

# SECOND SUPPLEMENTAL BOARD BOOK OF NOVEMBER 12, 2015

J. Paul Ozer, Chair



Juan Muñoz, Vice-Chair  
Leslie Bingham Escareño, Member  
T. Tolbert Chisum, Member  
Tom Gann, Member  
J. B. Goodwin, Member

7 a) - Presentation, Discussion, and Possible Action on an order adopting the repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and an order adopting the new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and directing its publication in the *Texas Register* is being replaced in its entirety by the following document except that the full public comments have not been republished here and can still be found under the overall item in the November 12, 2015, Board book.

**SUPPLEMENT TO BOARD ACTION REQUEST**

**MULTIFAMILY FINANCE DIVISION**

**NOVEMBER 12, 2015**

Subsequent to the publication of the November 12, 2015, Board book on the Department's web site it became apparent to staff that several items in the reasoned response were inadvertently left out of the draft QAP. In addition, staff recognized that the delineation of scoring criteria in two instances (Educational Excellence and Aging in Place) which were intended to offset each other were written such that the latter (Aging in Place) may not have comported with the plain language of HB 3311. Therefore staff prepared a supplemental Board book publication and revised recommendation. The following is a summary of changes to 10 TAC Chapter 11, Housing Tax Credit Program Qualified Allocation Plan as presented in the Supplement to the November 12, 2015, Board Book.

**§11.9.Competitive HTC Selection Criteria.**

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

**(2) Rent Levels of Tenants.**

(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments proposed by a Qualified Nonprofit 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 a minimum of 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);

Description of change: The change a minimum of five (5) ~~or seven (7)~~ corrects the scoring requirement in this item to reflect the addition of a six (6) point scoring option in (c)(4) Opportunity Index.

(6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive up to two (2) points if the Development Site is located in one of the areas described in subparagraphs (A) - ~~(E)~~ of this paragraph, and the Application contains evidence substantiating qualification for the points. 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...

~~(F) Within 5 miles of a new business that in the past two years has constructed a new facility and undergone initial hiring of its workforce employing 50 or more persons at or above the average median income for the population in which the Development is located (1 point); or~~

~~(G) A census tract which has experienced growth increases in excess of 120% of the county population growth over the past 10 years provided the census tract does not comprise more than 50% of the county (1 point).~~

Description of change: Removal of items (F) and (G) was described in the Reasoned Response as the result of Public Comment, but the change was not included in the version of the Qualified Allocation Plan included in the initial November 12, 2015, Board Book.

(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive up to ~~three (3)~~ two (2) points by serving Tenants with Special Housing Needs. Points will be awarded as described in subparagraphs (A) - (C) of this paragraph.

Description of change: The maximum points available for this item was reduced by a change to subparagraph (A) described in the Reasoned Response as the result of Public Comment, but the corresponding change to paragraph (7) was not included in the version of the Qualified Allocation Plan included in the initial November 12, 2015, Board Book.

(8) Aging in Place. (§2306.6725(d)(2) An Application ~~for an Elderly Development~~ may qualify to receive up to ~~three-five (35)~~ points under this paragraph only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence). An Application for a Supportive Housing Development may qualify to receive up to two (2) points under subparagraph (A) only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence).

Description of change: In order to comport with HB 3311, the limitation specific to an Elderly Development has been removed.

**(e) Criteria promoting the efficient use of limited resources and applicant accountability.**

(2) Cost of Development per Square Foot.

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

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

Description of change: The change a minimum of five (5) ~~or seven (7)~~ corrects the scoring requirement in this item to reflect the addition of a six (6) point scoring option in (c)(4) Opportunity Index.

**BOARD ACTION REQUEST  
MULTIFAMILY FINANCE DIVISION  
NOVEMBER 12, 2015**

Presentation, Discussion, and Possible Action on an order adopting the repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and an order adopting the new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and directing their publication in the *Texas Register*

**RECOMMENDED ACTION**

**WHEREAS**, the Texas Department of Housing and Community Affairs (the “Department”) is authorized to make Housing Tax Credit allocations for the State of Texas;

**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;

**WHEREAS**, the proposed amendments to Chapter 11 were published in the September 15, 2015, issue of the *Texas Register* for public comment; and

**WHEREAS**, pursuant to Texas Government Code §2306.6724(b) the Board shall adopt and submit to the Governor a proposed Qualified Allocation Plan no later than November 15;

**NOW, therefore, it is hereby,**

**RESOLVED**, that the final order adopting the repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Qualified Allocation Plan and the final order adopting the new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan is hereby ordered and approved, together with the preamble presented to this meeting, for publication in the *Texas Register*; and

**FURTHER RESOLVED**, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the Qualified Allocation Plan, together with the preamble in the form presented to this meeting, to be delivered to the Governor, prior to November 15<sup>th</sup> for his review and approval, and to cause the Qualified Allocation Plan, as approved, to be approved with changes or rejected by the Governor, and thereafter be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

## BACKGROUND

The Board approved the proposed repeal and proposed new Chapter 11 regarding the Housing Tax Credit Program Qualified Allocation Plan (“QAP”) at the Board meeting of September 11, 2015, to be published in the *Texas Register* for public comment. In keeping with the requirements of the Administrative Procedures Act, staff has reviewed all comments received and provided a reasoned response to these comments. Staff has listed the areas below that received the most comment.

1. §11.4(c) Increase in Eligible Basis
2. §11.6(3) Award Recommendation Methodology
3. §11.7 Tie Breaker Factors
4. §11.9(b)(2) Previous Participation Compliance History
5. §11.9(c)(4) Opportunity Index
6. §11.9(c)(5) Educational Excellence
7. §11.9(c)(6) Underserved Area
8. §11.9(c)(7) Tenant Populations with Special Housing Needs
9. §11.9(c)(8) Aging in Place
10. §11.9(c)(9) Proximity to Important Services
11. §11.9(d)(5) Community Support from a State Representative
12. §11.9(d)(7) Concerted Revitalization Plan
13. §11.9(e)(2) Cost of Development Per Square Foot
14. §11.9(e)(6) Historic Preservation

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## Preamble, Reasoned Response, and Amended Rule

The Texas Department of Housing and Community Affairs (the “Department”) adopts new 10 TAC, Chapter 11, §§11.1 – 11.10 concerning the Housing Tax Credit Program Qualified Allocation Plan. Sections 11.2, 11.4, 11.6, 11.7, and 11.9 are adopted with changes to text as published in the September 25, 2015 issue of the *Texas Register* (40 TexReg 6466). Sections 11.1, 11.3, 11.5, 11.8, and 11.10 are adopted without change and will not be republished.

REASONED JUSTIFICATION. The Department finds that the adoption of the rule will result in a more consistent approach to governing multifamily activity and to the awarding of multifamily funding or assistance through the Department while minimizing repetition among the programs. The comments and responses include both administrative clarifications and revisions to the Housing Tax Credit Program Qualified Allocation Plan based on the comments received. After each comment title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected at the end of the reasoned response. If comment resulted in recommended language changes to the Draft Housing Tax Credit Program Qualified Allocation Plan as presented to the Board in September, such changes are indicated.

## SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

Public comments were accepted through October 15, 2015, with comments received from (1) Foundation Communities, (2) Don Zimmerman, Austin City Councilman, (3) Texas Affiliation of Affordable Housing Providers, (4) Alyssa Carpenter, (5) Palladium USA, (6) Chris Boone, City of Beaumont, (7) Rural Rental Housing Association of Texas, (8) Fountainhead Management, Inc., (9) Dennis Hoover, (10) Houston LISC, (11) Alan Warrick, San Antonio City Councilman, (12) Ivy Taylor, Mayor of San Antonio, (13) Pedro Martinez, San Antonio Independent School District, (14) United Way of San Antonio, (15) Congressman Lloyd Doggett, (16) VIA Metropolitan Transit San Antonio, (17) San Antonio Housing Authority, (18) Tommy Calvert, Bexar County Commissioner, (19) R.L. “Bobby” Bowling IV, (20) Brad McMurray, (21) Structure Development, (22) Cynthia Bast, Lock Lord, (23) New Hope Housing, (24) Mary Henderson, (25) Vecino Group, (26) Daniel & Beshara, P.C., (27) Brownstone Affordable Housing, (28) Arx Advantage, LLC, (29) Hettig-Kahn, (30) Housing Lab by BETCO, (31) Marque Real Estate Consultants, (32) Texas Appleseed/Texas Low Income Housing Information Service, (33) Casa Linda Development Corporation, (34) Barry Palmer, Coats Rose, (35) Scott Marks, Coats Rose, (36) Texas Coalition of Affordable Developers, (37) Terri Anderson, (38) National Housing Trust, (39) Darrell Jack, (40) Madhouse Development Services, (41) Judy Telge, Coastal Bend Center for Independent Living, (42) Motivation Education & Training, et al., (43) Kim Schwimmer, (44) Christopher Myers, (45) Pedcor Investments, (46) Jen Joyce Brewerton, Dominion, (47) Jessica Perez, Capstone Management, (48) M Group, (49) National Church Residences, (50) DMA Development Company, (51) Texas Association of Community Development Corporations, (52) Cayetano Housing, (53) Disability Rights Texas, (54) Easter Seals Central Texas, (55) Eduardo Requena, (56) Ines Medrano, (57) Jannathan Fam, (58) John McMillian, (59) Mimay Phim, (60) Portia Haggerty, (61) Thy Phamnguyen, (62) Wanda Postea, (63) Deborah Thompson, Wells Branch Neighborhood Association, (64) Wendell Dunlap, Mayor of Plainview, (65) Christopher Fielder, Mayor of Leander, (66) Roxanne Johnston, City of Big Spring, (67) Tracy Cox, City of San Augustine, (68) Jason Weger, Cisco City Councilman, (69) Tim Barton, Cisco ISD, (70) Suzonne Franks, (71) James King, Mayor of Cisco, (72) Cisco Economic Development Corporation, (73) Wilks Brothers, LLC, (74) Michael Cary, Prosperity Bank, Cisco, (75) Myrtle Wilks Community Center, (76) Patrick Hoiby, Equify, LLC, (77) Breckenridge Exploration Co., Inc., (78) Board of Trustees, Cisco ISD, (79) Cisco Chief of Police, (80) Tammy Osborne, City of Cisco, (81) Cisco Chamber of Commerce, (82) Phil Green, Cisco City Councilman,



(83) Keep Cisco Beautiful Organization, (84) Peggy Ledbetter, Interim Cisco City Manager, (85) Tammy Douglas, Cisco City Councilwoman, (86) Matt Johnson, Cisco Post Master, (87) Russell Thomason, Criminal District Attorney, (88) Dennis Campbell, Cisco City Councilman, (89) Columbia Residential, (90) Jill Rafferty, Studewood Community Initiative, (91) Monica Washburn, (92) State Representative Ryan Guillen

## 1. §11 – General Comment (35), (90)

**COMMENT SUMMARY:** Commenter (35) indicated that by further compressing the above-the-line scoring items such that the maximum points for financial feasibility are only 13 points and a State Representative letter is worth only 4 points, the Department can amplify the effect of below-the-line scoring items such as the Underserved Areas. Such point modifications, according to commenter (35) could offset the trump card of NIMBYs that play out during the application cycle. Furthermore, commenter (35) proposed that negative QCP letters could also lead to deducting fewer points and suggested a deduction of 2 points. The suggested scoring matrix proposed by commenter (35) is located in the public comment supplement included in this presentation.

Commenter (90) asserted that the recommendations submitted by city and county planning departments and nonprofit housing organizations on the QAP over the past several years seek to facilitate the approval of future projects and not to develop consistent application of fair housing guidelines. Commenter (90) contended that the modifications to the QAP over the years have reached the point where little objective analysis is required and the use of algorithms or other objective data analysis tools for the review of proposed sites have been eliminated. Commenter (90) further maintained that the Department ought to formulate consistent fair lending guides rather than pandering to the momentary needs of project developers.

**STAFF RESPONSE:** In response to commenter (35) staff believes that the legislative priorities, as set out in statute, are more appropriately addressed by the proposed rule rather than by the changes suggested in these comments. In particular, changing the point value as suggested by the commenter would negatively affect the correlation between the statute and the rule. Moreover, staff believes the extent of the changes to the nature of the proposed rule suggested by the commenter would require renewing the rule-making process and re-publication prior to adoption.

*Staff recommends no changes based on these comments.*

## 2. §11.1(e) – Census Data (63)

**COMMENT SUMMARY:** Commenter (63) requested that the census data for surrounding areas within a ZIP code be taken into consideration as opposed to the use of data from individual census tracts, further stating that expanding the information gathered to include an entire ZIP code will allow all concerned a more comprehensive view of demographics and impact on a community as a whole.

**STAFF RESPONSE:** Staff appreciates the comment; however, much of the demographic data available to the Department is more reliable on a census tract level compared to ZIP codes because census data is collected on a census tract basis and ZIP codes do not always follow census tract boundaries. Moreover, to make such a change would be a significant modification in numerous areas of the rules associated with the evaluation process not identified by the general comment expressed.

*Staff recommends no changes based on these comments.*

### **3. §11.2 – Program Calendar (22), (32)**

**COMMENT SUMMARY:** Commenter (22) suggested the deadline for submission of the 10% test be consistent with the date noted under §10.402(g) of the Uniform Multifamily Rules. Commenter (32) expressed support for the proposed due date for the local government and state representative letters.

**STAFF RESPONSE:** In response to commenter (22), staff has modified the date in the program calendar accordingly and appreciates the support as expressed by commenter (32).

### **4. §11.3 – Housing De-concentration Factors (32), (38), (45)**

**COMMENT SUMMARY:** Commenter (38) expressed general support for the exemptions allowed for preservation developments under some of the de-concentration requirements.

As it relates to the Limitations on Developments in Certain Census Tracts de-concentration factor, commenter (32) disagreed with the proposed language which allows local jurisdictions to essentially waive the limitation on adding HTC units into a neighborhood where the existing HTC units makes up 1 in 5 of the housing units in the jurisdiction. Commenter (32) illustrated that in 2015 only 115 of the state's 5,265 census tracts fell into this limitation and further commented that those neighborhoods are the most egregious examples of over-concentration of HTC units. To make this limitation meaningful, commenter (32) requested the 20% be a meaningful, hard cap and to lower the waivable cap to 10%.

Commenter (45) advocated that the provision of the additional phase rule in this section unnecessarily delays putting units on the ground at otherwise eligible sites and further contended that any evaluation of a proposed site is going to somehow include adjacent sites, no matter the distance, and that they will be evaluated for demand based on factors already provided in the rule (i.e. de-concentration, undesirable characteristics and feasibility). Commenter (45) recommended the additional phase rule be removed.

**STAFF RESPONSE:** Staff appreciates the support expressed by commenter (38). In response to commenter (32), staff believes that in order to maintain consistency with other rule requirements regarding de-concentration, the proposed rule more appropriately addresses de-concentration goals than the changes suggested in these comments. Moreover, staff believes the extent of the changes to the nature of the proposed rule suggested by the commenter would require renewing the rule-making process and re-publication prior to adoption.

In response to commenter (45) this provision has been a long-standing policy of the Department which is associated with limitations on development size and the impact of sudden concentration without phased demonstration of demand. In addition, it would encourage the acquisition of sites that may be larger than necessary for any subject application to effectively bank land.

*Staff does not recommend any changes based on these comments.*

## 5. §11.4(b) – Maximum Request Limit (3), (7), (45)

**COMMENT SUMMARY:** Commenter (3), (7) requested a new credit cap for USDA applications of \$750,000 based on the belief that most of these developments are small and therefore such cap is appropriate.

Commenter (45) requested clarification regarding request limits for elderly developments in those regions prescribed under HB 3311 and proposed that those requests should be treated the same as those requests that might exceed the overall limit. Commenter (45) recommended the following modification:

“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. For Elderly Developments in an urban Uniform State Service Regions containing a county with a population that exceeds one million, the request may not exceed the final amount published in the Site Demographic Characteristics Report after the release of the Internal Revenue Service (“IRS”) notice regarding the 2016 credit ceiling. For all Applications,~~The 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))”

**STAFF RESPONSE:** In response to commenter (3), (7) staff believes that the legislative requirements as set out in statute are more appropriately addressed by the proposed rule than by the changes suggested in this comment. In particular, the Maximum Request Limit has been established by statute and setting a cap for applications in the USDA set-aside is not consistent with statute. Moreover, staff believes the extent of the changes to the nature of the proposed rule suggested by the commenter would require renewing the rule-making process and re-publication prior to adoption. In further response to commenter (7) regarding the farm worker housing application submitted, if farm worker housing receives funds from USDA to be eligible for the USDA set-aside, staff does not recommend that the Board de-prioritize farm worker housing under this set-aside at this time. This may be discussed and considered in developing the next QAP.

