the reserve, or require the Owner to enter into a separate Reserve Agreement if necessary to protect the long term feasibility of the Development.
- (9) Exceptions to Replacement Reserve Account. This section does not apply to a Development for which the Development Owner is required to maintain a Reserve Account under any other provision of federal or state law.
- (10) In the event of (7) or (8) of this section, the Department reserves the right to require by separate Reserve Agreement a revised annual deposit amount and/or require Department concurrence for withdrawals ~~approval of releases~~ from the Reserve Account to bring the Development back into compliance. Establishment of a new Bank Trustee or transfer of reserve funds to a new, separate and distinct account

may be required if necessary to meet the requirements of such Agreement. The Agreement will be executed by the Department, Development Owner, and financial institution representative.

- (b) **Lease-up Reserve Account.** A lease-up reserve funds start-up expenses in excess of the revenue produced by the Development prior to stabilization. The Department will consider a reasonable lease-up reserve account based on the documented requirements from a third-party lender, third-party syndicator, or the Department. During the underwriting at the point of the Cost Certification review, the lease-up reserve may be counted as a use of funds only to the extent that it represents operating shortfalls net of escrows for property taxes and property insurance. Funds from the lease-up reserve used to satisfy the funding requirements for other reserve accounts may not be included as a use of funds for the lease-up reserve. Funds from the lease-up reserve distributed or distributable as cash flow to the Development Owner will be considered and restricted as developer fee.
- (c) **Operating Reserve Account.** At various stages during the application, award process, and during the operating life of a Development, the Department will conduct a financial analysis of the Development's total development costs and operating budgets, including the estimated operating reserve account deposit required. For example, this analysis typically occurs at application and cost certification review. The Department will consider a reasonable operating reserve account deposit in this analysis based on the needs of the Development and requirements of third-party lenders or investors. The amount used in the analysis will be the amount described in the project cost schedule or balance sheet, if it is within the range of two (2) to six (6) months of stabilized operating expenses plus debt service. The Department may consider a greater amount proposed or required by the Department, any superior lien lender, or syndicator, if the detail for such greater amount is reasonable and well documented. Reasonable operating reserves in this chapter do not include capitalized asset management fees, guaranty reserves, or other similar costs. In no instance will operating reserves exceed twelve (12) months of stabilized operating expenses plus debt service (exclusive of transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Operating reserves are generally for the term of the permanent loan. In no instance will operating reserves released within five (5) years be included as a cost.
- (d) **Special Reserve Account.** If the funding program requires or allows for the establishment and maintenance of a Special Reserve Account for the purpose of assisting residents at the Development with expenses associated with their tenancy, this will be established in accordance with a written agreement with the Development Owner.
- (1) The Special Reserve Account is funded through a one-time payment or annually through an agreed upon percentage of net cash flow generated by the Development, excess development funds at completion as determined by the Department, or as otherwise set forth in the written agreement. For the purpose of this account, net cash flow is defined as funds available from operations after all expenses and debt service required to be paid have been considered. This does not include a deduction for depreciation and amortization expense, deferred developer fee payment, or other payments made to related parties, except as allowed by the Department for property management. Proceeds from any refinancing or other fund raising from the Development will be considered net cash flow for purposes of funding the Special Reserve Account. The account will be structured to require Department concurrence for withdrawals.
 - (2) All disbursements from the account must be approved by the Department.
 - (3) The Development Owner will be responsible for setting up a separate and distinct account with a financial institution acceptable to the Department. A Special Reserve Account Agreement will be drafted, ~~at the Department's discretion,~~ by the Department and executed by the Department, Development Owner and financial institution representative.
 - (4) Use of the funds in the Special Reserve Account is determined by a plan that is pre-approved by the Department. The Owner must create, update and maintain a plan for the disbursement of funds from the Special Reserve Account. The plan should be established at the time the account is created and updated and submitted for approval by the Department as needed. The plan should consider the needs of the tenants of the property and the existing and anticipated fund account balances such that all of the fund uses provide

benefit to tenants. Disbursements from the fund will only be approved by the Department if they are in accordance with the current approved plan.

- (e) **Other Reserve Accounts.** Additional reserve accounts may be recognized by the Department as necessary and required by the Department, superior lien lender or syndicator.

§10.405.Amendments and Extensions.

- (a) **Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) recording or amendments that do not result in a change to the LURA.** (§2306.6712) Regardless of development stage, the Board shall re_evaluate a Development that undergoes a substantial change, as identified in paragraph (4) of this subsection at any time after the initial Board approval of the Development. (§2306.6731(b)) The Board may deny an amendment request and subsequently may revoke any Commitment or Determination Notice issued for a Development ~~or and for~~ Competitive HTC Applications, and ~~may~~ reallocate the credits to other Applicants on the waiting list. An Applicant that provides materials to a neighborhood organization, a local governmental body, or a state representative to secure support (including materials in a Pre-Application or an Application) may not change any unit or common amenity(ies) depicted or described in such materials, or alter the size, number, or configuration of buildings reflected in such materials unless it requests and obtains Board approval for a material amendment.