In response to commenter (45) staff agrees and has changed the rule accordingly with a slight modification regarding where the information will be published:

“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. For Elderly Developments in an urban Uniform State Service Regions containing a county with a population that exceeds one million, the request may not exceed the final amount published on the Department’s website after the release of the Internal Revenue Service notice regarding the 2016 credit ceiling. For all Applications,~~The 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))”

**6. §11.4(c) – Increase in Eligible Basis (3), (22), (32), (36), (45)**

**COMMENT SUMMARY:** Commenter (3) requested paragraph (2) relating to the boost for small area DDAs be deleted in its entirety stating that such provision only allows the boost when the certificate of reservation is received in the same year as the small area DDA designation. Commenter (3) stated that because such designations are subject to change annually, the site may no longer have the designation the following year and stated that the proposed language forces a 4% HTC application that receives a certificate of reservation after the mid-August collapse to close before the end of the calendar year further compressing the 150-day timeline associated with the reservation. Similarly, commenter (22) suggested subparagraphs (1) and (2), relating to QCT and DDA designations respectively, be removed with the justification that the Department does not need to modify or expound upon the federal law that allows such increase in eligible basis, it should simply follow it.

Commenter (36) requested the language relating to the boost for DDA areas be modified to include a definitive statement that such areas are eligible for the boost. Commenter (36) believed that the proposed language seems to imply that the applicant would need to prove that the boost is required, thus leaving doubt with the applicant on the Department’s determination on the matter.

Commenter (32), (45) expressed support for the inclusion of difficult to development areas.

**STAFF RESPONSE:** In response to commenter (3), the current language in the rule states the DDA designation would correspond with the year the Certificate of Reservation is issued, not that the transaction would have to close within the same calendar year. If the Certificate of Reservation is issued after the August collapse, the Department will underwrite including the 30% boost and the applicant will be allowed the full 150-days under the Certificate of Reservation by which to close which could be in the subsequent program year.

In response to commenter (22) staff recognizes that Section 42 allows the boost but as with many other elements of Section 42, it leaves to the State allocating agency through its QAP the ability to determine what state policies may affect implementation. In this case, the inclusion of the SADDA in the rule provides additional clarification in the context of documentation required in the application and allows for DDA boost which has not been allowed in the QAP in the last few years.

Staff appreciates the support expressed by commenter (32), (45).

In response to commenter (36) the application would have to demonstrate that the boost is required for financial feasibility. The language in this section does not add anything new with regard to the determination of the need for the boost; however staff believes and the IRS has confirmed with staff that such practice is consistent with Section 42 (m) in that despite being in an area that would otherwise qualify for the boost, the Department is required to allocate not more credits than are necessary to demonstrate financial feasibility.

*Staff does not recommend any changes based on these comments.*

**7. §11.5(3) – Competitive HTC Set-Asides (7), (32), (38), (42)**

**COMMENT SUMMARY:** Commenter (7) indicated that an application for farm worker housing in the 2015 application round, using USDA 514 funds for new construction is reasonable to compete within the other USDA set aside applicants, but requested that they be limited to \$750,000, because the approximately \$800,000 in credits associated with a 2015 application would have taken 26% of the available funds in the USDA set-aside. Commenter (7) believed that while farmworker housing is deserving, the reduction in the set-aside is unacceptable considering their goal of preserving USDA units. Commenter (7) recommended a limit of one new construction award from the USDA set-aside in each application cycle for the USDA 515 and 514/516 properties. For a future consideration, commenter (7) requested a minimum 10% of available funds be set-aside for USDA properties with consideration of a Department preservation policy and priority points reflecting rural preservation priorities. With respect to the At-Risk set-aside, other than USDA, commenter (7) supports a limitation of \$1.5 million.

Commenter (32), (42) expressed support for the language as proposed under the USDA Set-Aside. Commenter (42) further stated several reasons for prioritizing farmworker housing with scoring advantages which include the following:

- Stabilizes the agricultural economy and agricultural workers in Texas with housing;
- Brings more rental assistance and federal dollars to Texas;
- Rental Assistance synergizes LIHTC and allows LIHTC units to reach 30% AMI;
- Rental assistance is lost with natural mortgage pay-offs when it should be a preservation tool; and
- Rental assistance makes LIHTC units accessible to farmworkers.

Commenter (42) noted that a 2012 Department study stated that 92.7% of farmworkers are not served by the 28 farmworker-designated developments in the 49 rural counties that were studied. Moreover, commenter (42) encouraged the Department to consider the recommendations in the study that were connected to the HTC program, in the development of the QAP.

Commenter (38) expressed support for the 15% set-aside for at-risk developments and associated prioritization of the preservation and rehabilitation of existing multifamily housing.

**STAFF RESPONSE:** In response to commenter (3), (7) staff believes that the legislative requirements as set out in statute are more appropriately addressed by the proposed rule than by the changes suggested in this comment. In particular, the Maximum Request Limit has been established by statute and setting a cap for applications in the USDA set-aside is not consistent with statute. Moreover, the extent of the changes to the nature of the proposed rule suggested by the commenter would appear to require renewing the rule-making process and re-publication prior to adoption. In further response to commenter (7) regarding the farm worker housing application submitted, if farm worker housing receives funds from USDA to be eligible for the USDA set-aside. Staff does not believe it has the authority to de-prioritize or further prioritize farm worker housing under this set-aside without additional policy directive from the Board. Moreover, the extent of the changes to the nature of the proposed rule suggested by the commenter would appear to require renewing the rule-making process and re-publication prior to adoption.

In response to commenter (42) staff believes this suggestion is a sufficiently substantive change from what was proposed that it could not be accomplished without re-publication for public comment. These ideas could be taken into consideration for drafting the 2017 QAP.

Staff appreciates the support expressed by commenter (38).

*Staff does not recommend any changes based on these comments.*

#### 8. §11.6(3) – Award Recommendation Methodology (28), (32), (35), (45), (50)

**COMMENT SUMMARY:** Commenter (28), (35) asserted that the language in HB 3311 is clear in being directed at the sub-regions and further maintained that since the At-Risk set-aside does not differentiate between regions and sub-regions or rural and urban, it should be clear that the At-Risk set-aside should not be included in the formula that places a cap on the amount of credits attributed to elderly developments. Commenter (35), (49) similarly expressed that because the Department has traditionally disregarded subregions in allocating under the At-Risk set-aside, which has been stated in the QAP for a while, the legislative intent behind HB 3311 is that it should also not apply to the At-Risk set-aside. Commenter (49), (50) contended that the intent was not to apply the formula to the At-Risk set-aside which is funded before the regional allocation is funded and that the formula does not reflect the need of persons (senior or family) already housed in affordable units which may or may not be eligible for prepayment and in need of rehab. Commenter (50) advocated that the following revision be made to this section:

“(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)).”

Commenter (49) expressed that the intent of HB 3311 was not to be implemented in the preservation or At-Risk set-aside based on the following: the At-Risk set-aside is not subject to the sub-regional pool caps and thus is not subject to the elderly sub-regional cap; At-Risk developments do not increase the number of new low-income elderly units created; HB 3311 does not specify that the cap is to be applied to the At-Risk set-aside; At-Risk elderly and At-Risk general population developments have equal scoring so there is no extra incentive to preserve elderly over family; and by splitting the limited amount of funding under the formula, the State would be implementing the exact opposite of its intention of ensuring that seniors are provided access to affordable housing resources. Commenter (49) further contended that if the formula was to apply to the At-Risk set-aside it would have the exact opposite of the bill’s intent by significantly reducing the dedicated senior tax credits and further asserted that “the bill would not have been passed if the intent was to stifle a community by blocking,” such developments from accessing the resources needed to preserve these developments.

Commenter (32) requested the Department make public the details of its calculations to implement HB 3311; specifically, identifying the HISTA variable names and definitions used. Commenter (32)

noted that data presented to the legislature during discussions relating to HB 3311 used the relative elderly vs. non-elderly renter populations in the calculations to determine the regional cap. Should alternative methodology be used, commenter (32) believed it to be misleading considering what the legislature relied upon when adopting the language contained in the bill.

Commenter (45) requested clarification regarding the maximum percentage of credits available for elderly development as it relates to returned credits. Assuming the calculation is based on awarded developments (not placed in service), commenter (45) believed that if credits are returned from a previous cycle, the amount of credits available to elderly applications should not be adjusted and that the credit returned should not be considered in subsequent calculations. The possibility of never-ending re-calculations based on returns, according to commenter (45), could create confusion and the potential for errors; therefore, a fixed maximum percentage at the beginning of cycle will ensure transparency and compliance with the statutory provision. Commenter (45) advocated for the following modification to the methodology under subparagraphs (C) and (E):

“...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 amount~~ 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 amount~~ available for Elderly Developments in accordance with Texas Government Code, §2306.6711(h). These ~~calculations maximum amounts~~ will be published by the Department in the Site Demographics Characteristics Report (§2306.6711(h)) and will be final, regardless of any returned credit from previous cycles, but may be exceeded only if necessary to comply with the nonprofit set-aside required by §42(h)(5) of the Code.”

**STAFF RESPONSE:** In response to commenters (28), (35), (49) and (50), staff agrees and is recommending that the credits made available under the “at risk” set-aside not be included in the competitive tax credits subject to the cap on elderly developments. This is based on the fact that only tax credits treated under the subregional set asides are allocated solely to covered subregions, and the credits in the “at risk” set aside are available statewide. The proposed modification includes the following:

“(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) and will publish such percentages on its website. ~~These calculations will be published by the Department in the Site Demographics Characteristics Report (§2306.6711(h))....~~”



(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) and will publish such percentages on its website. ~~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:..."

In response to commenter (32), staff has applied a plain language reading of the statute to determine that all elderly households will be used in the denominator of the formula to calculate the percentage of credits that will be available for elderly developments in the impacted regions. When the percentages are published, staff can include the HISTA variable names and Place names.

Staff agrees with commenter (45) regarding how credit returns from a previous cycle should be treated. The return of credits in an affected subregion, associated with a large development, regardless of whether it was elderly or general, would have a de minimis (less than 0.1%) effect on the percentage. Staff does not believe a re-calculation of the maximum percentage would significantly change the amount of credits available and factored into the calculation.

## 9. §11.6(5) – Competitive HTC Allocation Process – Force Majeure Events (1)

**COMMENT SUMMARY:** Commenter (1) stated that the greatest impact on the timing of a project's completion date are a series of compounding events, for example, a rainy month, a labor shortage, and a City's change in interpretation of specific development requirements. Commenter (1) requested staff consider that where there is the presence of three or more of the combined factors that has caused a project to push past their placed in service deadline, it be considered a force majeure event.

**STAFF RESPONSE:** The rule as written allows for multiple events to be considered in making a determination which staff will evaluate on a case by case basis.

*Staff does not recommend any changes based on this comment.*

## 10. §11.7 – Tie Breaker Factors (1), (3), (4), (7), (9), (21), (30), (31), (32), (36), (45)

**COMMENT SUMMARY:** Commenter (1) requested consideration for the addition of proximity to public transportation as a tie breaker. The choice between two really high opportunity urban areas should come down to the one that is most accessible to public transportation because it has a



broader appeal to those residents living in urban areas, according to commenter (1). Commenter (3), (7), (9), (30), (31), (45) recommended the following modification to the fourth tie breaker on the basis that it will assist with the on-going de-concentration efforts:

“(4) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit Development that serves the same population type~~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.”

Commenter (4), (31), (36) expressed concern over the third tie breaker that only comprehends one population type when there is a potential to have two tied applications serving two different populations. Commenter (4) asserted that since elderly and supportive housing developments are impacted by schools with regard to the opportunity index and educational excellence then the tie breaker should be considered for all developments. Commenter (4), (31), (36) recommended the following modification for the third tie breaker:

“(3) ~~For competing Applications for Developments that will serve the general population, the~~The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site, or (for “choice” districts) the closest.”

Commenter (21) recommended that for the second tiebreaker the full and exact real number, as provided by the ACS, without rounding, be used and further cited the Departments Site Demographics Report which uses only one decimal place rather than the full number. Commenter (21) proposed the following modification:

“(2) Applications proposed to be located in a census tract with the calculated lowest poverty rate, as published by the American Community Survey, as compared to another Application with the same score.”

Commenter (45) contended that very specific data regarding a site (i.e. poverty rate and school score) that is already incorporated into scoring and then again into the first tie breaker factor should not be given additional weight, but rather, other criteria outside of the opportunity index should be considered. Commenter (45) suggested the tie breaker factors relating to poverty rate and school score be removed and that should the Department choose to include additional factors, recommended the following, in the order of most appropriate:

“(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) Applicants with a portfolio that has a compliance history in the lowest category as determined in accordance with 10 TAC §1.301, related to Previous Participation;

(3) Applications eligible for the highest number of points under §10.101(a)(2), relating to Mandatory Community Assets;

(4) Applications in census tracts with the lowest percentage of Housing Tax Credit Units per household;

(5) Applications with the highest combined scores for Local Government Support, commitment of Development Funding by Local Political Subdivision, Declared Disaster Area, Quantifiable Community Participation, community Support from State Representative, Input from Community Organizations, and Concerted

Revitalization Plan under subsection §11.9(d) of this chapter (relating Competitive HTC Selection Criteria);

~~(64) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development serving the same Target Population 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.~~”

Commenter (32) expressed support for the changes proposed in this section and maintained that such changes prevent the over-reliance on the distance tiebreaker created by the lack of detail in the opportunity index.

**STAFF RESPONSE:** In response to commenter (1), proximity to public transportation can be an important factor for developments serving certain populations and is already included as an option under §10.101 (a) Mandatory Community Assets.

In response to commenters (3), (7), (9), (30), (31), and (45), staff believes that concerns regarding concentration of housing are not based on targeted population. Moreover, this tiebreaker has to do with allocation of resources in a specific area.

In response to commenters (4), (31), and (36), staff agrees that the limitation of tiebreaker (3) to general population developments is not appropriate. The item has been modified to remove the reference to type of development so that the tie breaker applies to all applications.

In response to commenter (21), §11.1(e) already requires the use of census or American Community Survey (“ACS”) data. The use of additional digits after the decimal will not create a meaningful measurement for the tie breaker, particularly when there are two other tie breakers to be applied.

In response to commenter (45), the suggested changes to the tiebreakers are a significant change to the current structure, which has not been available for public comment. Further, regarding the suggestion to add the sponsors previous participation history as a tie breaker, this scoring item will be removed from the QAP for this year in response to multiple commenter concerns.

Staff appreciates the support expressed by Commenter (32).

#### **11. §11.9(b)(2) – Selection Criteria – Previous Participation Compliance History (1), (3), (4), (19), (28), (30), (32), (34), (36), (45), (46), (48), (49), (50)**

**COMMENT SUMMARY:** Commenter (1) expressed that points associated with compliance history is not good policy and further stated, along with commenter (30), (49), that instances where the ability to correct such a situation is completely out of the owner’s control has no bearing on the quality of an owner’s development or compliance ability. Commenter (30), (49), (50) indicated there are times when staff review exceeds the 90-day correction period deadline, requiring more information from the applicant and questioned whether this would impact the category designation. Commenter (1) recommended points for compliance history be removed and this scoring item reflect points only for HUB or nonprofit participation.

Commenter (3), (30), (48) requested clarification with respect to the previous participation compliance history scoring item; specifically how an applicant would determine which category

applies to them with commenter (28), (48) stating it will be difficult to determine what points to assign to this scoring item. Commenter (3), (30) recommended that the category of an applicant be tied to March 1, 2016 to provide clarity within the competitive round as it relates to scoring. Commenter (28) recommended the scoring item be somewhat like a pilot program for 2016 with the points not actually considered in the final score which would provide an opportunity to evaluate further for the 2017 application cycle. Commenter (46) suggested that it is not reasonable to ask an applicant to assess their own category standing since some compliance history less than 3 years old is not captured in the Department's monitoring system and further suggested that the Department should provide the applicant with their category designation in advance of the pre-application deadline. Moreover, commenter (46) suggested that assessing everyone's category designation will be an administrative burden on the Department if the right tools are not in place. Commenter (48) stated that correction of a finding out of state within the correction action period is not verifiable and they further questioned whether the Department could verify out of state non-corrected compliance findings.

Commenter (19), (46) expressed support for a scoring item that rewards developers that have a track record of excellent performance; however, disagreed with the draft language which puts experienced developers with excellent track records in the same category of a developer with no record of performance in tax credit development. Such policy of ignoring good performance, according to commenter (19), runs contradictory to the private sector because an excellent record of performance is the most important factor to private lenders and investors. Commenter (19) recommended the following revision to this scoring item and further commented that for those applicants seeking to receive the point under (ii) having no track record, the rule allows for a partnership with an experienced developer and brings the policy in line with the private sector and what a bank or investor would be looking for before approving a proposal from an entity with no experience.

“(i) The portfolio of the Applicant ~~has adoes not have~~ compliance history of a category ~~1, 2, 3, or 4~~ as determined in accordance with 10 TAC §1.301, related to Previous Participation; ~~(+2 points); or~~

“(ii) ~~The portfolio of the Applicant has a compliance history of a category 2 as determined in accordance with 10 TAC 1.301, related to Previous Participation (1 point).~~”

Similarly, commenter (45) expressed support for this item and it remaining a determining factor in the awards made, but believed it could be given up to 4 points in weight asserting that the performance of developers and owners that participate in the program are paramount to its success and that it is meaningless to develop and own an HTC property and then operate it in a manner that does not adequately serve Texans in need of housing. Commenter (45) emphasized that this scoring item does not penalize out-of-state developers, it takes into consideration portfolio size, it does not penalize owners for having findings but only for not correcting those findings timely and it is generally concise and easy to understand. Commenter (45) contended that if the proposed language is revised, they would support a scoring item that awarded 2-4 points for Category 1 portfolios and 1-2 points for those with a Category 2 portfolio and would also support a scoring penalty (1 or 2 points) for those with a Category 3 or 4 portfolio, only because it would have the same impact. Moreover, a scoring item that took into account the compliance history of only the majority owner of the general partnership interest, so that owners with good compliance

histories would still be motivated to partner with a non-profit or HUB that might have had some compliance issues in the past, would also garner support from commenter (45).

Commenter (32) expressed support for this scoring item which they believe addresses applicants with a negative compliance history but does not discourage new entrants to the competitive process. Commenter (32) suggested this scoring item be modified to state that the point is unavailable to any applicant with a portfolio that includes a relevant property that has failed to timely and completely file a Housing Sponsor Report in the last 3 years. Commenter (32) maintained that such Report provides important insight into the activities of existing properties but is not always submitted.

Commenter (46) indicated the scoring item unfairly provides preference to out-of-state applicants without Department experience which appears to be the opposite of the intent of the item which is to reward strong developers with a strong compliance history.

Commenter (34), (36), (47) requested the points associated with compliance history be removed from this scoring item and be revisited for the 2017 application cycle. If this point remains; however, commenter (47), (50) recommended that a Category 2 portfolio be removed from the list such that Category 1 or 2 applicants could still receive the additional point. Commenter (50) suggested that the Category 1 designation, for those with an extra large portfolio would require not a single issue of non-compliance not corrected within the corrective action period, which is almost impossible to achieve, especially considering that the Department's compliance staff often does not review the corrective action within the corrective action period. Moreover, commenter (47) suggested the category designation be tied to an applicant's previous participation history at the beginning of the 2016 application cycle and that any outstanding non-compliance that occurred before the beginning of cycle not be considered for the category designation. To that end, commenter (47) offered the following modification:

“(B) Previous Participation Compliance History. The portfolio of the Applicant does not have compliance history of a category ~~2~~, 3, or 4 as determined in accordance with 10 TAC §1.301, related to Previous Participation. This point category will be applicable to any events of noncompliance that are uncorrected or events of noncompliance that were not corrected during the corrective action period for the Applicant's previous participation history as of March 1, 2016. (1 point)”

Commenter (4) asserted that points for compliance history is in essence double counting the review since previous participation is already contemplated during the award process and further contended that the ultimate goal of the previous participation was to require developers to fix any outstanding issues as a condition of award. Commenter (4) maintained that such process does not seem reasonable when the review and category designation appears to look back at issues that occurred prior to the implementation of the category system and which have to ability to correct. It was the recommendation of commenter (4) that this point item be deleted until applicants and staff have a better understanding of the category system and what is involved in the evaluation and that option (A) under this item be revised to reflect 2 points, instead of 1 point.

Commenter (48) expressed concern over how to equitably reward points to all developers without competitive advantage to a select few since the proposed language can punish an

applicant for a single event that was corrected but perhaps for reasons beyond the applicant's control, may not have been corrected during the corrective action period. Commenter (48) explained that a Category 2 portfolio, no matter how large, cannot have a single finding which is unfair to those who have a significant Texas only portfolio under review and further maintained that an uncorrected event should rise to the level of penalty loss of the competitive score, but not any single corrected event, regardless if corrected within or outside the corrective action period, especially if developers who operate outside Texas are not subject to the same compliance review. Commenter (48) suggested this item be removed for the 2016 application cycle or modified to reflect one of the following to ensure a reasonable standard for competition:

“(B) Previous Participation Compliance History. The portfolio of the Applicant does not have compliance history of a category ~~2, 3,~~ or 4 as determined in accordance with 10 TAC §1.301, related to Previous Participation. (1 point)”

“(B) Previous Participation Compliance History. The portfolio of the Applicant does not have compliance history of any uncorrected findings within the last 3 years a category 2, 3, or 4 as determined in accordance with 10 TAC §1.301, related to Previous Participation. (1 point)”

With respect to subparagraph (A) under this scoring item, commenter (45) suggested the threshold percentage for the HUB or nonprofit partner participation be lowered from 80% for a combination of ownership interest, cash flow from operations and developer fee taken together to equal at least 50%, with no less than 5% in each category. Commenter (45) expressed that while some of these organizations have extensive experience, part of the purpose of the scoring item is to give more experience to organizations that have some but that still need partners.

**STAFF RESPONSE:** Staff has carefully considered the volume of concern and conflicting comment regarding this scoring item. While the previous participation history will continue to be considered during the allocation process, staff recommends that the scoring item be excluded from this Qualified Allocation Plan and reevaluated as the 2017 rules are developed.

## **12. §11.9(c)(2) and (c)(3) – Selection Criteria – Rent Levels of Tenants and Tenant Services (8), (45)**

**COMMENT SUMMARY:** Commenter (45) suggested the additional points available to supportive housing developments under these two scoring items be removed on the basis that, by definition, these types of developments will require funding sources that will require the property serve particular populations which may result in additional units restricted at 30% AMI and/or provide additional services. Commenter (45) does not believe that in meeting the requirements associated with those funding sources, they should be allowed additional points under the QAP since the benefits of serving those populations are already realized through those sources. Commenter (45) recommended that perhaps only the highest scoring supportive housing development in any given region be allowed access to these additional points. As proposed, the QAP highly favors this type of development over those that serve general population or seniors. Moreover, commenter (45) argued that with developers of supportive housing seeking additional concessions in the QAP and Rules, as well as Direct Loan NOFA's being developed, they do not



believe statute explicitly states that this type of housing should be a primary purpose of the Department.

Commenter (8) asserted the proposed language for Rent Levels of Tenants fails to follow the legislative mandate by coupling rent levels with the status of the owner or other factors that could be more appropriate for another lower scoring aspect of the rule. Specifically, commenter (8) contends that the highest priority under this item is for those participating in the City of Houston's Permanent Supportive Housing program which is not an aspect of rent levels of tenants. Points that can be achieved that are based on additional factors that are already included in other lower scoring categories does not adhere to the plain language of statute, according to commenter (8). Moreover, given the statutory language, the legislature approved of lower rents; however, it is questionable as to whether the legislature intended for points to be given to developments that are increasing the rents of low income residents in order that even lower income residents would have lower rents, which the proposed language allows. According to commenter (8) the Department should reward the development that is actually bringing something to the project that does not cause some tenants to pay more than is necessary by obtaining project based rental assistance for the 30% AMGI which is essentially robbing Peter to pay Paul. Commenter (8) suggested the following revision to this item:

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

(A) At least 20% of all low-income Units at 30% or less of AMGI and the development has secured a commitment for either Section 8 or USDA Rental Assistance on the Units. In the alternative to obtaining a commitment for the rental assistance units, the developer shall agree to a one time cash deposit into a bank account jointly controlled by the developer and TDHCA to be released monthly to provide the subsidy for the 30% tenants. The amount of the cash deposit shall be equal to the number of units at 30% times 12 times the number of years in the affordability period times the dollar amount difference between the rent level at 50% less the rent level at 30%. A development meeting the requirement of this subsection shall qualify for 13 points.

(B) At least 10% of all low-income units at 30% or less of AMGI or, for a Development located in a Rural Area, 7.5% of all low income Units at 30% or less of AMGI and the development has secured a commitment for either Section 8 or USDA Rental Assistance on the Units. In the alternative to obtaining a commitment for the rental assistance units, the developer shall agree to a one time cash deposit into a bank account jointly controlled by the developer and the TDHCA to be released monthly to provide the subsidy for the 30% tenants. The amount of the cash deposit shall be equal to the number of units at 30% times 12 times the number of years in the affordability period times the dollar amount difference between the rent level at 50% less the rent level at 30%. A development meeting the requirement of this subsection shall qualify for 11 points.

(C) At least 5% of all low income Units at 30% or less of AMGI and the development has secured a commitment for either Section 8 or USDA Rental Assistance on the Units. In the alternative to obtaining a commitment for the rental assistance units, the developer shall agree to a one time cash deposit into a bank account jointly controlled by the developer and TDHCA to be released

monthly to provide the subsidy for the 30% tenants. The amount of the cash deposit shall be equal to the number of units at 30% times 12 times the number of years in the affordability period times the dollar amount difference between the rent level at 50% less the rent level at 30%. A development meeting the requirement of this subsection shall qualify for 7 points.

Commenter (8) further believed that a similar argument can be made to subsection (c)(1) of this item to only reward the development where the developer is subsidizing the tenants or has secured the long commitment from a third party government or private source to subsidize the extremely low income tenants without causing other low income tenants to pay more than is necessary for housing.

**STAFF RESPONSE:** In response to commenter (45), staff believes that the unique nature of supportive housing, including the higher level of services and deeper rent targeting cannot be adequately supported by a traditionally funded transaction. Supportive housing developments are structured in a manner that does not support debt. That is why they are able to sustain larger percentages of 30% AMGI units and more extensive services. The potential for these developments to score higher is offset by the difficult economics of the transaction. The scoring differential has been available in past years and has not disproportionately impacted the allocation of credits to Supportive Housing developments on a statewide basis, however staff is recommending several changes to limit this differential in combination with other scoring items. Staff will continue to monitor these numbers and may propose revisions in future QAPs if warranted based on the data.

In response to commenter (8), (45) suggestion regarding limitation of supportive housing developments, staff believes the changes proposed would have a significant impact on the effect of the overall scoring without providing a reasonable opportunity for public comment and, as a result, would not be considered a natural outgrowth of the rule.

**SUPPLEMENT STAFF RESPONSE:** In order to fully implement proposed changes under paragraph 4 (relating to the Opportunity Index) staff is recommending a clerical change to allow access to the points under the subject paragraph for an application receiving at least 5 points under the opportunity index rather than the 5 or 7 points identified in the published draft. The change is as follows:

"(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 Nonprofit 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 a minimum of 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);"

13. §11.9(c)(4) – Selection Criteria – Opportunity Index (3), (4), (7), (20), (21), (25), (29), (30), (31), (32), (38), (39), (45), (48), (49), (50)

**COMMENT SUMMARY:** Commenter (3), (31), (36) requested the median Index 1 score in this scoring item be changed from 77 to 76 for consistency with the 2015 data released by TEA. Commenter (31), (36) further elaborated that, while in previous years the statewide median of 77 was applicable to both elementary and all schools combined, the 2015 data released reflecting a score of 76 was specific to the elementary school statewide median. The fact that this scoring item, according to commenter (31), (36) is directly tied to elementary schools, it justifies the modification to the score of 76. Moreover, commenter (3), (29), (30), (49) requested the poverty rate in this scoring item be increased to 20% for all areas outside of Region 11 where the poverty rate should remain at 35%. Commenter (3), (29), (30), (49) suggested that such small change will add approximately 4.3% more census tracts, which they asserted to still be first and second quartile census tracts, to that of high opportunity which will promote further de-concentration of awards. Furthermore, as asserted by commenter (3), (29), (30) this modification will help alleviate the issue that preservation properties are part of the poverty rate thus making their own communities non-competitive. Commenter (29) further added that in large urban areas a specific census tract may be experiencing an increase in income levels; however, it may take time for the decrease in poverty rate to be seen.

Commenter (30) indicated that while they agreed with the change providing opportunities in second quartile tracts, they do not agree that such areas should be a point less than the first quartile areas with the added requirement of the elementary school having received at least one distinction. Commenter (30) believed that if this requirement is to be met for second quartile areas, then such areas should have the same point value as the first quartile tracts. To achieve this, commenter (30) offered the following modification:

“(i) 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 If~~ the Development Site is located in the top quartile, 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 achievements~~school; ~~or if the Development is located in the second quartile, is in the attendance zone of an elementary school that has a Met Standard rating, achieved a 77 or greater on index 1, and has earned at least one distinction designation by TEA~~ (7 points);

(ii) 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, has achieved a 77 or greater on index 1 of the performance index, related to student achievement, ~~and has earned at least one distinction designation by TEA~~ (6 points);

(iii) The Development Site is located in a census tract with income in the top 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);

~~(iv) 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) 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 (43 points).”

Similarly, commenter (48) asserted that by adding a 6 point scoring item for an elementary school based on its one earned distinction essentially gives bonus points only to second quartile sites whereas top quartile sites are not able to get similar bonus points. The new scoring option does not, according to commenter (48), open new census tracts for competition because the existing scoring criteria still rewards sites with a 77 or greater rating based on quartile without the added bonus points only to second quartile sites. Commenter (48) stated the same bonus points should be allowed for both first and second quartile sites if the elementary school has at least one designation and recommended that for a site within a first quartile could achieve 8 points and a second quartile could achieve 6 points; otherwise, the points for one star of distinction should be removed. Commenter (48) expressed support for maintaining the minimum rating of 77 for this scoring item.

Commenter (50) expressed support for adding a point category for sites located in second quartile tracts with exceptionally well performing schools and believed that second quartile tracts provide equal opportunity to that of first quartile tracts, especially when the schools are exceptional.

Commenter (45) expressed concern over deletion of the sentence in subparagraph (C) of this section that addressed the issue of choice programs, and stated that in districts with these programs the district rating should be used. According to commenter (45) it is inappropriate to assume that the closest school is the one the students will most likely attend and that it is possible that a school that is closest might be across a major highway and not be the logical choice, with respect to either school rating or transportation. Commenter (45) suggested the following modification:

“...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...”

Commenter (45) expressed opposition to the use of distinction designations by TEA because of the methodology behind the distinctions, which based on the TEA manual, are determined after schools are put in comparison groups with schools across the state and such groups can vary greatly in size. Commenter (45) believed this is not an accurate reflection of a school’s general performance because the “worst of the best” might earn a distinction while the “best of the worst” might not. Commenter (45) maintained that the Opportunity Index is appropriately designed to compare one part of the MSA to another, not to compare a census tract in Spring to one in McAllen, and they believed using the distinction designation violates this concept. If a 6 point scoring option is desired by the Department, it could be achieved by introducing a new factor or simply compressing the scoring, not be arbitrarily adjusting the thresholds for either income, poverty rate, or school ratings and suggested that proximity to community assets, which has been presented as a priority by the Department, could be included in this scoring item without undermining the policy objective of the index itself. To achieve this, commenter (45) recommended one of the following options:

“(i) 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 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, ~~and has earned at least one distinction designation by TEA~~ (6 points);

(iii) 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 (45 points);

(iv) 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 (23 points); ~~or~~

~~(v) 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)."~~

The other option, according to commenter (45) could be the following:

“(i) 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 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, has achieved a 77 or greater on index 1 of the performance index, related to student achievement, and has earned at least one distinction designation by TEA (6 points);

(iii) 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, and is within three miles of a full service grocery store, pharmacy, and urgent care facility (56 points);

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

(v) The Development Site is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (1 point).”

Commenter (25) expressed that the points under this scoring item forces development in suburban neighborhoods that are not conducive to the target population. Specifically, commenter (25) indicated that in working with the homeless population, they incorporate the adjacent neighborhood in offering services and working with the local schools to provide tutoring. When forced to develop in suburban communities, commenter (25) believed the resources they are able to provide are being taken away from the most vulnerable citizens and therefore recommended that community revitalization points be weighed just as much as opportunity index points.

As it relates to the Rural Opportunity Index, commenter (3) recommended the following be added to clause (i) to provide clarification on “services specific to a senior population”. Commenter (49) agreed and recommended “other senior appropriate services as evidenced by the applicant” also be added.

- [“Free or donation based hot meal service for a minimum of once daily 5 days a week \(either delivered on site or offered off-site;](#)
- [Access to primary health care including partnerships for on-site services, urgent care clinics that accept Medicaid/Medicare, primary care doctor’s offices that accept Medicaid/Medicare, ERs and Hospitals.”](#)

Commenter (45) disagreed with elderly developments having access to points for being in proximity to “services specific to a senior population” as well as being in proximity to a senior center and suggested deleting one or the other.

Commenter (7) requested deleting the point qualifiers for first and second quartiles for existing rural properties in the set-asides since they have fixed locations and cannot be moved and further requested a tiered point system for first and second quartiles and third and fourth quartiles.

With respect to the services identified in the scoring item, commenter (7) stated that USDA Rural Development does not permit the use of rent proceeds for on-site or off-site services; therefore, requiring such will create a financial challenge for the property. In lieu of the services, commenter (7) suggested that such developments be allowed to add upgrades such as accessibility, laundry room, community room or upgrades to unit amenities.

The proximity to the community assets in this scoring item should be increased from 1.5 miles to 3 miles according to commenter (7) to provide consideration for those existing units that cannot be moved.