- (1) If a proposed modification would alter a Development approved for an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection, the Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in §10.901(13) of this chapter (relating to Fee Schedule) in order to be received and processed by the Department.
- (2) Department staff will evaluate the amendment request. The Executive Director may administratively approve all non-material amendments, including those involving changes to the Developer, Guarantor or Person used to meet the experience requirement in §10.204(6) of this chapter (relating to Required Documentation for Application Submission). Changes in Developers or Guarantors will be subject to Previous Participation requirements as further described in §10.204(13). Amendments considered material pursuant to paragraph (4) of this subsection must be approved by the Board. Amendment requests which require Board approval must be received by the Department at least forty-five (45) calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the fifteenth (15th) day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4))
- (3) Amendment requests may be denied 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 percent 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, ~~other than changes under subparagraph (G) of this paragraph which are the result of a change required by local government,~~ of at least 5 percent;
- ~~(G) an increase or decrease in the site acreage, other than changes required by local government, of greater than 10 percent from the original site under control and proposed in the Application;~~
- ~~(HG)~~ exclusion of any requirements as identified in Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-Clearance for Applications);
- (H) Significant increases in development costs or changes in financing that may affect the financial feasibility of the Development or result in reductions of credit or changes in conditions such that a require full re-evaluation and analysis by staff assigned to underwrite applications is required; or
- ~~(I)~~ any other modification considered significant by the Board.

(5) In evaluating the amendment under this subsection, Department Staff shall consider whether changes to the selection or threshold criteria would have resulted in an equivalent or higher score and if the need for the proposed modification was reasonably foreseeable by the Applicant at the time the Application was submitted or preventable by the Applicant. Amendment requests will be denied if the score would have changed the allocation decision or if the circumstances were reasonably foreseeable and preventable unless good cause is found for the approval of the amendment.

(6) This section shall be administered in a manner that is consistent with §42 of the Code.

(7) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants identified in the Application and Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in subparagraphs (A) and (B) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:

(A) for amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence must be presented to the Department to support the amendment. In addition, the lender and syndicator must submit written confirmation 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 Department staff that the Unit adjustment is necessary for the continued financial feasibility of the Development; and

(B) if it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award in the year of 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 Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for twenty-four (24) months from the time that the amendment is approved.

(b) Amendments to the LURA. Department staff will evaluate the amendment request and provide the Development Owner an amended LURA for execution and recordation in the county where the Development is

located. LURAs will not be amended if the subject Development has any uncorrected issues of noncompliance outside of the Corrective Action Period (other than the provision being amended) unless otherwise approved by the Executive Award Review and Advisory Committee. LURAs will not be amended if the Development Owner owes fees to the Department. The Executive Director or designee may administratively approve all non-material LURA amendments. Board approval is required if a Development Owner requests a reduction in the number of Low-Income Units, a change in the income or rent restrictions, a change in the Target Population, a substantive modification in the scope of tenant services, ~~or the removal of material participation by a HUB or Nonprofit Organization as further described in §10.406 of this subchapter, a change in the Right of First Refusal period as described in amended §2306.6725 of the Texas Government Code, or any amendment deemed material by the Executive Director~~ ~~a delay in the Right of First Refusal (ROFR) requirements~~. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Texas Government Code, Chapter 2306, the Fair Housing Act, and, for Tax Exempt Bond Developments, compliance with their trust indenture and corresponding bond issuance documents. An amendment to the LURA is not considered material if the change is the result of a Department work out arrangement as recommended by the Department's Asset Management Division. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraphs (1) - (5) of this subsection must be followed:

- (1) the Development Owner must submit a written request accompanied by an amendment fee (except for awards that are funded only through one of the Department's Direct Loan programs, which do not require a fee) as identified in §10.901 of this chapter, specifying the requested change, the reason the change is necessary, the good cause for the change and if the necessity for the amendment was reasonably foreseeable at the time of Application;
 - (2) the Development Owner must supply financial information for the Department to evaluate the financial impact of the change;
 - (3) the Department may order a Market Study or appraisal to evaluate the request which shall be at the expense of the Development Owner and the Development Owner will remit funds necessary for such report prior to the Department commissioning such report;
 - (4) the Development Owner must hold a public hearing at least seven (7) business days prior to the Board meeting where the Board will consider their request. The notice of the hearing and requested change must be provided to each tenant of the Development, the current lender and/or investors, the State Senator and Representative for the district containing the Development, and the chief elected official for the municipality, if located in a municipality, or the county commissioners, if located outside of a municipality; and
 - (5) ten (10) business days before the public hearing, the Development Owner must submit a draft notice of the hearing for approval by the Department. The Department will create and provide upon request a sample notice and approve or amend the notice within three (3) business days of receipt.
- (c) **Amendments to Direct Loan Terms.** ~~An Applicant may request a change to the terms of a loan. Requests for changes to the loan post closing will be processed as a loan modification and may require additional approval by the Department's Asset Management Division.~~ The Executive Director or authorized designee may approve amendments to loan terms prior to closing as described in paragraphs (1) - (6) of this subsection ~~prior to closing~~. Board approval is necessary for any other changes prior to closing. ~~PA post closing loan modifications requiring changes in the Department's loan terms, lien priority, or amounts (other than in the event of a payoff) will generally only be considered as part of a Department that is the result of a or Asset Management Division Department work out arrangement or other condition intended to mitigate financial risk and recommended by the Department's Asset Management Division will not require additional Executive Director or Board approval except where the post closing change could have been anticipated prior to closing as determined by staff:~~

- (1) extensions of up to ~~twelve (12)~~15 months to ~~the~~[M1] loan closing date specified in §10.403(a) of this chapter (relating to Direct Loans). An Applicant must document good cause, which may include constraints in arranging a multiple-source closing;
- (2) changes to the loan maturity date to accommodate the requirements of other lenders or to maintain parity of term;
- (3) extensions of up to ~~six (6)~~12 months for the construction completion or loan conversion date based on documentation that the extension is necessary to complete construction and that there is good cause for the extension. Such a request will generally not be approved prior to initial loan closing;
- (4) changes to the loan amortization or interest rate that cause the annual repayment amount to decrease less than 20 percent or any changes to the amortization or interest rate that increases the annual repayment amount;
- (5) decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development. Increases will generally not be approved unless the Applicant competes for the additional funding under an open NOFA; and
- (6) changes to other loan terms or requirements as necessary to facilitate the loan closing without exposing the Department to undue financial risk.