Commenter (20) asserted there was an inconsistency with requiring an Index 1 score of 77 for the middle or high school in rural region 11 while §11.9(c)(5) relating to Educational Excellence requires an Index 1 score of 70. As a result, commenter (20) recommended the following modification to this scoring item:

“(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) Except for an Elderly Limitation Development, the Development Site is located within the attendance zone (or in the case of a choice district the closest) of an elementary, middle, or high school that has achieved the performance standards stated in subparagraph (B); (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); or for Elderly Developments, the Development Site has access to services specific to a senior population within 2 miles. (Note that if the school is more than 2 miles from the Development Site, free transportation must be provided by the school district in order to qualify for points. For purposes of this subparagraph 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 will not be considered.) (3 points);”

Commenter (4) expressed concern over the changes to Rural Opportunity Index, making it more difficult to obtain the points. Specifically, commenter (4) contended that there is no “choice” for a child to attend one school over another which implies that under subparagraph (B) there is no choice involved in attending a school that has an index 1 score of 77 or greater. Moreover, commenter (4) maintained that if this scoring item is about distances to commonly utilized or required facilities, and since a family does not have a choice in the rating of the school they may attend, the proposed language does not make sense. Commenter (4) asserted that the 2015 language regarding the Met Standard rating makes the most sense and has the most value to families in that the school the child will attend is close to the development.

Commenter (4) also stated the inconsistency with having two senior center-type scoring items worth various points – i.e. 3 points under clause (i) and 2 points under clause (v) of this subparagraph. Commenter (4) emphasized that an elderly application in a rural area that can achieve points for a day care center does not make sense considering they can at least use the school’s grounds for walking or exercise. To address these concerns, commenter (4) recommended the changes as reflected below. Commenter (21) expressed similar objections to substituting proximity to senior services for schools in rural regions for elderly developments and further elaborated that schools are a key community asset, providing volunteer opportunities for seniors, open space for recreation, fitness, social interaction and places to gather, hold community meetings and even vote. Commenter (21) proposed the same modifications to that of commenter (4):

“(i) ~~Except for an Elderly Limitation Development, the~~ The Development Site is located within the attendance zone (or in the case of a choice district the closest) and within 1.5 miles of an elementary, middle, or high school with a Met Standard rating ~~that has achieved the performance standards stated in subparagraph (B); or for Elderly Developments, the Development Site has access to services specific to a senior population within 2 miles. (Note that if the school is more than 2 miles from the Development Site, free transportation must be provided by the school district in order to qualify for points.~~ For purposes of this subparagraph 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 will not be considered.) (3 points);”

Commenter (39) recommended that for rural areas, points and requirements for sites to be located within a first or second quartile census tract be removed and maintained that a large number of cities are located within a third or fourth quartile, surrounded by a first or second quartile census tract on the outskirts of town.

Commenter (32) recommended paragraph (A) be consistent with paragraph (B) under this scoring item by substituting “the Development Site has access to services specific to a senior population within 1 mile” for the “school attendance zone” criteria. As proposed, commenter (32) maintained that it encourages developers to substitute elderly-only developments for family developments in high opportunity areas with access to good schools.

Commenter (45) requested clarification regarding sites located in districts with choice programs and stated the proposed language indicates that the closest school, regardless of distance to the site, must have the index 1 score of 77 under clause (i); however, this seems inconsistent with the concept of the rural opportunity index which requires one threshold that does not involve proximity to the services or community assets and then a second criteria which does require such proximity. Commenter (45) believed this to be redundant considering the first threshold for points and further suggested that either the requirement for the points be proximity to the elementary school or in the attendance zone of a highly rated middle or high school.

Commenter (38) urged the Department to balance point incentives for investing in high opportunity areas and the preservation and rehabilitation of existing multifamily housing in a way that makes sense for Texas.

Commenter (91) recommended the following subparagraph be added to this scoring item:

“(D) For At-Risk Developments, if the proposed Development Site is located within a 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 On the Map, an Application may qualify to receive up to seven (7) points.”

**STAFF RESPONSE:** As it relates to comments received on the **Urban Opportunity Index**, in response to commenter (3), (31), (36), the index 1 score of 77, since the inception of the scoring item, has been based on the statewide median of all schools, which has also been the statewide median for elementary schools over the past few years. While staff acknowledges the statewide median for elementary schools has been updated to reflect an index 1 score of 76, staff does not believe the score should be adjusted, since the statewide median for all schools remains at 77.

In response to commenters (3), (29), (30), (49) that recommended an increase to the poverty rate threshold to 20% in order to promote de-concentration of awards, staff believes that the current 15% maximum poverty rate continues to be appropriate. The 15% rate has not resulted in a concentration of awards in previous cycles, and it continues to support developments in high opportunity areas.

In response to commenters (30), (45) and (48), staff believes that a distinction designation indicates that students in the attendance zone of the elementary school will be able to access important educational opportunities, such that the scoring criteria is warranted.

In response to commenter (45), districts that have choice programs that allow students to attend higher performing schools do not necessarily provide transportation to such schools. As such, while

a student can attend the school of their choice they are most likely to attend the school in their neighborhood. Sites near poor performing schools should not receive the benefit of a high performing district rating.

In response to commenters (45) and (20), the proposed changes to the scoring structure are of a magnitude that would require re-publication and a necessary opportunity for additional public comment.

In response to commenter (32) staff agrees that an Elderly Development should be able to either score points for proximity to a high performing school or access to services specific to seniors, staff makes the following change:

(i) 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; or for Elderly Developments, the Development Site has access to services specific to a senior population within 2 miles. (7 points);

Staff appreciates the support expressed by commenter (50).

As it relates to the **Rural Opportunity Index**, in response to commenters (3) (45), and (49), staff believes that "services specific to a senior population" is appropriately descriptive, and that addition of the suggested language would create unnecessary limitation. Further, "services specific to a senior population" may provide in-home support or other types of services senior centers do not provide.

In response to commenter (7) the proposed changes to the scoring structure are of a magnitude that would require republication and an opportunity for additional public comment.

In response to commenter (20), staff believes that making the suggested change would create an inconsistency with points allowed under the Urban Opportunity Index.

In response to commenter (4), (45) districts that have choice programs that allow students to attend higher performing schools do not necessarily provide transportation to such schools. As such, while a student can attend the school of their choice they are most likely to attend the school in their neighborhood. Sites near poor performing schools should not receive the benefit of a high performing district rating. Staff believes the parenthetical regarding the closest choice district school is redundant with subparagraph (C) and therefore can be removed.

In response to commenter (4), staff believes that "services specific to a senior population" may provide in-home support or other types of services senior centers do not provide, and is therefore worthy of the additional point. Further, because Elderly Preference developments are required to accept families with children, the inclusion of proximity to licensed child care is appropriate. However to make the language consistent with the proposed Urban Opportunity Area language which allows Elderly Developments to either score points for proximity to a high performing school or access to services specific to seniors, staff makes the following change:



“(i) ~~Except for an Elderly Limitation Development, the~~ Development Site is located within the attendance zone ~~(or in the case of a choice district the closest)~~ of an elementary, middle, or high school that has achieved the performance standards stated in subparagraph (B) ~~or for Elderly Developments, the Development Site has access to services specific to a senior population within 2 miles. (Note that if the school is more than 2 miles from the Development Site, free transportation must be provided by the school district in order to qualify for points. For purposes of this subparagraph 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 will not be considered.)~~ (3 points);”

In response to commenters (32), (39) the proposed changes to the scoring structure are of a magnitude that would require republication and an opportunity for additional public comment.

In response to commenter (38) staff believes the proposed rules take into consideration preservation initiatives and provides incentives where appropriate.

In response to commenter (91) the suggested change would be a significant modification in numerous areas of the rules associated with the evaluation process not identified by the general comment expressed.

**14. §11.9(c)(5) – Selection Criteria – Educational Excellence (1), (3), (4), (7), (11), (12), (13), (14), (15), (16), (17), (18), (23), (25), (31), (32), (45), (48), (49), (89)**

**COMMENT SUMMARY:** Commenter (3) recommended the following changes to this scoring item indicating that while it is difficult to find sites where all three schools achieve the index 1 score of 77, this proposed modification would create more variation in scoring in at least achieving partial points.

“(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with a Met Standard rating and an Index 1 score of at least 77 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 (5 points);~~or~~

(B) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with a Met Standard rating and an Index 1 score of at least 77. For Developments in Region 11, the middle school and high school must achieve an Index 1 of at least 70 to be eligible for these points; (3 points)or

(C) The Development Site is within the attendance zone of an elementary school, a middle school and a high school either all with a Met Standard rating or any one of the three schools with Met Standard rating and an Index 1 score of at least 77. 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. (2 points)

Commenter (7) suggested there be a consideration for acceptable mitigation for schools that have not achieved the Met Standard rating in rural areas and specifically suggested an approved work-out plan be allowed and worth 2 points.

Commenter (11), (12), (13), (14), (15), (16), (17), (18) recommended At-Risk developments with Choice Neighborhood funding be allowed points under this scoring item regardless of their actual school scores. Commenter (11), (12), (13), (14), (15), (16), (17), (18) asserted that in order to be designated a Choice Neighborhood, a housing authority must have demonstrated that the targeted community needs assistance in areas that include housing, education and social services and has developed a community drive transformation plan that addresses those needs. Moreover, the Choice Neighborhood Initiative is a partnership among several federal agencies that supports locally driven solutions for transforming distressed neighborhoods. Commenter (11), (12), (13), (14), (15), (16), (17), (18) suggested this scoring item be revised to allow applications that qualify under the At-Risk set-aside, that have a nationally recognized educational initiative in place and/or receive funding from Choice Neighborhood receive 3 points, regardless of the school rankings and scores.

Commenter (25) recommended the points under this scoring item should not be limited to points under the opportunity index and that such change would allow supportive housing developers to continue to work in the urban core, collaborating with local communities to revive neighborhoods.

Commenter (4), (48) suggested that the 3 points allowed for a site that has all Met Standard schools effectively de-values a site that has all schools that are Met Standard and have an index 1 score of 77 or greater, which allows for 5 points. Commenter (4) stated that less than 8% of schools have an Improvement Required rating, with many of those schools being clustered in one district. Commenter (4) contended that points should not be awarded for a rating that has been achieved for 92% of all rated schools and that to keep this scoring item meaningful the following modification should be made:

“(B) ~~The Development Site is within the attendance zone of an elementary school, a middle school, and a high school with a Met Standard rating. The Development Site is within the attendance zone of an elementary school and either a middle school or high school with a Met Standard rating and an Index 1 score of at least 77 (or 70 for Region 11) or within the attendance zone of a middle and high school with a Met Standard rating and an Index 1 score of at least 77 (or 70 for Region 11).~~ (3 points)”

Commenter (48) recommended the following modifications to this scoring item to create a scoring benefit for high opportunity locations with 2 of 3 schools that have a 77 or better rating:

- (5 points) – all three schools (elementary, middle, and high school) met 77 (or 70 for Region 11 and 13);
- (3 points) – two of three schools (elementary, middle, and high school) met 77 (or 70 for Region 11 and 13);
- (1 point) – all three schools Met Standard.

Based on similar recommendations regarding the index 1 score of 76 to the Opportunity Index scoring item, commenter (31) recommended the index 1 score specific to elementary schools within this scoring item be modified to reflect the same. However, commenter (31) recommended the index 1 score for middle and high schools remain at 77 for this scoring item. Proposed modified language from commenter (31):



“(A) The Development Site is within the attendance zone of an elementary school with a Met Standard rating and an Index 1 score of at least 76, and a middle school and a high school with a Met Standard rating and an Index 1 score of at least 77 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 (5 points); or”

Commenter (89) believed points under this scoring item should be awarded to charter schools that are being developed as part of a holistic approach to neighborhood revitalization. To qualify for the points the children living at the proposed development must be able to attend the charter school and that the district rating should be allowed to be used on the basis that the charter school may not yet offer and therefore not have data on all grades that will be in place when the development is placed in service.

Commenter (89) also expressed concern that senior developments are still eligible to receive 5 points under this scoring item which means they would forgo the 3 points available under Aging in Place and will likely not incorporate design and service features specific to the target population. As a result, senior developments will continue to be built in areas with good schools because they are considered more acceptable to those communities.

Commenter (45) expressed the same concern in this scoring item as in Opportunity Index over deletion of the sentence that addressed the issue of choice programs and suggested the modification below. Moreover, commenter (45) believed that using the district rating in cases with district-wide enrollment is more appropriate than using the rating of the nearest school since there is no guarantee that the tenants will attend the nearest school.

“...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...”

Commenter (45) objected to awarding 3 points for developments located in the attendance zones of schools that only have a Met Standard rating on the basis that it is not in line with the concept of the scoring item and would only serve to severely dilute its impact. Commenter (45) recommended the following changes:

“... An Application may qualify to receive up to ~~five (5)~~four (4) 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, meeting the criteria as described in subparagraphs (A) and (B) of this paragraph, as determined 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 (C) 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 rating of the closest 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....”

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with the appropriate rating. a Met

~~Standard rating and an Index 1 score of at least 77~~ 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 (45 points); or

(B) The Development Site is within the attendance zone of an elementary school, and either a middle or high school with the appropriate rating. For Developments in Region 11, the middle or high school must achieve an index 1 score of at least 70 to be eligible for these points~~a middle school, and a high school with a Met Standard rating.~~ (23 points)

(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 (2 points)."

Commenters (1), (23), (32), (49) all commented regarding Aging in Place points for Supportive Housing or single-room occupancy Developments. They implied a need for parity between developments choosing Aging in Place points and those electing Educational Excellence points and that selection of such points should be mutually exclusive. Commenter (45) also commented on the parity intent between Aging in Place points and Educational Excellence points in order to maintain scoring parity between Elderly and General Developments.

**STAFF RESPONSE:** In response to commenters (7), (11), (12), (13), (14), (15), (16), (17), and (18) staff believe that the Met Standard rating is an appropriate criterion for schools, as more than 94% of districts and more than 84% of campuses across the state have met this level. While mitigation efforts and other initiatives are to be applauded, there is no assurance that they will be successful within the relatively short period between application and occupancy of a development.

In response to commenters (1), (23), (32), (45), and (49) regarding parity in points achievable for Aging in Place and Educational Excellence, staff has also considered recent legislation regarding parity between Elderly and general population Developments in recommending that Supportive Housing Developments be limited to two (2) points under Educational Excellence. This limitation would allow parity between a Supportive Housing general population Development and an Elderly Development. Staff will further be proposing an alternative two (2) points under Aging in Place for Supportive Housing Developments which are also HOPA Elderly Limitation restricted.

In response to commenter (3), (4), (45), (48) staff agrees that there should be more levels of differentiation for distinction by location. Staff proposes the following change:

“(5) Educational Excellence. Except for Supportive Housing Developments, an Application may qualify to receive up to five (5) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A) - (C) of this paragraph, as determined by the Texas Education Agency. A Supportive Housing Development may qualify to receive no more than two (2) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A) and (B)- (C) of this paragraph, as determined 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 an Applicant may use the rating of the closest 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.

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with a Met Standard rating and an Index 1 score of at least 77. 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 (5 points, [or 2 points for a Supportive Housing Development](#)); ~~or~~

(B) The Development Site is within the attendance zone of [any two of the following three schools](#) (an elementary school, a middle school, and a high school) with a Met Standard rating [and an Index 1 score of at least 77. 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 2 points for a Supportive Housing Development](#)); ~~or~~

[\(C\) The Development Site is within the attendance zone of an elementary school, a middle school and a high school either all with a Met Standard rating or any one of the three schools with Met Standard rating and an Index 1 score of at least 77. 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. \(1 point\)](#)”

In response to commenter (11), (12), (13), (14), (15), (16), (17), (18) staff recognizes that the initiatives create potential for future improvement to the schools, however the purpose of this scoring criteria is to recognize the current rating of schools.

**15. §11.9(c)(6) – Selection Criteria – Underserved Area (3), (4), (5), (7), (20), (21), (28), (31), (32), (33), (34), (36), (40), (45), (48), (49), (50)**

**COMMENT SUMMARY:** Commenter (4) expressed support under the colonia option within this scoring item and further indicated such changes help to remove the ambiguity and subjectivity. Commenter (32) expressed similar support and indicated that the proposed changes strike an

appropriate balance between giving preference to high opportunity areas and providing infrastructure needs of colonias.

With respect to the economically distressed areas (“EDA”) option within this scoring item, commenter (4) proposed that this remain at 2 points (instead of 1 point) for those developments in EDA areas that do not have an existing HTC development.

Commenter (3) proposed the following revisions to this scoring item; while commenter (31), (36) expressed similar changes to subparagraph (C):

- “(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 the same population type for a Development that which remains an active tax credit development (2 points);
- (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 the same population type for a Development that which remains an active tax credit development serving the same Target Population (2 points);
- (E) A census tract that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for the same population type for a Development that which remains an active tax credit development serving the same Target Population within the past 10 years (1 point);”

Commenter (4) expressed support for the current language under subparagraph (C) and maintained that there is already an option in this scoring item for a census tract that does not have a same-population development in 10 years.

Commenter (4) expressed support for subparagraph (D) relating to rural areas underserved by HTC developments; specifically that there are fewer rural towns with even fewer census tract options compared to urban areas.

Commenter (5) recommended the option under subparagraph (E) be deleted on the basis that it offers no benefit and its real effect is that it makes traditional underserved areas lose part of its advantage. Commenter (5) asserted the option is too easy since most census tracts would fall into this category thereby creating a free point. Commenter (32) believed that a lack of affordable housing should not qualify for a point in scoring and further illustrated that the 50 census tracts with zero housing units of any type would qualify for these points. Commenter (32) further recommended that this point should only be available to those proposing new construction that also qualifies under the Opportunity Index. Commenter (33) asserted that this scoring option puts a development in a census tract with no existing tax credits at a one point disadvantage. Based on supplemental information provided by commenter (33), census tracts with properties awarded in 1994, 1998 and 2001 would have a one point advantage to the surrounding census tracts that have none which does not, according to commenter (33) meet the spirit of an underserved area. Commenter (33) provided the following modification:

- “(E) A census tract Place, or if outside the boundaries of any Place, a County that currently does not have more than one (1) that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation awarded prior to 2001 (15 years) for a Development that remains an active tax credit development serving the same Target Population within the past 10 years (1 point);”

On the contrary, commenter (4), (21) expressed support for this option and commenter (21) recommended that, for consistency, the “year” column on the property inventory be used which in some instances is the year following the date in the “board approval” column.

Commenter (5), (33) stated that subparagraph (F) is too vague and broad in its intentions because 5 miles is significant and too wide, effectively creating a 10 mile circle around a development. Commenter (5) asserted that if the incentive is to be in an area of significant new growth then the incentive should be to be in the area, and thus recommended that the distance limitation be within one or two miles. Commenter (32) indicated that a 5-mile radius in an urban area would cover neighborhoods of a wide variety of quality and a 50-person facility would have a negligible impact on the economic opportunities available to the area’s population. In smaller areas, a 50-person facility may represent a notable change in local conditions; however, commenter (32) expressed an opposition to the state choosing the placement of 30-year housing infrastructure by chasing after the recent employment activity of a single employer. Commenter (32) further added that other than wage level, there is no restriction on the type of business that qualifies a development for this point, and of additional concern is the lack of zoning in certain areas which could incentivize development near businesses unsuitable for a residential area. Commenter (32), (33) recommended removing subparagraph (F) from this scoring item and commenter (33) suggested that this concept is better suited for community revitalization criteria once there is a consensus on definitive support material.

Commenter (3), (5), (33), (45), (48) requested clarification regarding what documentation would be required to substantiate points under subparagraph (F) of this scoring item and if a definitive method by which to document compliance the provision cannot be identified then commenter (5), (33), (34), (40), (45), (48) suggested subparagraph (F) be deleted. Commenter (28) similarly expressed that a clear, reliable third party source needs to be identified for obtaining the data relating to subparagraph (F) and further stated that a letter from a city/county official can be subjective and a strong case for administrative review. Commenter (4), (31), (36) also recommended this item be deleted since there does not seem to be a consistent objective data source to document the points and commenter (4) proposed that staff and the development community explore SBA and State incentive programs for consideration in the 2017 QAP.

Commenter (7), (20) suggested this item be expanded to include business expansion and addition of employees and space as reflected in the following modification proposed by commenter (20):

“(F) Within 5 miles of a new business that in the past two years has constructed a new facility and undergone initial hiring of its workforce or relocated to the area with an existing workforce employing **50** or more persons at or above the average median income for the population in which the Development is located (1 point); or”

Commenter (7) further added that such change can be documented with construction plans, or site acquisition and verification of business hires can be provided by the HR department of the expanding business. Commenter (3), (49) suggested the following modification as it relates to leased space:

“(F) Within 5 miles of a new business that in the past two years has constructed a new facility or leased new (and/or additional) office space and undergone initial hiring of its workforce employing **50** or more persons at or above the average median income for the population in which the Development is located (1 point); or”



Commenter (21) asserted that the proposed language makes it impossible to verify, questioned whether expansion would count as a new facility, along with new buildings or an addition and further stated that there was no way to verify salary data. Commenter (21) offered the following modification to this item and further added that if such modification is not used then the item should be removed:

~~“(F) Within 5 miles of a new business that in the past two years has constructed a new facility and undergone initial hiring of its workforce employing 50 or more persons at or above the average median income for the population in which the Development is located. A site with a 10:1 or higher ratio of jobs earning the top tier of wages within 1 mile of the site compared to the number of HTC units, as evidenced by the U.S. Census Bureau’s on the map tool (1 point); or”~~

Commenter (50) expressed support for subparagraph (F) and further recommended the U.S. Census Bureau’s On the Map tool be used to substantiate the scoring item.

Commenter (4) indicated there was not a consistent data source to use for subparagraph (G) and that considering the fact that some census tracts changed from 2000 to 2010 there would not data available for some census tracts prior to the 2010 American Communities Survey (“ACS”) data. Commenter (4), (34), (40) proposed that this subparagraph be deleted until more research can be done to identify a consistent data source, unless, according to commenter (34), the Department intends to publish such data within the Site Demographics Report. Commenter (28) inquired whether the Department will require use of ACS data and if so, which data specifically. Commenter (21) stated that data is only available at the Place level and not the census tract level and further stated that by 2016 the 2000-2010 data is outdated. Commenter (21) indicated that the newest data sources that come closes to a 10-year spread is 2013-2010 ACS data since 2003 numbers are not available; therefore, commenter (21) recommended the following modification:

~~“(G) A census tract Place which has experienced growth increases in excess of 120% of the countyPlace population growth over the past 103 years provided the census tract does not comprise more than 50% of the county as evidenced by American Community Survey 2010 to 2013 data (1 point).”~~

Commenter (31), (36) also indicated that accurate information related to growth is not available at the census tract level and stated that Place level is a more appropriate indication of growth for a community as a whole and therefore recommended the following modification:

~~“(G) A census tract Place which has experienced growth increases in excess of 120% of the county population growth over the past 10 years provided the census tract does not comprise more than 50% of the county (1 point).”~~

Commenter (40) recommended that should items (F) and (G) remain in the QAP then the maximum point value for this item should be increased to 4 points on the basis that areas that were truly underserved, for example, a Place that has never had a tax credit development that also has a new employment center and has experienced exceptional growth could achieve the maximum points.

Commenter (32) suggested subparagraph (G) be modified to reflect areas that are rapidly growing for the better, based on census tract poverty, census tract income and neighborhood land values

relative to a Place (Appraisal District) in addition to population growth. Commenter (32) recommended such growth points be awarded to those developments in areas that reflect a statistically significant improvement on two of the three aforementioned metrics over the decennial measurement period. Commenter (32) questioned whether the 120% growth rate is a meaningful benchmark and requested clarification on how it would be applied. Specifically, for a county with a 1% growth rate, 120% of the county growth rate is 1.2%. A census tract with a 1.21% growth rate, according to commenter (32), is hardly deserving of points for being in an underserved area. Commenter (32) recommended that a floor growth rate be included, should this option remain under this scoring item. Commenter (32) suggested ranking tracts by growth rate by the state service region and awarding these points to the top 10% tracts in each region, provided that they also meet the poverty, income and land value metrics as previously described and have a large enough starting population base to make the percentage, for example 3,000 which is about 75<sup>th</sup> percentile tract in the state.

Commenter (45) disagreed that high growth areas are equated with underserved areas but rather believed that an area is underserved with respect to the amount of affordable housing available. Commenter (45) contended that it's possible to have significant growth and also have a high concentration of affordable housing. Furthermore, high growth areas would already be more attractive to developers and unnecessary to incentivize further. Commenter (45) believed that high growth areas inside large MSAs that lack affordable housing should be incentivized and suggested that the same criteria used for rural developments be used for urban developments. Commenter (45) indicated that the administration of carrying out the proposed language will be difficult and would result in multiple appeals and third party requests for administrative deficiencies. Commenter (45) suggested the following modifications to this scoring item:

- “(A) The Development Site is located wholly or partially within the boundaries of a colonia... (2 points);
- (B) An Economically Distressed Area (1 point);
- (C) A ~~census tract~~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 servicing the same Target Population (2 points);
- ~~(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 servicing the same Target Population (2 points);~~
- ~~(E)~~ (D) A census tract that has not 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 within the past 10 years (1 point);
- ~~(F) Within 5 miles of a new business that in the past two years has constructed a new facility and undergone initial hiring of its workforce employing 50 or more persons at or above the average median income for the population in which the Development is located (1 point); or~~
- ~~(G) A census tract which has experienced growth increases in excess of 120% of the county population growth over the past 10 years provided the census tract does not comprise more than 50% of the county (1 point).”~~

Commenter (50) expressed support for subparagraph (G) of this scoring item.

## **STAFF RESPONSE:**

Staff appreciates the support expressed by commenter (4), (32) regarding colonia option. In response to commenter (4) on increasing the points associated with EDA's, staff believes that while the Department is required by statute to provide a point incentive for an EDA, increasing the point value further does not align with the goal of producing housing in high opportunity areas.

In response to those commenters requesting option (C) be modified to consider those developments that are of the same population type, staff agrees and has made the change as recommended for consistency with options (D) and (E).

In response to the varying comments associated with options (F) and (G) relating to job growth and population growth, staff notes that these were included in the draft in response to public comment in September. After reviewing the comments provided and performing its own research into the options, staff recommends removing these from consideration under this scoring item. While it may be worth pursuing in future rule-making, staff has not been able identify a consistent, reliable data set regarding an appropriate distance, total number of jobs, or percentage of population growth in order to retain the scoring item for the 2016 application cycle.

### **16. §11.9(c)(7) – Selection Criteria – Tenant Populations with Special Housing Needs (3), (4), (7), (19), (21), (27), (28), (30), (31), (33), (36), (41), (45), (52), (53), (54), (92)**

**COMMENT SUMMARY:** Commenter (3), (31), (33), (36), (45), (92) requested subparagraph (A) under this scoring item that allows points for placing 811 units in existing developments be deleted with commenter (3), (33), (36), (92) further asserting that because a large percentage of developers will not be able to qualify for the points it creates an unfair competitive advantage for those with a disproportionate number of developments that would not qualify. Commenter (31), (45) asserted that this scoring item results in providing a competitive advantage to some within the application round based on a factor unrelated to the development being proposed within the current application. Similarly, commenter (7) recommend subparagraph (A) be removed for rural USDA properties on the basis that it only serves to reward developers with urban properties who convert to 811 units. Commenter (7) further asserted that when a workable policy to accommodate the 811 funds is developed by the Department, it should not further penalize the preservation of USDA units. Commenter (28), (52), (92) asserted the points allowed for existing developments to include 811 units is anti-competitive and exclusionary, sacrifices the integrity of the program and will prevent developers that lack such a portfolio from competing and will further restrict new developers from entering the industry. Commenter (92) further stated that only 7 regions would qualify for the 811 units thereby leaving the 19 non-811 regions unable to compete which creates a privileged group of developers to dominate all regions in the state. According to commenter (92) such treatment fails to treat developers in all regions equally.

Commenter (33), (52) suggested this scoring item be modified in order to give all developers equal access to the same scoring items or that it be a threshold requirement associated with the 4% HTC program where the developments are larger and usually located in areas where services are more readily available for 811 tenants. Commenter (28) expressed a similar recommendation but also offered that for 4% HTC applications, 10% of the total units in a qualified development be the minimum requirement. Commenter (30), (33) also suggested 811 units be a 4% HTC threshold requirement utilizing a tiered approach based on the number of the total number of units – i.e. 100 units or less must commit 10 Section 811 units; 101-200 units must commit 20 units, 201-300 or more units must commit 30 Section 811 units. Commenter (33) also proposed that the Department



propose a NOFA to owners with eligible properties a TCAP grant of \$150,000 for commitment (15) 811 eligible units which can further be limited to a certain number of developments. Commenter (28) further added that should the option to include 811 units under the 4% HTC program not be possible for the 2016 application cycle, it should be included in 2017 to work with the 9% application cycle.

Commenter (19), (53), (54) expressed support for the incentive for 811 units to be placed into existing developments which is an excellent way to increase the available housing units now instead of waiting 2 to 3 years for new construction projects to be completed. According to commenter (54), there were 17 properties (a mix of both new and existing developments) that chose to set aside 811 units, which illustrates the need for more developers to participate in the program. Commenter (19) also suggested that other incentives such as increasing developer fees to 20% or shortening extended use periods by 5 years be considered as well.

Commenter (41) stated that Corpus Christi has an extremely high unmet need for affordable, accessible, integrated rental housing for people with disabilities and others below 30% AMI. Commenter (41) further requested that the 811 program be available in Corpus Christi so that the needs of their community are met, specifically, those individuals on SSI who are unable to relocate from institutions and those who are homeless or at risk of homelessness.

Commenter (27) determined that only 43% of the Department's inventory would be eligible for 811 vouchers without taking into account the developments located in the floodplain which would decrease the number of qualifying developments. Commenter (27) stated that considering the importance of tie-breakers in determining awards, those developers without existing developments that would qualify are at a disadvantage and has the ability to put a number of developers out of business for 2016. Commenter (27) requested subparagraph (A) be modified to allow 2 points to be achieved instead of the proposed 3 points.

Commenter (30) questioned why the point values associated with this scoring item changed over the previous year when the path by which to receive the points has not changed. Commenter (30) expressed that creating an unfair playing field is bad policy and requested subparagraph (A) be removed from this scoring item.

Commenter (21) stated that the proposed language results in rural developers who do not have any urban units being disadvantaged by one point and recommend the following revision:

“(A) Applications [in Urban Regions](#) 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...”

Commenter (4) asserted that subparagraph (A) penalizes new developers and developers that lack the portfolio that would meet the 811 requirements and further suggested that there be an incentive for developers with qualifying properties that does not involve a 1 point advantage. To achieve this, commenter (4) recommended that all options under this scoring item be modified to 3 points and modify subparagraph A to reflect the following as an incentive:

“(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. [Applications electing this subparagraph may request a LURA amendment with no fee to reduce the Extended Affordability Period by 5 years for the existing Development participating in Section 811 per this subsection](#)”

Commenter (45) expressed concern that those applicants who may qualify for these points may not necessarily have good compliance histories and did not believe that placing 811 units in existing developments will not necessarily deliver the units much sooner than it would if applicants were only required to place the 811 units in the developments proposed in the 2016 application cycle. Commenter (45) recommended the option (A) be removed but alternatively suggested the following modifications:

“(A) Applications may qualify for three (3) points if [evidence is provided in the Application that a Memorandum of Understanding \(“MOU”\) or other appropriate document has been fully executed by the Department and Applicant \(or Affiliate of the Applicant\) 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 portfolio of the Applicant must not have compliance history of a category 2, 3, or 4 as determined in accordance with 10 TAC §1.301, related to Previous Participation, and](#) 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.”

**STAFF RESPONSE:** This item was one of the top items receiving significant comment and while the majority of comment was against inclusion of the entire item, the only significant change from last year’s rule was the expansion of allowing owners of existing developments to add 811 units to those developments. In order to expedite the impact of this expansion of the scoring item, an additional point was proposed in the draft QAP. Reducing the proposed three points for the option in (7)(A) to two points would continue to allow for the expansion of this scoring item to attract owners with existing available units without giving them an undue competitive advantage since all new applicants could choose the two points under (7)(C). Removing the item altogether would take away an effective tool utilized last year to create more targeted affordability.

In response to commenter (41) staff agrees and has modified the item to include the Corpus Christi MSA.

**17. §11.9(c)(8) – Selection Criteria – Aging in Place (1), (3), (7), (9), (21), (23), (32), (36), (45), (49), (50), (51)**

**COMMENT SUMMARY:** Commenter (1), (23) suggested an alternative for supportive housing, in line with the this scoring item and further stated that similar to that of Aging in Place developments, the quality of nearby schools has no bearing on the suitability of a site for single room occupancy supportive housing where no children live at the property. The requirement for high performing schools presents an unnecessary hurdle because those residing in SRO developments do not have school aged children; therefore, commenter (1), (23), (32) recommended the following:

“(8) Aging in Place. (§2306.6725(d)(2) An Application for an Elderly Development or a Supportive Housing Single Room Occupancy 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).”

Commenter (49) recommended similar changes so that such developments could be eligible for points under this scoring item in lieu of Educational Excellence on the premise that such households without children do not house school age children and schools are not a resource for this very vulnerable population.

“(8) Aging in Place. (§2306.6725(d)(2) An Application for an Elderly Development and Supportive Housing that serves households without children (100%) 1 bedroom and/or studios 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).”

Commenter (3), (50) requested this scoring item be modified to reflect the following, with commenter (50) further stated that the recommended language would better serve the target population considering that many senior residents are not in wheelchairs. Moreover, commenter (50) expressed concern that 100% accessible units would be cost prohibitive and difficult to market due to the institutional feel it would create.

~~“(A) All Units are designed to be fully accessible (for both mobility and visual/hearing impairments) in accordance with the 2010 ADA Standards with the exceptions listed in “Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities”. (2 points) In addition to meeting all of the accessibility and design standards under Section 504 of the Rehabilitation Act and the 2010 ADA Standards (with the exceptions listed in “Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities”), the Applicant will include (3 points):-~~

~~\_\_\_\_\_ (i) “Walk-in” showers of at least 30” x 60” in at least 50% of all residential bathrooms;~~

~~\_\_\_\_\_ (ii) 100% of units include blocking in showers/tubs to allow for grab bars at a later date if requested as a reasonable accommodation;~~

~~\_\_\_\_\_ (iii) Chair height (17-19”) toilets in all bathrooms; and~~

~~\_\_\_\_\_ (iv) A continuous handrail on at least one side of all interior corridors in excess of five feet in length.~~

(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 (+2 points):

- (i) a minimum of 16 hours per week for Developments of 8079 Units or less;  
~~and~~
- (ii) a minimum of 24 hours per week for Developments of 81 to 120 units;  
~~and~~
- (iii) a minimum of 32 hours for Developments in excess of 80121 Units ~~or more.~~”

Commenter (49) requested similar modifications, with the following slight variation regarding weekly hours for the resident services provision. Commenter (49) also noted that in order to comply with HB 3311 creating point parity, the maximum score under this item should be increased to 5 points to be equal with Educational Excellence.