(7) An Applicant may request a change to the terms of a loan. Requests for changes to the loan post closing will be processed as loan modifications and may require additional approval by the Department's Asset Management Division. Post closing loan modifications requiring changes in the Department's loan terms, lien priority, or amounts (other than in the event of a payoff) will generally only be considered as part of a Department or Asset Management Division work out arrangement or other condition intended to mitigate financial risk and will not require additional Executive Director or Board approval except where the post closing change could have been anticipated prior to closing as determined by staff.

- (d) **HTC Extensions.** Extensions must be requested if the original deadline associated with ~~carryover~~Carryover, the 10 Percent Test (including submission and expenditure deadlines), or cost certification requirements will not be met. Extension requests submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee as described in §10.901 of this chapter. Any extension request submitted fewer than thirty (30) days in advance of the applicable deadline or after the applicable deadline will not be processed unless accompanied by the applicable fee. Extension requests will be approved by the Executive Director or Designee, unless, at staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request must specify a requested extension date and the reason why such an extension is required. If the Development Owner is requesting an extension to the Carryover submission or 10 percent Test deadline(s), a point deduction evaluation will be completed in accordance with Texas Government Code, §2306.6710(b)(2), and §11.9(f) of this title (relating to Competitive HTC Selection Criteria). Therefore, the Development Owner must clearly describe in their request for an extension how the need for the extension was beyond the reasonable control of the Applicant/Development Owner and could not have been reasonably anticipated. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued.

§10.406.Ownership Transfers (§2306.6713).

- (a) **Ownership Transfer Notification.** All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least ~~thirty-fourty-five (4530)~~ calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of

this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with ~~§1.5 of this title~~ Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

- (b) **Requirement.** All new members must be eligible applicants under §10.202 of Subchapter C. In addition, new members with a controlling interest will be reviewed in accordance with Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews). Department approval must be requested for any new member to join in the ownership of a Development. Exceptions to the full approval process include changes to the investment limited partner, non-controlling limited partner, or other non-controlling partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Changes in Developers or Guarantors must be addressed as non-material amendments to the application under 10.405 of this subchapter. Limited Partners or other Investor or Special Limited Partners or Affiliates who were acknowledged by the Department at the time of a previous transfer but were not subject to a full approval process because of Limited Partnership, Investor or Special Limited Partner roles with non-controlling interests in the Owner, will be subject to full ownership transfer review requirements in the event that the Limited Partner or other Investor or Special Limited Partner at any point moves to acquire any portion of controlling interest as a member of the General Partner Development Owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity 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 requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.
- (c) **Transfers Prior to 8609 Issuance or Construction Completion.** ~~Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved p~~ Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) an Applicant may request an amendment to its ownership structure to add parties deemed to have control. The party(ies) reflected in the Application as having control must remain in the ownership structure and retain such control, unless approved otherwise by the Board. A development sponsor, gGeneral pPartner or Development Owner may not sell the Development in whole or voluntarily end their control prior to the issuance of 8609s, unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third Party agreement.
- (d) **Non-Profit Organizations.** If the ownership transfer request is to replace a non-profit organization within the Development ownership entity, the replacement non-profit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.
- (1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706 and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) (2)—If the LURA requires ownership or material participation in ownership by a qualified non-profit organization or CHDO, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a non-profit organization or CHDO, as applicable, that complies with the LURA.

(3) Exceptions to the above may be made on a case by case basis if the Development is past its Compliance Period, was not reported to the IRS as part of the Department’s Non-Profit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1)-(5) of this chapter (relating to LURA Amendments that require Board Approval). The Board must find that:

(a) the selling nNon-Pprofit is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(b) the participation by the nNon-Pprofit was substantive and meaningful during the full term of the Compliance Period but is not longer substantive or meaningful to the operations of the Development; and

(c) the proposed purchaser is an affiliate of the current Owner or otherwise meets the Department’s standards for ownership transfers.

(e) Historically Underutilized Business (“HUB”) Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner ~~or~~, (ii) determines to sell its ownership interest or (iii) determines to maintain its ownership interest but is unable to maintain its HUB status[rbm2], in either case, after the issuance of 8609’s, the purchaser of that general partnership interest or the general partner is not required to be a HUB as long as the LURA does not require such continual ownership, or the procedures outlined in §10.405(b)(1)-(5) of this chapter (relating to LURA Amendments that require Board Approval) a material LURA amendment is have been followed and approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

(1) the selling HUB is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department’s standards for ownership transfers

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

(1) (1)—a written explanation outlining the reason for the request;

(2) ownership transfer information, including but not limited to the type of sale, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §10.204(13)(A) of Subchapter C;

(3) (2)—a list of the names and contact information ~~for~~ transferees and Related Parties;

;

(4) Previous Participation information for any new Principal or natural person as described in §10.204(13)(b) of Subchapter C;

(5) agreements among parties associated with the transfer;

(6) ~~required Certifications from the proposed Owner;~~ a fully executed ~~and recorded~~ Owner's Certification of Agreement to Comply with the LURA, which may be subject to recording as required by the Department;

(7) ~~Owners Other Certifications~~ with regard to materials submitted ~~as required further described in by the Post Award Activities Manual;~~

(873) ~~d~~etailed information describing the organizational structure, experience, and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

(984) evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least ~~thirty (30)~~ calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired;

(109) ~~any required exhibits and the list of exhibits~~ related to specific circumstances of transfer or Ownership as detailed in the ~~Post Award Activities Manual.~~

(g) ~~Within five (5) business days after the~~Once the Department ~~date the Department~~ receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with §1.5 of this titleChapter 1, Subchapter C of this part, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and Subchapter C—§10.202 of Subchapter C (relating to ineligible applicants and applications).