- “(i) a minimum of 16 hours per week for Developments of 8079 Units or less; and
- (ii) a minimum of 32 hours for Developments of 8081 Units or more.”

Commenter (7) stated that it is not possible to adapt all existing units in a USDA 515, 514/516 property to full accessibility and further asserted that not all residents want an adapted unit, they are difficult to rent to residents that do not require such accommodations. Commenter (7) recommended the requirement for full accessibility be removed and should just continue to be made where reasonable. With respect to the full-time resident services coordinator requirement under this scoring item, commenter (7) recommended it be deleted as well on the basis that USDA does not allow rent proceeds to be used for such services. As an alternative, commenter (7) recommended the language be modified to allow the property to provide appropriate services for elderly residents with at least one event per month. Moreover, commenter (7) recommended that adding upgrades to the property, including accessibility, laundry room or community room, or upgrades to unit amenities be considered a replacement point category.

Commenter (51) expressed support for the inclusion of the onsite service coordinator but indicated concerns that the effectiveness of the service coordinator would be diminished if the person is part of the property management team; therefore, clarification was requested to help ensure the effectiveness of the service coordinator.

Commenter (9) expressed concern over the cost associated with converting 100% of the units in existing properties and stated the minimum to do so is approximately \$10,000 - \$15,000 for a full ADA conversion which would take funds away from other much needed rehab. Moreover, according to commenter (9) it is physically impossible to make the space in the bathrooms to meet the standards. As an alternative, commenter (9) recommended this item be modified to require an additional 5% of the total units be converted to the ADA standards. This would include lower cabinets, roll-in showers, etc. and would be in addition to the already required 5%. Moreover, commenter (9) suggested a requirement that 50% of the bathtubs be converted to roll-in showers. These changes, according to commenter (9) would be a financially better use of HTC funds and would better meet the needs and wants more accurately.

Commenter (21) recommended the following revision to this scoring item which would still achieve a policy that would allow individuals to age in place gracefully and with dignity:

“(A) ~~All~~Fifty (50) percent of the Units are designed to be fully ~~accessible~~adaptable (for both mobility and visual/hearing impairments) in accordance with the 2010 ADA Standards with the exceptions listed in “Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities”. (2 points).”

Commenter (36) recommended the following modifications to this scoring item based on concerns over the marketing and cost implications of developments designed to be 100% fully accessible:

“(A) In addition to meeting all of the accessibility and design standards under Section 504 of the Rehabilitation Act and All Units are designed to be fully accessible (for both mobility and visual/hearing impairments) in accordance with the 2010 ADA Standards (with the exceptions listed in “Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities”) the Applicant will build 50% of the units with adaptable design features as specified in 24 CFR 100.205(c)(1)-(3). (2 points).”

Commenter (45) disagreed with the addition of this scoring item on the basis that, while it is meant to create parity with the educational excellence scoring criteria for elderly developments, considering the new definition for elderly development, it is quite possible that such tenants would have children therefore being in the attendance zones of high quality schools would definitely benefit them. Moreover, even if the tenants do not have children, high performing schools is one of many indicators of a high quality neighborhood in general. In terms of competing for sites, if the Department believes there should be a path by which elderly developments compete for credits, commenter (45) suggested that it be driven by location, similar to the Educational Excellence scoring item. While the location of a development is a known fact at the time of application, a commitment to develop accessible units and provide services is in reality an unknown. Commenter (45) further emphasized that it's possible for an applicant to fail to meet these requirements which in this case would mean having denied credits to an applicant that was clearly already meeting the equivalent requirement. Commenter (45) recommended this scoring item be removed.

**STAFF RESPONSE:** The proposed rule allows an elderly development to choose to be in a location with Educational Excellence or provide for Aging in Place but not both. This allows Elderly Developments to have greater flexibility in location for developments that could exclude families. However, some elderly developments include or allow for families with children which would benefit from being in attendance zones of high quality schools. Similarly Supportive Housing Developments cannot exclude families with children (unless the development is qualified to do so under Housing for Older Persons Act “HOPA”) and some types of Supportive Housing, such as those targeting single parents would also benefit from being in attendance zones of high quality schools. Staff agrees that the maximum points for Educational Excellence and Aging in Place should be equivalent at five points. Staff agrees that a reduction in the intensity of accessibility of Aging in Place features would make this option more achievable. Staff also believes the provision for a service coordinator should be simplified and proposes the following changes. In addition, staff believes Supportive Housing Developments which serve Elderly Limitation restricted households should also be able to achieve scoring parity for Aging in Place points with Supportive Housing Developments serving the general population which receive Educational Excellence points.

Supplement Staff Response:

In response to commenters (1), (23), (32), (45), and (49) regarding parity in points achievable for Aging in Place and Educational Excellence, staff has also considered recent legislation regarding



parity between Elderly and general population Developments in recommending that Supportive Housing Developments be limited to two (2) points under Educational Excellence. This limitation would allow parity between a Supportive Housing general population Development and an Elderly Development. Staff further proposes an alternative two (2) points under Aging in Place for Supportive Housing Developments which are also HOPA Elderly Limitation restricted. In addition Staff recommends that the limitation allowing Elderly Developments only to achieve the maximum points is inconsistent with HB 3311 and therefore proposes to strike that limitation.

Staff proposes the following change:

~~“(8) Aging in Place. (§2306.6725(d)(2) An Application for an Elderly Development may qualify to receive up to ~~three (3)~~five (5) points under this paragraph only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence). An Application for a Supportive Housing Development may qualify to receive up to two (2) points under subparagraph (A) 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 (for both mobility and visual/hearing impairments) in accordance with the 2010 ADA Standards with the exceptions listed in “Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities”. (2 points)In addition to meeting all of the accessibility and design standards under Section 504 of the Rehabilitation Act and the 2010 ADA Standards (with the exceptions listed in “Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities”), the Applicant will include (3 points):-~~

~~(i) “Walk-in” (also known as roll-in) showers of at least 30” x 60” in at least one bathroom in each unit;~~  
~~(ii) 100% of units include blocking in showers/tubs to allow for grab bars at a later date if requested as a reasonable accommodation;~~  
~~(iii) Chair or seat height (17-19”) toilets in all bathrooms; and~~  
~~(iv) A continuous handrail on at least one side of all interior corridors in excess of five feet in length.~~

~~(B) The Property will employ a full-time dedicated resident services coordinator on site for the duration of the Compliance Period and Extended Use Period/Affordability 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 dedicated is defined as follows an employee that is reasonably available exclusively for service coordination to work with residents during normal business hours at posted times(~~4~~2 points):~~

~~(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.”~~

**18. §11.9(c)(9) – Selection Criteria – Proximity to Important Services (3), (5), (7), (24), (30), (39), (43), (44), (45), (48)**

**COMMENT SUMMARY:** Commenter (3), (24), (30), (43), (44) requested the radius for developments in rural areas be increased to 3 miles further indicating that such residents are reliant on their cars and these services are on the outskirts of town near more major roadways. Commenter

(5) recommended this scoring item be modified to increase the distance to 3 miles of a full service grocery store, a pharmacy and a medical office or urgent care facility, including hospitals. According to commenter (5) such change would help incentivize development and will keep the point item hard to obtain but not arbitrarily limit to one mile. Commenter (24), (43), (44) additionally suggested the distance to these services for urban development's should be increased to a 1.5 mile radius which would help developers find land large enough to support a multifamily development, where land will be less expensive and there will be less opportunity for opposition to new multifamily housing.

Commenter (7) asserted this scoring item needs to be further defined based on the inability for an existing property to be relocated in order to achieve the Department's new construction goals and recommended there be a focus on priorities and points for existing developments under a separate scoring item.

Commenter (39) asserted that proximity to a grocery store and pharmacy have little to no effect on the demand for housing and recommended this scoring item be deleted. Commenter (45) mentioned that the Remedial Plan called for the removal of all development location incentive criteria, outside of the opportunity index, educational excellence and those otherwise mandated by statute or federal law. The addition of this location specific scoring item, according to commenter (45) could be counteractive to the goals of the Remedial Plan, and specifically the Opportunity Index, and recommended it be removed.

Commenter (48) recommended proximity to an urgent care facility be included as a third option under this scoring item on the basis that having 2 of 3 important services seems reasonable and allows many new sites to be competitive. Commenter (48) further added that while a one mile radius for most urban locations may seem appropriate; however, most top quartile locations where land is available for development have full service grocery stores outside of a mile, but inside a 2 mile radius

**STAFF RESPONSE:** Staff agrees with commenter (3), (24), (30), (43), (44) in increasing the distance for rural areas to 3 miles and to 1.5 miles for urban areas in response to commenter (24), (43), (44) and has made the changes accordingly. In response to commenter (39) inclusion of these items is not an issue of demand but rather ensuring there is access to these important services. In response to commenter (45) staff does not agree with the commenter that proximity to these services is inconsistent with the objectives of higher opportunity sites and more de-concentration.

#### **19. §11.9(d)(1) – Selection Criteria – Local Government Support (2), (26), (32)**

**COMMENT SUMMARY:** Commenter (26) asserted that the Department has discretion in defining the terms upon which the points under this scoring item would be awarded and indicated that the segregative effect could be lessened by conditioning the award of positive and negative points based on a statement from the municipality of reasons for the opposition and provide the developer with an opportunity to respond to the opposition.

Commenter (2) contended that there is a systemic bias that heavily favors awarding tax credits in communities that oppose them and recommended the changes below on the basis that it would help level the playing field.

“(A) Within a municipality, the Application will receive [or sustain](#):

(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~~ a deduction of seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes ~~has no objection to~~ the Application or Development; ~~or~~

(iii) if the Governing Body of that municipality elects its members from single-member districts, an addition of ten (10) points for a letter of support from that particular member of the Governing Body who represents the district which includes the territory covered in the Application or Development; or

(iv) if the Governing of that municipality elects its members from single-member districts, a deduction of ten (10) points for a letter of opposition from that particular member of the Governing Body who represents the district which includes the territory covered in the Application or Development.

(B) Within the extraterritorial jurisdiction of a municipality, the Application ~~may~~shall receive or lose points under clause (i) or (ii) of this subparagraph and under clause (iii) or (iv) of this subparagraph as indicated:

(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) a deduction of eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development; or ~~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) a deduction of eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development. - ~~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, an Application or Development shall receive or sustain:

(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)-a deduction of (17) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Developmentfourteen (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.”~~

Commenter (32) expressed support regarding the modification to this scoring item that does not allow letters to be changed or withdrawn once submitted to the Department.

**STAFF RESPONSE:** The structure of the rule has been developed in a manner to achieve the clear purpose of the statutory scoring item and the changes requested by the commenter may conflict with statute. Moreover, they are significant substantive changes from what was proposed and could not be accomplished without re-publication for public comment.

*Staff recommends no change based on these comments.*

## **20. §11.9(d)(2) – Selection Criteria – Commitment of Development Funding by a Local Political Subdivision (22), (34)**

**COMMENT SUMMARY:** Commenter (22) suggested clarification regarding whether a development located in an ETJ should look to the city or county for funding. Commenter (34) requested this item be modified to include language from similar scoring items in that “once a resolution is submitted to the Department, it may not be changed or withdrawn.”

**STAFF RESPONSE:** In response to commenter (22) either the city or county can provide the documentation. In response to commenter (34) staff agrees and has modified the scoring item accordingly.

## **21. §11.9(d)(4) – Selection Criteria – Quantifiable Community Participation (2), (32), (63)**

**COMMENT SUMMARY:** Commenter (32) expressed support regarding the modification to this scoring item that does not allow letters to be changed or withdrawn once submitted to the Department. Commenter (32) further indicated that the Department’s process for registering neighborhood associations is unnecessary and duplicative of the functions of the secretary of state and the county. This process, according to commenter (32), allows groups as small as two people to have a nine-point impact on an application and is therefore an impediment to fair housing choices and conflicts with the State’s commitment to reduce NIMBYism as outlined in the State of Texas Plan for Fair Housing Choice: Analysis of Impediments.

Commenter (2) contended that there is a systemic bias that heavily favors awarding tax credits in communities that oppose them and recommended the changes below on the basis that it would help level the playing field.

“(4) Quantifiable Community Participation. (§2306.6710(b)(1)(I); §2306.6725(a)(2)) An Application ~~shall~~may qualify to receive, or have deducted, as appropriate, eight (8) for up to nine (9) points for written statements from a Neighborhood Organization or a Home Owner Association (as established by Texas Property Code, Title 11, Chapter 209, known as the ‘Texas Residential Property Owners Act’). In order for the statement to qualify for review, the Neighborhood Organization or Home Owner Association must have been in existence prior to the Pre-Application

Final Delivery Date, and its boundaries must contain the Development Site or be within one linear mile from an edge of the Development's boundary to an edge of a Neighborhood Organization's or Home Owner Association's boundary. In addition, the Neighborhood Organization or Home Owner Association 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 30 days prior to the Full Application Delivery Date. Once a letter is submitted to the Department it may not be changed or withdrawn. The written statement must meet all of the requirements in subparagraph (A) of this paragraph.

(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 or Home Owner Association'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 or association;

(ii) certification that the boundaries of the Neighborhood Organization, or Home Owner Association, contain the Development Site or be within one linear mile from an edge of the Development Site's boundary to an edge of a Neighborhood Organization's or Home Owner Association's boundary and that the Neighborhood Organization or Home Owner Association 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, or Home Owner Association, including any votes taken;

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

(v) an explicit expression of support; or 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 [Quantifiable Community Participation \(QCP\)](#) 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 or lose 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 or against 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 or Home Owner Association; or~~

~~(iii) a deduction of eight (8) points for explicitly stated opposition from a Neighborhood Organization or Home Owner Association. 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.”~~

Commenter (63) requested that proximity to developments be taken into consideration and that Home Owner Associations as well as Neighborhood Associations within one linear mile of proposed developments be allowed a voice.

**STAFF RESPONSE:** in response to commenter (32) staff agrees that the Department’s process for registering Neighborhood Associations is duplicative and unnecessary and recommends removing the reference (includes the Department).

In response to commenter (2) staff believes that the proposed rule comports with the express statutory requirements and recommends no change based on this comment.

In response to commenter (63), the legislature identified neighborhood organizations which could impact the score of a development by including those boundaries contain the development site. Staff recommends no change based on this comment

## **22. §11.9(d)(5) – Selection Criteria – Community Support from State Representative (2), (3), (26), (32), (42)**

**COMMENT SUMMARY:** Commenter (3) recommended the point value associated with these letters be modified to reflect +4 points for support, 0 points for neutrality and -4 points for letters of opposition. The justification provided by commenter (3) stated that reducing the point range is still consistent with the legislative intent of ranking it the lowest point category under statute.

Commenter (32) expressed concern that the proposed language is in conflict with the statutory language outlining the priority of the support letters, which ranks the priority, not the scoring and that the current 16 point spread between the +8 and -8 points gives those letters priority above neighborhood organizations. Commenter (32) recommended that positive letters should be worth 6 points and negative letters worth -2 points. In reducing the spread between positive and negative letters to 8 points, it would still comply with the statutory language.

Commenter (26), (32) asserted that the Department has discretion in defining the terms upon which the points under this scoring item would be awarded and indicated that the segregative effect could be lessened by conditioning the award of positive and negative points based on a statement from the State Representative of reasons for the opposition and provide the developer with an opportunity to respond to the opposition.

Commenter (2) recommended the following changes to this scoring item:

“(5) Community Support from State Representative. (§2306.6710(b)(1)(f); §2306.6725(a)(2)) Applications ~~shall~~ 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 which fail to 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."

Commenter (42) expressed concern regarding this scoring item on the basis that fair housing impediments and isolation of important constituents will result in cases where the state representative refuses to support housing for farmworkers; therefore, this scoring item should be eliminated or given other opportunity to cure so that housing is not denied for important constituents.

**STAFF RESPONSE:** In response to commenters (3), (32) staff believes that compressing the points associated with the letters conflicts with priorities created by statute, as established by the legislature and, in response to commenter (32) such priority is established in the score attributed to each of the scoring items. Moreover, the changes proposed by commenters (3), (32) would require re-publication and a necessary opportunity for additional public comment.

In response to commenter (2) the plain language of statute does not limit the possibility of assigning varying point values associated with the letters even if no such distinction is anticipated.

In response to commenter (42) this scoring item is a statutory requirement and therefore not one that staff can eliminate in the rule.

*Staff recommends no changes based on these commenters.*

### 23. §11.9(d)(6) – Selection Criteria – Input from Community Organizations (2)

**COMMENT SUMMARY:** Commenter (2) contended that there is a systemic bias that heavily favors awarding tax credits in communities that oppose them and recommended the changes below on the basis that it would help level the playing field.

“(6) Input from Civic and Community Organizations. (§2306.6725(a)(2))Where, at the time of Application, the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization or Home Owner Association or be within one linear mile from an edge of the Development’s boundary to an edge of a qualifying Neighborhood Organization or Home Owner Association; then, in order to ascertain if there is community support or opposition, an Application shall 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 four (4) points will be awarded for letters in support, or deducted for letters in opposition, as applicable, under this point item under any circumstances. All letters must be submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under

~~this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item.~~

(A) An Application ~~shall~~may receive two (2) points for each letter of support, and shall have deducted two (2) points for each letter of opposition submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support or opposition must identify the specific Development and must state~~express~~ support of, or opposition to, the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide evidence 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 or opposition 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 or have points deducted, as the case might be. 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~~shall receive two (2) points for a letter of support, and shall have deducted two (2) points for a letter of opposition 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~~shall receive two (2) points for a letter of support, and shall have deducted two (2) points for a letter of opposition 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.”

**STAFF RESPONSE:** In response to commenter (2), a plain reading of the statute does not allow for negative points for any scoring items other than State Representative letters.

*Staff recommends no changes based on this comment.*

**24. §11.9(d)(7) – Selection Criteria – Concerted Revitalization Plan (3), (10), (21), (22), (26), (31), (32), (34), (35), (36), (45), (51), (89)**

**COMMENT SUMMARY:** Commenter (3) expressed concern regarding the level of subjectivity relating to “sufficiently mitigated and addressed prior to the Development being placed in service” and further asserted that such language will only benefit neighborhoods that are at the end of their revitalization efforts. Commenter (3), (34) suggested the 2015 language with respect to this scoring item be reinstated. Similarly, commenter (10), (51) suggested that investment in affordable housing at the end of the revitalization process negates the positive impact such housing can have on an area



that is on a positive revitalization trajectory and could make the purchase of the land impractical due to rising land costs in an area nearing the end of its redevelopment cycle. Commenter (10), (51) offered the following modification to this item:

“(IV) The adopted plan must have sufficient, documented and committed funding, to the extent allowed by law or ordinance, to accomplish its purposes on its established timetable. This funding must have been flowing in accordance with the plan, such that the problems identified within the plan can reasonably be expected to be will have been sufficiently mitigated within a period of time commensurate with the plan’s timeline and addressed prior to or after the Development beinghas been placed into service.”

Commenter (10) disagreed with the manner in which points will be awarded; specifically that a city or county can only indicate one development as most significantly contributing to revitalization efforts in the area. Commenter (10) asserted that this underestimates the revitalization needs of urban areas and further offered the following modification:

“(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; and

(II) An urban classified city or county may identify no more than three (3) Developments during each Application Round for the additional points under this subclause. Applications may receive (2) points in addition to those under subclause (I) 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.”

Commenter (22), (32) expressed support for effectiveness at which the opening paragraph establishes the expectations of the characteristics of a revitalization area. Commenter (22) requested clarification with respect to the following sentence under subclause (III) relating to urban developments “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...” Specifically, whether this sentence means that the city or county has programs/activities in progress that can be documented by are not necessarily described in the plan document?

Commenter (26) expressed disagreement with the proposed changes to this scoring item, specifically, the delegation of such revitalization plans with the municipalities which is without



standards for the conditions that must be addressed and without standards for the measurable improvements upon which the points are to be awarded. Commenter (26) suggested that the proposed language will allow for continued segregation in areas of slum and blight by making improvements that do not address significant elements thereof. By way of example, commenter (26) illustrated that a revitalization plan that calls for new sidewalks in an area of slum and blight could receive points even if there is partial completion of such sidewalk replacements. Commenter (26) asserted that there is no obligation to address other elements of slum and blight in order to achieve the points.

Commenter (32) asserted that the framework of the scoring item lacks objective benchmarks and will become just another “letter from a local official,” promising that the area is already looking better and will be great by the time the development is placed in service. Considering the fact that the local official can choose the measuring improvements to be used for documentation invites gaming of the process. To that end, commenter (32) recommended the Department look to three metrics over the past 3 years: census tract poverty, census tract income, and neighborhood land values relative to Place (Appraisal District) and that points under this scoring item should be awarded only if an application demonstrates a statistically significant improvement on two of these metrics over the 3 year timeframe since the date of the adoption of the revitalization plan. Commenter (32) acknowledged that this timeframe is longer than is currently proposed, it recognizes that true revitalization takes an extended commitment in local and private resources.

Commenter (31), (36) stated identified concerns regarding the subjectivity of this scoring item and recommended the modifications below to add specificity.

“(A) For Developments located in an Urban Area.

(i) An Application may qualify to receive up to six (6) points if the Development Site is located in an distinct area that ~~was once vital and has lapsed into a situation requiring~~ has been identified by the municipality or county as needing concerted revitalization, and where a concerted revitalization plan has been developed and ~~executed~~ adopted. 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 but smaller than the municipality or county as a whole. The concerted revitalization plan ~~should that~~ meets the criteria described in subclauses (I) - (IV) of this clause:

(I) The concerted revitalization plan must have been adopted by the municipality or county in which the Development Site is located prior to the pre-application deadline.

(II) The problems in the revitalization area must have been identified ~~be identified~~ through a process 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. These problems may include the following:

(-a-) long-term disinvestment, such as significant presence of residential and/or commercial blight, infrastructure neglect such as inadequate drainage, and streets and/or sidewalks in significant disrepair;

~~(-b-) declining quality of life for area residents, such as high levels of violent crime, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances or overt illegal activities; and/or~~

~~(-c-) lack of community assets that provide for the diverse needs of the residents such as access to supermarkets or healthy food centers, parks and activity centers.~~

(III) Staff will review the ~~target area for presence of the problems identified in the plan and~~ for targeted efforts within the plan to address ~~those the~~ problems identified within the plan. 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.

However, this supplemental information may not take the place of an adopted plan meeting the requirements I, II and IV of this section. The supplemental information may only provide evidence of plan goals and activities being carried out by the municipality or the county or funds being committed for the plan purposes.

(IV) The adopted plan must ~~have identify~~ sufficient ~~and~~ documented ~~and committed~~ funding sources to accomplish its purposes on its established timetable. This funding must have commenced at the time of Application submission. ~~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.~~

(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 certifying the identified~~ revitalization area, that the development is located within the revitalization area, and that the plan meets the requirements of subsections I, II and IV of this section ~~based on the target efforts outlined in the plan;~~ and

Commenter (31) indicated that in order to support the revitalization efforts in large cities, this scoring item should be modified to allow a city to designate more than one development as significantly contributing to revitalization, as reflected in the following:

(II) Applications may receive (2) points in addition to those under subclause (I) 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 no more than three ~~one single~~ Developments 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, ~~no~~ then not more than three of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application(s) as contributing ~~most~~ significantly to concerted revitalization efforts.”

Commenter (45) suggested modifications as provided below that could address instances where cities may develop a revitalization plan in response to a natural disaster, which they believed would still align with the overall policy objective behind the scoring item.

“(II) The problems in the revitalization area must be identified through a process 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. These problems may include the following:

(-a-) ~~long-term disinvestment, such as significant presence of residential and/or commercial blight, streets and/or sidewalks in significant disrepair;~~

(-b-) long-term disinvestment, such as the significant presence of residential and/or declining quality of life for area residents, such as high levels of violent crime, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances or overt illegal activities;

(-c-) destruction of property as a result of a natural disaster.

(IV) The adopted plan must have sufficient, documented and committed funding to accomplish its purposes on its established timetable. While it will generally be expected that ~~This~~ this funding ~~must~~ would 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, plans that are more recently adopted due to events that created cause for such a plan may be considered if sufficient evidence is provided to indicate that it is reasonable to expect that the goals of the plan will be able to be met.”

Commenter (32) expressed the opinion that developing health care facilities under (A)(i)(III)(-b-) of this scoring item does not augment a desirable neighborhood and further stated that there is a long

tradition of relegating clinics and public hospitals to areas with low land values and few residential amenities. As a result, commenter (32) recommended this option be deleted from this scoring item.

Commenter (21) indicated that while they are in agreement that concerted revitalization in a rural area is separate and distinct from an urban area, they expressed an objection to the disparity in points and recommended the scoring be adjusted, without increasing the requirements, so that revitalization in both areas would yield the same point value.

Commenter (35) asserted that the proposed changes to this scoring item are too restrictive and further suggested that HUD's Site and Neighborhood standards guidance would be helpful in drafting this scoring item that is consistent with HUD's interpretation of the Fair Housing Act. Commenter (35) further added that HUD has always carved out an exception for revitalizing areas in the Site and Neighborhood Standards and that examples of such areas can be found in 24 CFR 983.57(e)(3)(vi). These "revitalizing areas" as defined by HUD would capture those gentrifying areas where there is revitalization and significant private investment; therefore, commenter (35) urged the Department to adopt HUD's definition of a revitalizing area as qualifying for full points under this scoring item.

Commenter (89) expressed concern over the possibility for applicant's to orchestrate the development of a revitalization plan to receive points, despite the proposed changes. In an effort to prevent this, commenter (89) suggested this scoring item be modified such that only revitalization plans that show true community input should be eligible for the points; simply showing evidence that notice has been given to the public does not constitute public input. Further, if no one in the community is interested in providing comments, it is unlikely that the plan represents a legitimate need or effort to revitalize the area. Moreover, commenter (89) suggested that plans less than 6 months old should not be accepted, but that the plans must have started at least 6 months prior to the application deadline; and lastly, there should be no involvement on the part of any member of the Development Team in the formulation of such plan; it must be developed at the direction of the local government and without involvement of the applicant.

**STAFF RESPONSE:** Staff agrees with the additional clarification regarding infrastructure neglect as recommended by commenter (31), (36) and has made the change accordingly.

In response to commenter (10) and (31), staff believes that identifying only one development as most significantly contributing to the concerted revitalization efforts of the city or county where the area being revitalized continues to be appropriate. Allowing for the scoring boost for multiple revitalization-based developments represents a potential impetus for rapid concentration and a disproportionate utilization of limited resources. Furthermore, staff is concerned that the failure to achieve an award for all of the developments identified as most significantly contributing could undermine the ability to sufficiently mitigate issues identified in the plan prior to the subject development being placed into service.

In response to commenter (26), staff agrees that the example provided of sidewalk replacement could be considered part of a revitalization plan for some fund sources and programs, but believes that this is not the case for this scoring item. The described revitalization plan would not meet the requirements of this section.

In response to commenter (32), staff believes that the suggested measures would not provide a reliable measurement of the impact of all concerted revitalization plans. The measurements could be used to support the application for this scoring item.

In response to commenters (31), (36), staff believes that the section as drafted provides sufficient description of the requirements for an acceptable revitalization plan without removing necessary flexibility.

In response to commenter (45), developments in counties that have been proclaimed disaster areas within the preceding three years already have a scoring incentive. Further, staff believes that disaster recovery is not a revitalization effort.

In response to commenter (32), no evidence was provided to support the comment that health care facilities do not augment a desirable neighborhood, and in fact, proximity to medical care is a community asset in other scoring items. Staff believes that the example is appropriate.

In response to commenter (21), the concerted revitalization plan described for urban areas supports local efforts to remove longstanding blighting influences in specific areas, while the measures for rural communities address efforts to create continued economic growth. Because these are 2 distinct requirements, staff believes the scoring is appropriate.

In response to commenter (35), while HUD's Site and Neighborhood standards guidance, generally, may contain useful measures and definitions, staff believes that the proposed rule more appropriately addresses this issue. Further, the depth of analysis required to determine if a wholesale adoption of federal guidance in this area is appropriate in all cases, and achieves the purposes of the rule, exceeds the time constraints of this rule-making proposal. Finally, the extent of the changes to the scope of the proposed rule as suggested by the Commenter, and incorporation of the HUD Site and Neighborhood Standards and/or the HUD definition of “a revitalizing area,” would require renewing the rule-making process and re-publication prior to adoption.

In response to commenter (89), staff believes that imposing requirements on units of local government that impact the way they conduct business would be overreaching and inappropriate.

**25. §11.9(e)(2) – Selection Criteria – Cost of Development per Square Foot (1), (3), (21), (23), (25), (27), (31), (35), (36), (48), (49)**

**COMMENT SUMMARY:** Commenter (1), (23) expressed support for the inclusion of 50 square feet of common area space into the net rentable area calculation. However, commenter (1) indicated that this scoring item, in all of the categories, failed to reflect changes due to increases in construction costs and further indicated that such costs differ between four-story, elevator-served general population developments and that of single room occupancy supportive housing and the categories should therefore be distinct. According to commenter (1), supportive housing developments have less of the cheaper square footage to build, but more cost per square foot of the more expensive square footage (plumbing, electrical, HVAC). Commenter (1), (23) suggested the following modifications to this scoring item:

“(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 ~~\$2070~~ per square foot;

(ii) The Building Cost per square foot is less than ~~\$9575~~ per square foot, and the Development meets the definition of a high cost development;

(iii) The Building Cost per square foot is less than \$125 per square foot, and the Development meets the definition of both a high cost development and a single room occupancy Supportive Housing development;

(iv~~ii~~) The Hard Cost per square foot is less than ~~\$11090~~ per square foot;~~or~~

(~~iv~~) The Hard Cost per square foot is less than ~~\$120400~~ per square foot, and the Development meets the definition of high cost development; or-

(vi) The Hard Cost per square foot is less than \$150 per square foot, and the Development meets the definition of both a high cost development and a single room occupancy Supportive Housing development.”

Commenter (3), (31), (36), (48) recommended the calculations in this scoring item be increased by \$10 per square foot, at a minimum, further stating that the current language does not account for recent construction cost increases which, according to these commenters have been 8-12% per annum over the last three years. Commenter (49) recommended an increase of cost per square foot limitations by 15% to account for actual hard cost increases and inflation since 2013. Commenter (21) recommended an increase of \$10, but preferably by \$12 per square foot and further requested that subparagraphs (A)(iv) and (E)(ii) of this item be updated to correspond with the proposed scoring point changes relating to the Opportunity Index. Along these lines, commenter (3), (49) suggested the following revision within this item:

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

(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, if the Development is considered a high cost development or 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..”

Commenter (25) stated the cost per square foot threshold for adaptive reuse or acquisition/rehabilitation was low for scoring purposes and further suggested that for those that include 100% historic development, the costs should exceed 20% of the allowable threshold.

Commenter (27) indicated that this scoring items needs to be modified to account for the considerations made under the historic preservation scoring item, specifically, to make them competitive. When dealing with historic structures, according to commenter (27), the current \$130/SF limitation is unachievable and recommends the following modification:

“(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) Twelve (12) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than \$175 per square foot, that qualify for points under subsection (e)(6) of this section, related to Historic Preservation; or

(iv) Eleven (11) points for Applications which include Hard Costs plus acquisition costs included in Eligible Basis that are less than \$130 per square foot, or \$200 per square foot for Applications that qualify for points under subsection (e)(6) of this section, related to Historic Preservation.”

Commenter (35) asserted that a more constructive approach to this scoring item would be to cap the amount of tax credits generated by their hard costs in order to qualify for points. In doing so, according to commenter (35) it would involve a policy choice with the same logic as in the 2015 QAP of disregarding certain costs and space; however, it would encourage more due diligence and full disclosure at application. To achieve this, commenter (35) requested the following sentence be added to the end of this scoring item:

“This calculation does not include Hard Costs voluntarily excluded from eligible basis.”

**STAFF RESPONSE:** In response to the commenters, the providing of scoring incentives for cost per square foot should not be conflated with the operation of other rules, chiefly underwriting rules, to allow for increased costs.

**SUPPLEMENTAL STAFF RESPONSE:** However, in order to fully implement proposed changes under paragraph 4 (relating to the Opportunity Index) staff is recommending a clerical change to allow access to the points under the subject paragraph under (A) (iv) for an application receiving at least 5 points under the opportunity index rather than the 5 or 7 points identified in the published draft. The change is as follows:

"(iv) the Development Site qualifies for a minimum of five (5) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area."

## 26. §11.9(e)(4) – Selection Criteria – Leveraging of Private, State and Federal Resources (1)

**COMMENT SUMMARY:** Commenter (1) suggested staff allow supportive housing developments that do not have third party hard debt be allowed the tolerance under clause (i) of this scoring item to increase to the 9% leveraging rate. It is the assertion of commenter (1) that a supportive housing application will always reflect the maximum amount of credits in order to help bridge the gap that can't be supported with debt and further stated that such structure ensures that



these developments will almost always have a larger percentage of tax credits to total development costs. Commenter (1) further indicated that the types of funding sources currently allowed under clause (i) are eligible for hard debt and therefore this scoring item is not equitable with that of supportive housing which are fundamentally different in this regard. Commenter (1) recommended the leveraging percentages in this scoring item be increased 1% for supportive housing developments with no permanent debt as reflected in the following:

“(i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding [or the Development is Supportive Housing](#) 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”

**STAFF RESPONSE:** This item provides points for leveraging of several fund sources, rather than types of developments. Supportive Housing developments that use any of these fund sources in their financing structure are able to gain these points if Housing Tax Credit Funding Request is less than 9 percent of the Total Housing Development Cost.