(h) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

- (1) 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
- (2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(i) Penalties, Past Due Fees and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties or fees imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department. In the event a transferring propertyDevelopment has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PCA, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

§10.407.Right of First Refusal.

(a) **General.** This section applies to LURAs that provided an incentive for Development Owners to offer a Right of First Refusal (ROFR) to a Qualified ROFR Organization which is defined as a qualified nonprofit organization under §42(h)(5)(c) of the Code or tenant organizations. The purpose of this section is to provide administrative procedures and guidance on the process and valuation of properties under the LURA. All requests for ROFR submitted to the Department, regardless of existing regulations, must adhere to this process.

(1) The Development Owner may market the Property for sale and sell the Property to a Qualified ROFR Organization without going through the ROFR process outlined in this section. The purpose of this section is to provide administrative procedures and guidance on the process and valuation of properties under the LURA. All requests for ROFR submitted to the Department, regardless of existing regulations, must adhere to this process.

(2) A ROFR request must be made in accordance with the LURA for the Development. If there is a conflict between the Development's LURA and this subchapter, requirements in the LURA supersede the subchapter. If a conflict between the LURA and statute exists the Development Owner may request a LURA amendment to be consistent with any changes to Texas Government Code §2306.

(3) If a LURA includes the ROFR provision, the Development Owner may not request a Preliminary Qualified Contract until the requirements outlined in this section have been satisfied.

(4) The Department reviews and approves all ownership transfers, including transfers to a nonprofit or tenant organization through a ROFR. Properties subject to a LURA may not be transferred to an entity that is considered an ineligible entity under the Department's most recent Qualified Allocation Plan. In addition, ownership transfers to a Qualified ROFR Organization during the ROFR period are subject to §1.5 of this title Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews). A Qualified ROFR Organization that wishes to pursue the acquisition of a Development through a ROFR but that is not approved for transfer under the Previous Participation Review, pursuant to §1.5 of this title, may appeal the denial to the Board.

(5) Satisfying the ROFR requirement does not terminate the LURA or the ongoing application of the ROFR requirement to any subsequent Development Owner.

(6) A right of first refusal is not triggered if the transfer is made to a newly formed entity:

(A) that is under common control with the Development Owner; and

(B) the primary purpose of the formation of which is to facilitate the financing of the rehabilitation of the development using assistance administered through a state financing program.

(C) Any additional ownership entities are subject to Chapter 1, Subchapter C of this part (relating to Previous Participation Reviews).

(b) **Right of First Refusal Offer Price.** There are two general expectations of the ROFR offer or sale price identified in the outstanding LURAs. The descriptions in paragraphs (1) and (2) of this subsection do not alter the requirements or definitions included in the LURA but provide further clarification as applicable:

(1) Fair Market Value is established using either a current appraisal (completed within three months prior to the ROFR request and in accordance with §10.304 of this chapter (relating to Appraisal Rules and Guidelines)) of the Property or an executed purchase offer that the Development Owner would like to

accept. The purchase offer must contain specific language that the offer is conditioned upon satisfaction of the ROFR requirement. If a subsequent ROFR request is made within six months of the previously approved ROFR posting, the lesser of the prior ROFR posted value or new appraisal/purchase contract amount must be used in establishing Fair Market Value;

(2) Minimum Purchase Price, pursuant to §42(i)(7)(B) of the Code, is the sum of:

- (A) the principal amount of outstanding indebtedness secured by the project (other than indebtedness incurred within the five (5)-year period immediately preceding the date of said notice); and
- (B) all federal, state, and local taxes incurred or payable by the Development Owner as a consequence of such sale. If the Property has a minimum Applicable Fraction of less than 1, the offer must take this into account by multiplying the purchase price by the applicable fraction and the fair market value of the non-Low-Income Units.

(c) **Required Documentation.** Upon establishing the value of the Property, the ROFR process is the same for all types of LURAs. To proceed with the ROFR request, submit all documents listed in paragraphs (1) - (12) of this subsection:

- (1) upon the Development Owner's determination to sell the Development to an entity other than a Qualified ROFR Organization, the Development Owner shall provide a notice of intent to the Department and to such other parties as the Department may direct at that time. If the LURA identifies a Qualified ROFR Organization that has a limited priority in exercising a ROFR to purchase the Development, the Development Owner must first offer the Property to this entity. If the nonprofit entity does not purchase the Property, this denial of offer must be in writing and submitted to the Department along with the notice of intent to sell the Property and the ROFR Fee. The Department will determine from this documentation whether the ROFR requirement has been met. In the event that the organization is not operating or in existence when the ROFR is to be made, the ROFR must be provided to another Qualified ROFR Organization that is not related to or affiliated with the current Development Owner. Upon review and approval of the notice of intent and denial of offer letter, the Department will notify the Development Owner in writing whether the ROFR requirement has been satisfied or not. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to another buyer at or above the posted price;
- (2) documentation verifying the ROFR offer price of the property:
 - (A) if the Development Owner receives an offer to purchase the Property from any buyer other than a Qualified ROFR Organization that the Development Owner would like to accept, the Development Owner may execute a sales contract, conditioned upon satisfaction of the ROFR requirement, and submit the executed sales contract to establish fair market value; or
 - (B) if the Development Owner of the Property chooses to establish fair market value using an appraisal, the Development Owner must submit an appraisal of the Property completed during the last three (3) months prior to the date of submission of the ROFR request, establishing a value for the Property in compliance with Subchapter D of this chapter (relating to Underwriting and Loan Policy) in effect at the time of the request. The appraisal should take into account the existing and continuing requirements to operate the Property under the LURA and any other restrictions that may exist. Department staff will review all materials within thirty (30) calendar days of receipt. If, after the review, the Department does not agree with the fair market value proposed in the Development Owner's appraisal, the Department may order another appraisal at the Development Owner's expense; or
 - (C) if the LURA requires valuation through the Minimum Purchase Price calculation, submit documentation verifying the calculation of the Minimum Purchase Price as described in subsection (b)(2) of this section regardless of any existing offer or appraised value;

- (3) description of the Property, including all amenities and current zoning requirements;
- (4) copies of all documents imposing income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Property;
- (5) copy of the most current title report, commitment or policy in the Development Owner's possession;
- (6) the most recent Physical Needs Assessment, pursuant to Texas Government Code, ~~§2306.186(e)~~, conducted by a Third-Party ~~and in the Development Owner's possession~~;
- (7) copy of the monthly operating statements, including income statements and balance sheets for the Property for the most recent twelve (12) consecutive months (financial statements should identify amounts held in reserves);
- (8) the three (3) most recent consecutive audited annual operating statements, if available;
- (9) detailed set of photographs of the Property, including interior and exterior of representative units and buildings, and the Property's grounds (including digital photographs that may be easily displayed on the Department's website);
- (10) current and complete rent roll for the entire Property;
- (11) if any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases; and
- (12) ROFR fee as identified in §10.901 of this chapter (relating to Fee Schedule).

(d) Process. Within ~~ten thirty (1030)~~ business days of receipt of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies. Once the deficiencies are resolved and the Development Owner and Department come to an agreement on the ROFR offer price of the Property, the Department will list the Property for sale on the Department's website and contact entities on the nonprofit buyer list maintained by the Department to inform them of the availability of the Property at the agreed upon ROFR offer price as determined under this section. The Department will notify the Development Owner when the Property has been listed and of any inquiries or offers generated by such listing. If the Department or Development Owner receives offers to purchase the Property from more than one Qualified ROFR Organization, the Development Owner may accept back up offers. To satisfy the ROFR requirement, the Development Owner may sell the Property to the Qualified ROFR Organization selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department. The period of time required for offering the property at the ROFR offer price is based upon the period identified in the LURA and clarified in paragraphs (1) - (3) of this subsection:

- (1) if the LURA requires a ~~ninety (90)~~ day ROFR posting period, within ~~ninety (90)~~ days from the date listed on the website, the process as identified in subparagraphs (A) - (D) of this paragraph shall be followed:
 - (A) if a bona fide offer from a qualified ROFR organization is received at or above the posted ROFR offer price, and the Development Owner does not accept the offer, the ROFR requirement will not be satisfied;
 - (B) if a bona fide offer from a qualified ROFR organization is received at or above the posted ROFR offer price and the Development Owner accepts the offer, and the nonprofit fails to close the purchase, if the failure is determined to not be the fault of the Development Owner, the ROFR requirement will be deemed met so long as no other acceptable offers have been timely received. If the proposed Development Owner is subsequently not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to ~~§1.5 of~~

~~this title~~ Chapter 1, Subchapter C of this part, the ROFR requirement will be deemed met so long as no other acceptable offers have been timely received;

- (C) if an offer from a nonprofit is received at a price below the posted ROFR offer price, the Development Owner is not required to accept the offer, and the ROFR requirement will be deemed met if no other offers at or above the price are received during the ~~ninety (90)~~ day period;
 - (D) if no bona fide offers are received during the ~~ninety (90)~~ day period, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to a for-profit buyer at or above the posted price;
- (2) if the LURA requires a two year ROFR posting period, and the Development Owner intends to sell the Property upon expiration of the Compliance Period, the notice of intent described in this section may be submitted ~~within at least two (2)~~ years before the expiration of the Compliance Period, as required by Texas Government Code, §2306.6726. 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 within two (2) years before the date upon which the Development Owner intends to sell the Development in order for the two year ROFR posting period to be completed prior to intended sale. The two (2) year period referenced in this paragraph begins when the Department has received and approved all documentation required under subsection (c)(1) - (12) of this section. During the two (2) years following the notice of intent and in order to satisfy the ROFR requirement of the LURA, the Development Owner may negotiate or enter into an agreement to sell the Development only with the parties listed, and in order of priority:
- (A) during the first six (6) month period after notice of intent, only with a Qualified Nonprofit Organization that is also a Community Housing Development Organization, as defined in the HOME Final Rule and is approved by the Department;
 - (B) during the second six (6) month period after notice of intent, only with a Qualified Nonprofit Organization or a tenant organization;
 - (C) during the second year after 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;
 - (D) if, during the two (2) year period, the Development Owner shall receive an offer to purchase the Development at or above the Minimum Purchase Price from one of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organization), the Development Owner may sell the Development to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at or above the Minimum Purchase Price from one or more of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organizations), the Development Owner may sell the Development at or above the Minimum Purchase Price to the organization selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department; and
 - (E) upon expiration of the two (2) year period, if no Minimum Purchase Price offers were received from a Qualified ROFR Organization or by the Department, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to a for-profit buyer at or above the minimum purchase price.
- (3) if the Development Owner has amended the LURA to require a ~~one hundred and eighty (180)~~ day ROFR posting period pursuant to Texas Government Code §2306.6725-, as amended, and the Development Owner intends to sell the Property at any time after the expiration of the Compliance Period, the Development

Owner shall notify the Department and the tenants of the development of the owner's intent to sell. The Development Owner shall also identify to the Department any qualified entity that is the owner's intended recipient of the right of first refusal in the LURA, if applicable. As soon as practicable after receiving the Development Owner's notice, and if the owner has specifically identified any qualified entity that is the owner's intended recipient of the ROFR, the Department shall provide notice to any identified qualified entity of the owner's intent to sell the development and shall post the notice to the Department's website. The owner's notice of intent to sell shall be given within ~~one hundred and eighty (180)~~ days before the date upon which the Development Owner intends to sell the Development in order for the ~~ninety~~90 day ROFR posting period to be completed prior to the intended sale. The ~~one hundred and eighty (180)~~ day ROFR period referenced in this paragraph begins when the Department has received and approval all documentation required under subsection (c)(1) – (12) of this section. During the ~~one hundred and eighty (180)~~ days following the notice of intent and in order to satisfy the ROFR requirement of the LURA, the Development Owner may negotiate or enter into an agreement to sell the Development only with the parties listed, and in order of priority:

(A) during the first ~~sixty (60)~~ day period after notice of intent, only with a Community Housing Development Organization, as defined in the HOME Final Rule, or with a qualified entity that is controlled by a Community Housing Development Organization, and is approved by the Department;

(B) during the second ~~sixty (60)~~ day period after notice of intent, only with a Qualified Nonprofit Organization as described by Texas Government Code §2306.6706, a qualified entity that is controlled by a Qualified Nonprofit Organization as described by Texas Government Code §2306.6706, or a tenant organization, and is approved by the Department;

(C) during the last ~~sixty (60)~~ day period after notice of intent, with any other qualified entity that is approved by the Department;

(D) if, during the one hundred and eighty (180) day period, the Development Owner shall receive an offer to purchase the Development at a price that the Department determines to be reasonable from one of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organization), the Development Owner may sell the Development to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at or above the price that the Department determines to be reasonable from one or more of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organizations), the Development Owner may sell the Development at or above the price that the Department determines to be reasonable in accordance with subsection (b)(2) of this section to the organization selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department; and

(E) beginning on the 181st day after the date the Department posts notice of the Development Owner's intent to sell, if no offers at a price determined to be reasonable by the Department were received from a Qualified ROFR Organization or by the Department, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to a for-profit buyer at or above the price determined to be reasonable by the Department

~~(F) this section applies only to a right of first refusal memorialized in the Department's LURA. This section does not authorize a modification of any other agreement between the Development Owner and a qualified entity.~~

(34) ——— If the LURA does not specify a required ROFR posting timeframe, or, is unclear on the required ROFR posting timeframe, and the required ROFR value is determined by the Minimum Purchase Price method, any Development that received a tax credit allocation prior to September 1, 1997 is required to post for a 90-day ROFR period and any Development that received a tax credit allocation on or after

September 1, 1997 and until September 1, 2015 is required to post for a 2-year ROFR, unless the LURA is amended under §10.405(b), or after September 1, 2015 is required to post for a 180-day ROFR period as described in Texas Government Code, §2306.6726.

(e) **Closing the Transaction.** 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.

(1) Prior to closing a sale of the Property, the Development Owner must obtain Department approval of the transfer through the ownership transfer process in accordance with §10.406 of this chapter (relating to Ownership Transfers (§2306.6713)). The request should include, among other required transfer documents outlined in the Post ~~Award~~ ~~Carryover~~ Activities Manual, the final settlement statement and final sales contract with all amendments. If there is no material change in the sales price or terms and conditions of the sale, as approved at the conclusion of the ROFR process, and there are no issues identified during the Ownership Transfer review process, the Department will notify the Development Owner in writing that the transfer is approved.

(2) If the closing price is materially less than the amount identified in the sales contract or appraisal that was submitted in accordance with subsection (c)(2)(A) - (C) of this section or the terms and conditions of the sale change materially, in the Department's sole determination, the Development Owner must go through the ROFR process again.

(3) Following notice that the ROFR requirement has been met, if the Development Owner fails to proceed with a request for a Qualified Contract or sell the Property to a for-profit entity within twenty-four (24) months of the Department's written approval, the Development Owner must again offer the Property to nonprofits in accordance with the applicable section prior to any transfer. If the Department determines that the ROFR requirement has not been met during the ROFR posting period, the Owner may not re-post under this provision at a ROFR price that is higher than the originally posted ROFR price until twenty-four (24) months has expired from the Department's written denial. The Development Owner may market the Property for sale and sell the Property to a Qualified ROFR Organization during this twenty-four month period.

(f) **Appeals.** A Development Owner may appeal a staff decision in accordance with §10.902 of this chapter (relating to the Appeals Process (§2306.0321; §2306.6715)). The appeal may include:

- (1) the best interests of the residents of the Development;
- (2) the impact the decision would have on other Developments in the Department's portfolio;
- (3) the source of the data used as the basis for the Development Owner's appeal;
- (4) the rights of nonprofits under the ROFR;
- (5) any offers from an eligible nonprofit to purchase the Development; and
- (6) other factors as deemed relevant by the Executive Director.

§10.408. Qualified Contract Requirements.

(a) **General.** Pursuant to §42(h)(6) of the Code, after the end of the 14th year of the Compliance Period, the Development Owner of a Development utilizing Housing Tax Credits can request that the allocating agency find a buyer at the Qualified Contract Price. If a buyer cannot be located within one (1) year, the Extended Use Period will expire. This section provides the procedures for the submittal and review of Qualified Contract Request.

(b) Eligibility. Development Owners who received an award of credits on or after January 1, 2002 are not eligible to request a Qualified Contract prior to the thirty (30) year anniversary of the date the property was placed in service. (§2306.185) Unless otherwise stated in the LURA, Development Owners awarded credits prior to 2002 may submit a Qualified Contract Request at any time after the end of the year proceeding the last year of the Initial Affordability Period, following the Department's determination that the Development Owner is eligible. The Initial Affordability Period starts concurrently with the credit period, which begins at placement-in-service or is deferred until the beginning of the next tax year, if there is an election. Unless the Development Owner has elected an Initial Affordability Period longer than the Compliance Period, as described in the LURA, this can commence at any time after the end of the 14th year of the Compliance Period. References in this section to actions which can occur after the 14th year of the Compliance Period shall refer, as applicable, to the year preceding the last year of the Initial Affordability Period, if the Development Owner elected an Initial Affordability Period longer than the Compliance Period.

- (1) If there are multiple buildings placed in service in different years, the end of the Initial Affordability Period will be based upon the date the last building placed in service. For example, if five buildings in the Development began their credit periods in 1990 and one began in 1991, the 15th year would be 2005.
- (2) If a Development received an allocation in multiple years, the end of the Initial Affordability Period will be based upon the last year of a multiple allocation. For example, if a Development received its first allocation in 1990 and a subsequent allocation and began the credit period in 1992, the 15th year would be 2006.

(c) Preliminary Qualified Contract Request. All eligible Development Owners must file a Preliminary Qualified Contract Request.

- (1) In addition to determining the basic eligibility described in subsection (b) of this section, the pre-request will be used to determine that:
 - (A) the ~~Property-Development~~ does not have any uncorrected issues of noncompliance outside the Corrective Action Period;
 - (B) there is a Right of First Refusal (ROFR) connected to the ~~Property-Development~~ that has been satisfied;
 - (C) the Compliance Period has not been extended in the LURA and, if it has, the Development Owner is eligible to file a pre-request as described in paragraph (2) of this subsection; and
- (2) In order to assess the validity of the pre-request, the Development Owner must submit:
 - (A) Preliminary Request Form;
 - (B) Qualified Contract Pre-Request fee as outlined in §10.901 of this chapter (relating to Fee Schedule);
 - (C) copy of all regulatory agreements or LURAs associated with the ~~P~~property (non-TDHCA);
 - (D) ~~local code compliance report, TDHCA UPCS Inspection Report, or HUD certified REAC or UPCS inspection within the last twelve (12) months~~copy of the most recent Physical Needs Assessment, pursuant to Texas Government Code §2306.186(e), conducted by a Third Party.
- (3) The pre-request will not bind the Development Owner to submit a Request and does not start the One (1) Year Period (1YP). A review of the pre-request will be conducted by the Department within ninety (90) days of receipt of all documents and fees described in paragraph (2) of this subsection. If the Department determines that this stage is satisfied, a letter will be sent to the Development Owner stating that they are eligible to submit a Qualified Contract (QC) Request.

(d) Qualified Contract Request. A Development Owner may file a QC Request anytime after written approval is received from the Department verifying that the Development Owner is eligible to submit the Request.

- (1) Documentation that must be submitted with a Request is outlined in subparagraphs (A) - (P) of this paragraph:
 - (A) a completed application and certification;
 - (B) the Qualified Contract price calculation worksheets completed by a Third-Party certified public accountant (CPA). The CPA shall certify that they have reviewed annual partnership tax returns for all years of operation, loan documents for all secured debt, and partnership agreements. They shall also certify that they are not being compensated for the assignment based upon a predetermined outcome;
 - (C) a thorough description of the Development, including all amenities;
 - (D) a description of all income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Development;
 - (E) a current title report;
 - (F) a current appraisal with the effective date within ~~three-six~~ months ~~prior to~~ the date of the QC Request and consistent with Subchapter D of this chapter (relating to Underwriting and Loan Policy);
 - (G) a current Phase I Environmental Site Assessment (Phase II if necessary) with the effective date within six months of the date of the QC Request and consistent with Subchapter D of this chapter;
 - (H) a copy of the most recent ~~property condition assessment~~ Physical Needs Assessment of the property conducted by a Third Party of the property, if different from the assessment submitted during the preliminary qualified contract request, consistent with Subchapter D of this chapter and in accordance with the requirement described in Texas Government Code, §2306.186(e);
 - (I) a copy of the monthly operating statements for the Development for the most recent twelve (12) consecutive months;
 - (J) the three most recent consecutive annual operating statements;
 - (K) a detailed set of photographs of the development, including interior and exterior of representative units and buildings, and the property's grounds (including digital photographs that may be easily displayed on the Department's website);
 - (L) a current and complete rent roll for the entire Development;
 - (M) a certification that all tenants in the Development have been notified in writing of the request for a Qualified Contract. A copy of the letter used for the notification must also be included;
 - (N) if any portion of the land or improvements is leased, copies of the leases;
 - (O) the Qualified Contract Fee as identified in §10.901 of this chapter; and
 - (P) additional information deemed necessary by the Department.
- (2) Unless otherwise directed by the Department pursuant to subsection (g) of this section, the Development Owner shall contract with a broker to market and sell the Property. The Department may, at its sole discretion, notify the Owner that the selected Broker is not approved by the Department. The fee for this service will be paid by the seller, not to exceed ~~6-six~~ percent of the QC Price.

(3) Within ~~ninety (90)~~ days of the submission of a complete Request, the Department will notify the Development Owner in writing of the acceptance or rejection of the Development Owner's QC Price calculation. The Department will have one (1) year from the date of the acceptance letter to find a Qualified Purchaser and present a QC. The Department's rejection of the Development Owner's QC Price calculation will be processed in accordance with subsection (e) of this section and the 1YP will commence as provided therein.

(e) Determination of Qualified Contract Price. The QC Price calculation is not the same as the Minimum Purchase Price calculation for the ROFR. The CPA contracted by the Development Owner will determine the QC Price in accordance with §42(h)(6)(F) of the Code taking the following into account:

- (1) distributions to the Development Owner of any and all cash flow, including incentive management fees and reserve balance distributions or future anticipated distributions, but excluding payments of any eligible deferred developer fee. These distributions can only be confirmed by a review of all prior year tax returns for the Development;
- (2) all equity contributions will be adjusted based upon the lesser of the consumer price index or 5 percent for each year, from the end of the year of the contribution to the end of year fourteen or the end of the year of the request for a QC Price if requested at the end of the year or the year prior if the request is made earlier than the last year of the month; and
- (3) these guidelines are subject to change based upon future IRS Rulings and/or guidance on the determination of Development Owner distributions, equity contributions and/or any other element of the QC Price.

(f) Appeal of Qualified Contract Price. The Department reserves the right, at any time, to request additional information to document the QC Price calculation or other information submitted. If the documentation does not support the price indicated by the CPA hired by the Development Owner, the Department may engage its own CPA to perform a QC Price calculation and the cost of such service will be paid for by the Development Owner. If a Development Owner disagrees with the QC Price calculated by the Department, a Development Owner may appeal in writing. A meeting will be arranged with representatives of the Development Owner, the Department and the CPA contracted by the Department to attempt to resolve the discrepancy. The 1YP will not begin until the Department and Development Owner have agreed to the QC Price in writing. Further appeals can be submitted in accordance with §10.902 of this title (relating to Appeals Process (§2306.0321; §2306.6715)).

(g) Marketing of Property. By submitting a Request, the Development Owner grants the Department the authority to market the Development and provide Development information to interested parties. Development information will consist of pictures of the Development, location, amenities, number of Units, age of building, etc. Development Owner contact information will also be provided to interested parties. The Development Owner is responsible for providing staff any requested information to assist with site visits and inspections. Marketing of the Development will continue until such time that a Qualified Contract is presented or the 1YP has expired. Notwithstanding subsection (d)(2) of this section, the Department reserves the right to contract directly with a Third Party in marketing the Development. Cost of such service, including a broker's fee not to exceed 6 percent, will be paid for by the existing Development Owner. The Department must have continuous cooperation from the Development Owner. Lack of cooperation will cause the process to cease and the Development Owner will be required to comply with requirements of the LURA for the remainder of the Extended Use Period. A prospective purchaser must complete all requirements of an ownership transfer request and be approved by the Department prior to closing on the purchase. ~~The Department will assess if the prospective purchaser is a Qualified Purchaser during the Ownership Transfer review process.~~ Responsibilities of the Development Owner include but are not limited to the items described in paragraphs (1) - (3) of this subsection. The Development Owner must:

- (1) allow access to the Property and tenant files;
- (2) keep the Department informed of potential purchasers; and

(3) notify the Department of any offers to purchase.

(h) Presentation of a Qualified Contract. If the Department finds a Qualified Purchaser willing to present an offer to purchase the property for an amount at or above the QC Price, the Development Owner may accept the offer and enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase. If the Development Owner chooses not to accept the QC offer that the Department presents, the QC request will be closed and the possibility of terminating the Extended Use Period through the Qualified Contract process is eliminated; the Property remains bound by the provisions of the LURA. If the Development Owner decides to sell the development for the QC Price pursuant to a QC, the consummation of such a sale is not required for the LURA to continue to bind the Development for the remainder of the Extended Use Period.

(1) The Department will attempt to procure a QC only once during the Extended Use Period. If the transaction closes under the contract, the new Development Owner will be required to fulfill the requirements of the LURA for the remainder of the Extended Use Period.

(2) If the Department fails to present a QC before the end of the 1YP, the Department will file a release of the LURA and the Development will no longer be restricted to low-income requirements and compliance. However, in accordance with §42(h)(6)(E)(ii) of the Code, for a three (3) year period commencing on the termination of the Extended Use Period, the Development Owner may not evict or displace tenants of Low-Income Units for reasons other than good cause and will not be permitted to increase rents beyond the maximum tax credit rents. Additionally, the Development Owner should submit to the Department a request to terminate the LURA and evidence, in the form of a signed certification and a copy of the letter, to be approved by the Department, that the tenants in the Development have been notified in writing that the LURA will be terminated and have been informed of their protections during the three (3) year time frame.

(3) Prior to the Department filing a release of the LURA, the Development Owner must correct all instances of noncompliance at the [Property Development](#).

(i) Compliance Monitoring during Extended Use Period. For Developments that continue to be bound by the LURA and remain affordable after the end of the Compliance Period, the Department will monitor in accordance with the Extended Use Period Compliance Policy in Subchapter F of this chapter (relating to Compliance Monitoring).