*Staff recommends no change based on this comment.*

**27. §11.9(e)(6) – Selection Criteria – Historic Preservation (4), (21), (27), (32), (45), (64), (65), (66), (67), (68), (69), (70), (71), (72), (73), (74), (75), (76), (77), (78), (79), (80), (81), (82), (83), (84), (85), (86), (87), (88)**

**COMMENT SUMMARY:** Commenter (27) expressed support for the changes to this scoring item but believes further changes are necessary relating to the percentage of units required to be maintained within the historic structure. The current language that requires 75% of the units be maintained is excessive and does not account for historic structures that are small and cannot accommodate enough units to make redevelopment financially feasible unless new units are added to the site. Commenter (27) recommended a decrease in the percentage to 40%.

Commenter (4) asserted that with the proposed changes to the point value associated with this item, it is possible to have a historic preservation application with a revitalization plan outscore a 7-point high opportunity application with top schools which, according to commenter (4), should not be encouraged over high opportunity areas that are inherently in high income, low poverty, and high performing areas, characteristics which differ from the locations in which historic developments are found. Commenter (4), (45) recommended the point value be reduced from 5 points to 2 points and further maintained that based on where historic preservation was inserted into the legislation the point value is too high and should be consistent with neighboring point items. Commenter (4) further asserted that in a practical sense, this is a location specific criteria, and therefore could undermine the objectives of the Remedial Plan and specifically the Opportunity Index if given too much weight. Commenter (45) recommended the following modification:

“(6) Historic Preservation. (§2306.6725(a)(5)) An Application 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 [up to two \(2\) five \(5\) points](#). At least [one existing building that will be part of the Development](#) ~~seventy-five percent of the residential units shall reside within the Certified Historic Structure and 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.”

Commenter (32) opposed the proposed changes to this scoring item which they believed increase the emphasis on historic structures relative to other factors far beyond what is necessary to comply with SB 1316. Commenter (32) maintained that the 2015 point value suitably prioritize historic buildings over new construction when they are in areas with opportunity for the families within them, or when they are in areas that have undergone the comprehensive revitalization necessary to provide opportunity to the families.

Commenter (21), (64), (65), (66), (67), (68), (69), (70), (71), (72), (73), (74), (75), (76), (77), (78), (79), (80), (81), (82), (83), (84), (85), (86), (87), (88) expressed support for the proposed changes to this scoring item which would allow for these existing historic structures within a city to be restored as a vibrant asset to the community.

**STAFF RESPONSE:** In response to commenter (27), staff believes that the Historic Preservation points are to encourage the re-development of affordable units within a historic property, and as such believes that a significant majority of the units should be contained within the historic structure.

In response to commenters (4), (45), staff agrees in part with the potential for a Historic Preservation Development in a Concerted Revitalization Area outscoring a Development in a High Opportunity Area with maximum Educational Excellence points. To address this possibility, staff recommends a reduction in points for Historic Preservation of two (2) points when the Development also qualifies for one (1) or three (3) points under Educational Excellence. Staff recommends the following change:

“(6) Historic Preservation. (§2306.6725(a)(5)) Except for Developments that qualify for one (1) or three (3) points under Educational Excellence §11.9 (c)(5), aAn Application 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 five (5) points. Developments that qualify for one (1) or three (3) points under Educational Excellence §11.9 (c)(5) 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 three (3) points. At least seventy-five percent of the residential units shall reside within the Certified Historic Structure and 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.”

## 28. §11.9(f) – Point Adjustments (22)

**COMMENT SUMMARY:** Commenter (22) suggested that while paragraph (2) under this item identifies violations that should be considered, the opening sentence of the item does not specifically allow a point deduction for such violations and therefore requested clarification.

**STAFF RESPONSE:** In response to commenter (22), staff believes that the item provides sufficient authority for adjustment of points in response to violations.

*Staff recommends no changes based on this comment.*

## **29. §11.9(f) – Third Party Request for Administrative Deficiency (21), (34)**

**COMMENT SUMMARY:** Commenter (21) expressed support for the proposed changes to this section and requested the Department post the application deficiencies and applicant responses to the website throughout the review period. In doing so, commenter (21) believed it would alleviate the administrative burden of the Department as well as increase the transparency of the review process.

Commenter (34) recommended such third party requests be limited to one submission per application by any single third party requestor and further maintained that even with such limitation the Department will receive multiple requests from related persons, each of who would qualify as a “third party.” Commenter (34) indicated that this potential may hinder the evaluation process if the June 1 deadline is used and as a result suggested an earlier deadline be implemented.

**STAFF RESPONSE:** In response to commenter (21) staff intends to update the applications that are posted on the website as reviews are done. As applications are reviewed and deficiencies are resolved, the application posted to the web will be updated nightly with the most current information received in response to staff’s review. In this respect, the public will have access to the same information staff has and they can use that information to determine whether to proceed with a third party request for administrative deficiency.

In response to commenter (34), the number of third party requests will not be limited, as new information may trigger the need for a new submission. If staff identifies multiple requests from related persons, staff will endeavor to evaluate them as a single request but may, as dictated by resource constraints or deemed appropriate, take them up separately.

*Staff recommends no changes based on this comment.*

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

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- (3) Texas Affiliation of Affordable Housing Providers
- (4) Alyssa Carpenter
- (5) Palladium USA
- (6) Chris Boone, City of Beaumont
- (7) Rural Rental Housing Association of Texas
- (8) Fountainhead Management, Inc.
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## **Preamble, Reasoned Response, and Repealed Rule**

The Texas Department of Housing and Community Affairs (the “Department”) adopts the repeal of 10 TAC, Chapter 11, §§11.1 – 11.10, concerning the 2015 Housing Tax Credit Program Qualified Allocation Plan, without changes to the proposed text as published in the September 25, 2015 issue of the *Texas Register* (40 TexReg 6466) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the repeal will replace the sections with a new QAP applicable to the 2016 application cycle.

The Department accepted public comments between September 25, 2015 and October 15, 2015. Comments regarding the repeal sections were accepted in writing and by fax. No comments were received concerning the repeal section.

The Board approved the final order adopting the repeal section on November 12, 2015.

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

§11.1 General

§11.2 Program Calendar for Competitive Housing Tax Credits

§11.3 Housing De-Concentration Factors

§11.4 Tax Credit Request and Award Limits

§11.5 Competitive HTC Set-Asides

§11.6 Competitive HTC Allocation Process

§11.7 Tie Breaker Factors

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## **Housing Tax Credit Program 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.

**(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, 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. 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 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 §1.1 relating to Reasonable Accommodation Requests, 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
01/04/2016	Application Acceptance Period Begins.
01/08/2016	Pre-Application Final Delivery Date (including waiver requests).
03/01/2016	<p>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; all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors).</p> <p>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).</p>

Deadline	Documentation Required
04/01/2016	Market Analysis Delivery Date pursuant to §10.205 of this title.
Mid-May	Final Scoring Notices Issued for Majority of Applications Considered "Competitive."
June	Release of Eligible Applications for Consideration for Award in July.
July	Final Awards.
Mid-August	Commitments are Issued.
11/01/2016	Carryover Documentation Delivery Date.
<del>0706/0330</del> /2017	10 Percent Test Documentation Delivery Date.
12/31/2018	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 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. 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.

**(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.

**(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. [For Elderly Developments in an urban Uniform State Service Regions containing a county with a population that exceeds one million, the request may not exceed the final amount published on the Department's website after the release of the Internal Revenue Service notice regarding the 2016 credit ceiling.](#) ~~The~~For all Applications, the Department will consider the amount in the Funding Request of the pre-application and Application to be the amount of Housing Tax Credits requested and will 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) - (3) of this subsection, or if required under §42 of the Code. 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 (3) of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20 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.

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

**§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 unless the Application is receiving USDA Section 514 funding. 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 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) and will publish such percentages on its website. ~~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) and will publish such percentages on its website. ~~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 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) ~~For competing Applications for Developments that will serve the general population, t~~The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site, or (for “choice” districts) the closest.
- (4) 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 pre-application and corresponding fee is not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.
- (2) Only one pre-application may be submitted by an Applicant for each Development Site.
- (3) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the pre-application is more limited in scope than 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 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. When providing a pre-application, Application or other materials to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure support or approval that may affect the Applicant's competitive posture, an Applicant must disclose that in accordance with the Department's rules aspects of the Development may be subject to change, including, but not limited to, changes in the amenities ultimately selected and provided.

**(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)) An Application may qualify to receive one (1) point if up to two (2) points under subparagraphs (A) and (B) of this paragraph.

~~(A)~~ 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). (1 point)

~~(B) Previous Participation Compliance History. The portfolio of the Applicant does not have compliance history of a category 2, 3, or 4 as determined in accordance with 10 TAC §1.301, related to Previous Participation. (1 point)~~

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

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

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

- (i) At least 40 percent of all low-income Units at 50 percent or less of AMGI (16 points);
- (ii) At least 30 percent of all low income Units at 50 percent or less of AMGI (14 points);
- or
- (iii) At least 20 percent of all low-income Units at 50 percent or less of AMGI (12 points).

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

- (i) At least 20 percent of all low-income Units at 50 percent or less of AMGI (16 points);
- (ii) At least 15 percent of all low-income Units at 50 percent or less of AMGI (14 points);
- or
- (iii) At least 10 percent of all low-income Units at 50 percent or less of AMGI (12 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(E)) 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 Nonprofit 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 [a minimum of 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)(G) and §2306.6725(a)(1)) A Supportive Housing Development proposed by a Qualified Nonprofit or Developments participating in the 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 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) - (v) of this subparagraph. The Department will base poverty rate on data from the five (5) year American Community Survey.

(i) 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; or for Elderly Developments, the Development Site has access to services specific to a senior population within 2 miles. (7 points);

(ii) 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,

has achieved a 77 or greater on index 1 of the performance index, related to student achievement, and has earned at least one distinction designation by TEA (6 points);

(iii) 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);

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

(v) 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) ~~Except for an Elderly Limitation Development, the~~ The Development Site is located within the attendance zone ~~(or in the case of a choice district the closest)~~ of an elementary, middle, or high school that has achieved the performance standards stated in subparagraph (B); or for Elderly Developments, the Development Site has access to services specific to a senior population within 2 miles. (Note that if the school is more than 2 miles from the Development Site, free transportation must be provided by the school district in order to qualify for points. For purposes of this subparagraph 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 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 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 rating of the closest elementary schools that 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), 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. [Except for Supportive Housing Developments, a](#) An Application may qualify to receive up to five (5) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A) ~~and (C)~~ [\(B\)](#) of this paragraph, as determined by the Texas Education Agency. [A Supportive Housing Development may qualify to receive no more than two \(2\) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs \(A\) and \(BC\) of this paragraph, as determined 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 an Applicant may use the rating of the closest 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.

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with a Met Standard rating and an Index 1 score of at least 77. 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 (5 points, [or 2 points for a Supportive Housing Development](#)); ~~or~~

(B) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with a Met Standard rating and an Index 1 score of at least 77. 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 2 points for a Supportive Housing Development); or

(C) The Development Site is within the attendance zone of an elementary school, a middle school and a high school either all with a Met Standard rating or any one of the three schools with Met Standard rating and an Index 1 score of at least 77. 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 up to two (2) points if the Development Site is located in one of the areas described in subparagraphs (A) - ~~(E)~~ of this paragraph, and the Application contains evidence substantiating qualification for the points. 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) The Development Site is located wholly or partially within the boundaries of a colonia as such boundaries are determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border. For purposes of this scoring item, the colonia must lack water, wastewater, or electricity provided to all residents of the colonia at a level commensurate with the quality and quantity expected of a municipality and the proposed Development must make available any such missing water, wastewater, and electricity supply infrastructure physically within the borders of the colonia in a manner that would enable the current dwellings within the colonia to connect to such infrastructure (2 points);

(B) An Economically Distressed Area (1 point);

(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 servicing the same Target Population which for a Development that remains an active tax credit development (2 points);

(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 (2 points);

(E) A census tract that has not 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 within the past 10 years (1 point);

~~(F) Within 5 miles of a new business that in the past two years has constructed a new facility and undergone initial hiring of its workforce employing 50 or more persons at or above the average median income for the population in which the Development is located (1 point); or~~

~~(G) A census tract which has experienced growth increases in excess of 120% of the county population growth over the past 10 years provided the census tract does not comprise more than 50% of the county (1 point).~~

(7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive up to ~~three (3) two (2)~~ points by serving Tenants with Special Housing Needs. Points will be awarded as described in subparagraphs (A) - (C) of this paragraph.



(A) Applications may qualify for ~~threetwo~~ (23) points if a determination by the Department of approval is submitted in the Application indicating participation of an existing Development's Development 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) – (v) of this subparagraph are eligible to receive two (2) points by committing to participate in the Department's Section 811 PRA 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 requirements limits the proposed Development to fewer than 10 Units. 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.

(i) The Development must not be an 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;

(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; Corpus Christi MSA; or San Antonio-New Braunfels MSA; and

(v) The Development Site must not be located in the mapped 500-year floodplain or in the 100-year floodplain.

(C) Applications proposing Developments that do not meet all of the requirements of clauses (i) – (v) of subparagraph (B) 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 ~~threefive~~ (35) points under this paragraph only if no points are elected under subsection (c)(5) of this section (related to Educational Excellence). An Application for a Supportive Housing Development may qualify to receive up to two (2) points under subparagraph (A) 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 (for both mobility and visual/hearing impairments) in accordance with the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities". (2 points). In addition to meeting all of the accessibility and design standards under Section 504 of the Rehabilitation Act and the 2010 ADA Standards (with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities"), the Applicant will include (3 points):~~

~~\_\_\_\_\_ (i) Walk-in (also known as roll-in) showers of at least 30" x 60" in at least one bathroom in each unit;~~

~~\_\_\_\_\_ (ii) 100% of units include blocking in showers/tubs to allow for grab bars at a later date if requested as a reasonable accommodation;~~

~~\_\_\_\_\_ (iii) Chair or seat height (17-19") toilets in all bathrooms; and~~

~~\_\_\_\_\_ (iv) A continuous handrail on at least one side of all interior corridors in excess of five feet in length.~~

(B) The Property will employ a ~~dedicated full-time~~ resident services coordinator on site for the duration of the ~~Compliance Period and Extended Use Period~~ Affordability 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-timededicated~~ is defined as an employee that is reasonably available exclusively for service coordination to work with residents during normal business hours at posted times ~~follows~~ (12 points):

~~(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.~~

(9) Proximity to Important Services. An Application may qualify to receive up to two (2) points for being located within a one and a half (1.5) mile radius (~~threetwo- (3)~~ mile radius for Developments in a Rural Area) of the services listed below. These do not need to be in separate facilities to qualify for the points. A map must be included identifying the Development Site and the location of each of the services.

- (A) Full Service Grocery Store (1 point);
- (B) Pharmacy (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. Once a resolution is submitted to the Department it may not be changed or withdrawn. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

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

- (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. (§2306.6725(a)(5)) An Application may receive one (1) point 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. [Once a letter is submitted to the Department it may not be changed or withdrawn.](#)

(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)(~~J~~); §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 30 days prior to the Full Application Delivery Date. Once a letter is submitted to the Department it may not be changed or withdrawn. The written statement must meet all of the requirements in subparagraph (A) of this paragraph.

(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. 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)(J); §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. Once a

letter is submitted to the Department it may not be changed or withdrawn. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item.

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide evidence 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) 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.

(i) An Application may qualify to receive up to six (6) points if the Development Site is located in a 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 concerted revitalization plan that meets the criteria described in subclauses (I) - (IV) of this clause:

(I) The 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 through a process 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. These problems may include the following:

(-a-) long-term disinvestment, such as significant presence of residential and/or commercial blight, streets [infrastructure neglect such as inadequate drainage](#), and/or sidewalks in significant disrepair;

(-b-) declining quality of life for area residents, such as high levels of violent crime, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances or overt illegal activities;

(III) Staff will review the target area for presence of the problems identified in 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 must have sufficient, documented and committed funding to accomplish its purposes 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.

(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 [outlined](#) in the plan; and



(II) Applications may receive (2) points in addition to those under subclause (I) 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 a Rural Area.

(i) The requirements for concerted revitalization in a Rural Area are distinct and separate from the requirements related to concerted 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. 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)(F); §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. If the proposed Development is a Supportive Housing Development, the NRA will include common area up to 50 square feet per Unit.

(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 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 a minimum of 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. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) In accordance with the Code, each Development is required to maintain its affordability for a 15-year Compliance Period and, subject to certain exceptions, an additional 15-year Extended Use Period. Development Owners that agree to extend the Affordability Period for a Development to thirty-five (35) years total may receive two (2) points.

(6) Historic Preservation. (§2306.6725(a)(5)) [Except for Developments that qualify for one \(1\) or three \(3\) points under Educational Excellence §11.9 \(c\)\(5\), a](#) An Application 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 five (5) points. [Developments that qualify for one \(1\) or three \(3\) points under Educational Excellence §11.9 \(c\)\(5\) 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 three \(3\) points.](#) At least seventy-five percent of the residential units shall reside within the Certified Historic Structure and 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.

(7) 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).

(8) 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 December 1, 2015.

**(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 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. Requestors must provide, at the time of filing the challenge, all briefings, documentation, and other information that the requestor offers in support of the deficiency. Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered.