

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
TDHCA Governing Board Approved Draft of
New Proposed Rule at 10 Texas Administrative Code (“TAC”) Chapter 11 Housing Tax Credit Program
Qualified Allocation Plan

Disclaimer

Attached is a draft of a Proposed New Rule at 10 TAC Chapter 11 that was approved by the TDHCA Governing Board on September 8, 2016. This draft incorporates changes made by the Board as a result of public comment at the meeting. This document, including its preamble, is scheduled to be published in the September 23, 2016, edition of the *Texas Register* and that published version will constitute the official version for purposes of public comment. The version herein is informational only and should not be relied upon as the basis for public comment.

Public Comment

Public Comment Period: Starts: 8:00 a.m. Austin local time on September 23, 2016 Ends: 5:00 p.m. Austin local time on October 14, 2016.

Comments received after 5:00 p.m. Austin local time on October 14, 2016 will not be accepted.

Written comments may be submitted, in hard copy/fax or electronic formats to:

Texas Department of Housing and Community Affairs
Attn: Sharon Gamble
P.O. Box 13941
Austin, Texas 78711-3941
Fax: (512) 475-0764
Email: htc.public-comment@tdhca.state.tx.us

Written comments may be submitted in hard copy, fax, or email formats within the designated public comment period. Those making public comment are encouraged to reference the specific draft rule, policy, or plan related to their comment as well as a specific reference or cite associated with each comment.

Please be aware that all comments submitted to the TDHCA will be considered public information.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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Proposed New Chapter 11

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 11, §§11.1 – 11.10, concerning the 2017 Housing Tax Credit Program Qualified Allocation Plan. The purpose of the proposed new sections is to replace the current Qualified Allocation Plan with a new Qualified Allocation Plan applicable to the 2017 cycle.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be to provide additional clarity regarding requirements for application submission, define ineligible applicants and applications, and explain processes regarding Board decisions. The average cost of filing an application is between \$50,000 and \$60,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new or additional economic effect on small or micro-businesses. The average cost of filing an application is between \$50,000 and \$60,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 23, 2016, to October 14, 2016, to receive input on the new sections. Note that score values may change, and items may be removed or modified, as a result of public comment. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Sharon Gamble, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to htc.public-comment@tdhca.state.tx.us, or by fax to (512) 475-0764, attn: Sharon Gamble. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. AUSTIN LOCAL TIME OCTOBER 14, 2016.**

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Additionally, the new sections are proposed pursuant to Tex. Gov't Code §2306.67022, which specifically authorizes the Department to adopt a qualified allocation plan.

The proposed new sections affect Chapter 2306 of the Tex. Gov't Code, including Subchapter DD, concerning the Low Income Housing Tax Credit Program. The new sections affect no other statutes, articles or codes.

11.1. GENERAL.

11.2. PROGRAM CALENDAR FOR COMPETITIVE HOUSING TAX CREDITS.

11.3. HOUSING DE-CONCENTRATION FACTORS.

11.4. TAX CREDIT REQUEST AND AWARD LIMITS.

11.5. COMPETITIVE HTC SET-ASIDES.

11.6. COMPETITIVE HTC ALLOCATION PROCESS.

11.7. TIE BREAKER FACTORS.

11.8. PRE-APPLICATION REQUIREMENTS (COMPETITIVE HTC ONLY).

11.9. COMPETITIVE HTC SELECTION CRITERIA.

11.10. THIRD PARTY REQUEST FOR ADMINISTRATIVE DEFICIENCY FOR COMPETITIVE HTC APPLICATIONS.

§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 Tex Gov't Code, Chapter 2306, Subchapter DD, the Department is assigned responsibility for this activity. As required by Internal Revenue Code (the "Code"), §42(m)(1), the Department has developed this Qualified Allocation Plan ("QAP") and it has been duly approved to establish the procedures and requirements relating to an award and allocation of 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 Tex Gov't 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. As provided by Tex Gov't Code §2306.6715(c), appeal rights are triggered by the publication on the Department's website of the results of the evaluation process. Individual Scoring notices or similar communications are a courtesy only.

(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 Tex Gov't 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, 2016, 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. Unless otherwise noted deadlines are based on calendar days.

§11.2. Program Calendar for Competitive Housing Tax Credits.

Non-statutory deadlines specifically listed in the Program Calendar may be extended by the Department 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 Department 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 or the documentation involves signatures needed on certifications in the Application.

| Deadline | Documentation Required |
|------------|--|
| 01/05/2017 | Application Acceptance Period Begins. |
| 01/09/2017 | Pre-Application Final Delivery Date (including waiver requests). |
| 02/17/2017 | Deadline for submission of application for .ftp access if pre-application not submitted |
| 03/01/2017 | 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). 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). |
| 04/01/2017 | Market Analysis Delivery Date pursuant to §10.205 of this title. |
| Mid-May | Final Scoring Notices Issued for Majority of Applications Considered "Competitive." |

| Deadline | Documentation Required |
|--|---|
| 06/01/2017 | Third Party Request for Administrative Deficiency |
| 06/23/2017 | Public Comment to be included in the Board presentation for awards |
| June | Release of Eligible Applications for Consideration for Award in July. |
| July | Final Awards. |
| Mid-August | Commitments are Issued. |
| 11/01/2017 | Carryover Documentation Delivery Date. |
| 06/30/2018 | 10 Percent Test Documentation Delivery Date. |
| 12/31/2019 | Placement in Service. |
| Three (3) 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 Tex Gov't Code, §2306.6711(f), staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application within said county that is awarded in the same calendar year.

(b) Twice the State Average Per Capita. As provided for in Tex Gov't Code, §2306.6703(a)(4), if a proposed Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application 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 Tex Gov't Code, §2306.6703(a)(4) in the text of the actual adopted resolution, and authorizing an allocation of Housing Tax Credits for the Development. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 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 or provides the guaranty only during the construction period, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater

than \$3 million in a single Application Round. If the Department determines that an allocation recommendation would cause a violation of the \$3 million credit limit per Applicant, the Department will select the Development(s) that most effectively satisfies the Department's goals in fulfilling set-aside priorities and are highest scoring in the regional allocation. 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. In addition, for Elderly Developments in a Uniform State Service Region containing a county with a population that exceeds one million, the request may not exceed the final amount published on the Department's website after the release of the Internal Revenue Service notice regarding the 2017 credit ceiling. 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 required under any other funding source from the Multifamily Direct Loan program; 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 Tex Gov't 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 Tex Gov't 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 Tex Gov't 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 Tex Gov't 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 Carryover 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) If Developments at risk of losing affordability from the financial benefits available to the Development are able to retain or renew the existing financial benefits and affordability they must do so unless regulatory barriers necessitate elimination of a portion of that benefit for the Development.

(i) Evidence of the legal requirements that will unambiguously cause the loss of affordability must be included with the application.

(ii) 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)). If less than 100 percent of the public housing benefits are transferred, an explanation of the disposition of the remaining public housing

benefits must be included in the Application, as well as a copy of the HUD-approved plan for demolition and disposition.

(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 Tex Gov't 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 Tex Gov't 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, if sufficient credits are available to meet the requirements of the Application after underwriting review.

(3) Award Recommendation Methodology. (§2306.6710(a) - (f); §2306.111) The Department will assign, as described herein, Developments for review by the program and underwriting divisions. In general, Applications 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. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex Gov't Code, §2306.6711(h) and will publish such percentages on its website.

(i) in Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion.

(ii) in Uniform State Service Regions containing a county with a population that exceeds 1.7 million, the Department shall allocate competitive tax credits to the highest scoring development, if any, that is part of a concerted revitalization plan that meets the requirements of §11.9(d)(7), is located in an urban subregion, and is within the boundaries of a municipality with a population that exceeds 500,000.

(D) Rural Collapse (Step 4). If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region ("Rural 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 Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex Gov't Code, §2306.6711(h) and will publish such percentages on its website. 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, including timely closing of all financing and start of construction, that the Development and Development Owner was properly insured and that the Department was timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph;

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

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

(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 having achieved a score on Proximity to the Urban Core

(2) 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.

(3) Applications having achieved the maximum Opportunity Index Score and the highest number of point items on the Opportunity Index menu that they were unable to claim because of the 7 point cap on that item.

(4) Applications having achieved the maximum Educational Quality score and the highest number of point items on the Educational Quality menu that they were unable to claim because of the 5 point cap on that item.

(5) The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site.

(6) Applications proposed to be located in a census tract with the lowest poverty rate as compared to another Application with the same score.

(7) 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 Tex Gov't Code, §2306.6704(c) pre-applications will be terminated unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection:

(1) Submission of the competitive HTC pre-application in the form prescribed by the Department which identifies at a minimum:

(A) Site Control meeting the requirements of §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;

(H) Proposed name of ownership entity; and

(I) Disclosure of any Undesirable Neighborhood Characteristics under §10.101(a)(4).

(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, 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 a Target Population exclusively unless such targeting or preference is documented in the Application and is in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

(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 Tex Gov't 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 not yet have been determined or selected or may be subject to change, such as 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 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.

(A) 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.

(B) The HUB or Qualified Nonprofit Organization must also materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. A Principal of the HUB or Qualified Nonprofit Organization cannot be a Related Party to any other Principal of the Applicant or Developer (excluding another Principal of said HUB or Qualified Nonprofit Organization).

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

(1) Income Levels of Tenants. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(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 (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 may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points.

(A) 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. (10 points for Supportive Housing, 9 points for all other Development)

(B) The Applicant certifies that the Development will contact local service providers, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. (1 point)

(4) Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials.

(A) A Proposed Development is eligible for a maximum of seven (7) opportunity index points if it is located in a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) below.

(i) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and an income rate in the two highest quartiles within the uniform service region. (2 points)

(ii) The Development Site is located in a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. and, (1 point)

(B) An application that meets the foregoing criteria may qualify for additional points up to seven (7) points for any one or more of the following factors. Each facility or amenity may be used only once for scoring purposes, regardless of the number of categories it fits:

(i) For Developments located in an Urban Area, an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIV) of this subparagraph.

(I) The Development site is located less than 1/2 mile on an accessible route from a public park with an accessible playground (1 point)

- (II) The Development Site is located less than ½ mile on an accessible route from Public Transportation with a route schedule that provides regular service to employment and basic services (1 point)
- (III) The Development site is located within 1 mile of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point)
- (IV) The Development is located within 3 miles of either an emergency room or an urgent care facility (1 point)
- (V) The Development Site is within 2 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point)
- (VI) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less (1 point)
- (VII) The development site is located within 1 mile of a public library (1 point)
- (VIII) The Development Site is located within 5 miles of a University or Community College campus (1 point)
- (IX) The Development Site is located within 3 miles of a concentrated retail shopping center of at least 1 million square feet or that includes at least 4 big-box national retail stores (1 point)
- (X) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher. (1 point)
- (XI) Development site is within 2 miles of a government-sponsored museum (1 point)
- (XII) Development site is within 1 mile of an indoor recreation facility available to the public (1 point)
- (XIII) Development site is within 1 mile of an outdoor recreation facility available to the public (1 point)
- (XIV) Development site is within 1 mile of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point)
- (ii) For Developments located in a Rural Area, an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIII) of this subparagraph.
- (I) The Development site is located within 2 miles of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point)
- (II) The Development is located within 4 miles of health -related facility, such a full service hospital, community health center, or minor emergency center. Physician specialty offices are not considered in this category. (1 point)
- (III) The Development Site is within 3 miles of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten (1 point)
- (IV) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less (1 point)
- (V) The development site is located within 3 miles of a public library (1 point)
- (VI) The development site is located within 3 miles of a public park (1 point)

(VII) The Development Site is located within 7 miles of a University or Community College campus (1 point)

(VIII) The Development Site is located within 5 miles of a retail shopping center with XX square feet of stores (1point)

(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher. (1 point)

(X) Development site is within 2 miles of a government-sponsored museum (1 point)

(XI) Development site is within 1 mile of an indoor recreation facility available to the public (1 point)

(XII) Development site is within 1 mile of an outdoor recreation facility available to the public (1 point)

(XIII) Development site is within 1 mile of community, civic or service organizations that provide regular and recurring services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club) (1 point)

(5) Educational Quality. In order to qualify for points under Educational Quality, the elementary school and the middle school or high school within the attendance zone of the Development must have a TEA rating of Met Standard. For districts without attendance zones, the schools closest to the site which may possibly be attended by the tenants must be used for scoring. Choice districts with attendance zones will use the school zoned to the Development site. Schools with an application process for admittance, limited enrollment or other requirements that may prevent a tenant from attending will not be considered as the closest school or the school which attendance zone contains the site. The applicable ratings will be the 2016 accountability rating determined by the Texas Education Agency for the State, Education Service Center region, or individual campus. 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 an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score (5 points);

(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 an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (3 points, or 2 points for a Supportive Housing Development); or

(C) The Development Site is within the attendance zone of a middle school or a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. Center.(1 point); or

(D) The Development Site is within the attendance zone of an elementary school with an Index 1 score in the first quartile of all elementary schools statewide.(1 point); or

(E) If the Development Site is able to score one or three points under clauses (B) - (D) above, two additional points or 1 point for a Supportive Housing Development may be added if one or more of the features described in clause (i) - (iv) is present:

- (i) The Development Site is in the attendance zone of an elementary school that has Met Standard, and has earned at least one distinction designation by TEA(1 point);
- (ii) The Development Site is located in the attendance zone of a general admission high school with a four-year longitudinal graduation rate in excess of the statewide four-year longitudinal graduation rate for all schools for the latest year available. (1 point)
- (iii) The development is in the primary attendance zones for an elementary school that has met standard and offers an extended day Pre-K program. (1 point)
- (iv) The development site within the attendance zone of an elementary school, a middle school and a high school that all have a Met Standard rating for the three years prior to application. (1 point)
- (6) Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive up to five (5) 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 census tract within the boundaries of an incorporated area that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years (3 points);
- (D) For areas not scoring points for (C) above, a census tract that does not have a Development subject to an active tax credit LURA (2 points);
- (E) A census tract within the boundaries of an incorporated area and all contiguous census tracts for which neither the census tract in which the Development is located nor the contiguous census tracts have received an award or HTC allocation within the past 15 years and continues to appear on the Department's inventory. This item will apply to cities with a population of 500,000 or more, and will not apply in the At-Risk Set-Aside (5 points).
- (7) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive up to two (2) points by serving Tenants with Special Housing Needs. 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. The units identified for this scoring item may not be the same units identified for Section 811 Project Rental Assistance Demonstration program. 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, unless the units receive HOME funds from any source. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Needs, but will be required to continue to affirmatively market Units to Persons with Special Needs.

(8) Proximity to the Urban Core. A development in a County with a population over 1 million and in a City with a population over 500,000 if the Development Site is located within 4 miles of the main City Hall facility. The main City Hall facility will be determined by the location of regularly scheduled City Council, City Commission, or similar governing body meetings. Distances are measured from the nearest property boundaries, not inclusive of non-contiguous parking areas (5 points).

(d) Criteria promoting community support and engagement.

(1) Local Government Support. (§2306.6710(b)(1)(B)) An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) - (C) of this paragraph, as applicable. The resolution(s) must be dated prior to Final Input from Elected Officials Delivery Date and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 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 (“FHA”ST”) 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. The letter must include the amount of support and the terms under which it will be provided. 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 Tex Gov't 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 entire Development Site. In addition, the Neighborhood Organization must be on record with the Secretary of State or county in which the Development Site is located. 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 Tex Gov't Code, §2306.004(23-a) and includes at least two separate residential households;

(iii) certification that no person required to be listed in accordance with Tex Gov't Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, including any votes taken;

(iv) certification that at least 80 percent of the current membership of the Neighborhood Organization consists of homeowners and/or tenants living within the boundaries, of the Neighborhood Organization; and

(v) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization 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, 2017. 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 except in the instance where a representative who has provided a letter provides an additional letter to the Department, on or before April 3, 2017, stating that in their estimation the factual representations made to them to secure their original letter have proven to have been inaccurate, misleading, or otherwise insufficient to form a basis for their support, neutrality or opposition and, accordingly, their letter is withdrawn. A change in this manner is final and will result in a score of zero (0) points. 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. A letter expressly stating opposition is scored – 8 points. A letter expressly stating neutrality is scored 0 points. Any other letter conveying a sense of support is scored 8 points. If a tone of support cannot be discerned in a letter that does not expressly state support, neutrality or opposition, the representative will be contacted and given five (5) business days to indicate in writing if they wish to have the letter scored as support or neutral. If clarification is not timely provided, the letter will be scored as neutral.

(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, and in a city with a population of 100,000 or more.

(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. The resolution adopting the plan or other acceptable evidence that the plan has been duly adopted must be submitted with the application.

(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 must include the limited availability of safe, decent, affordable housing and 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-) creation of needed affordable housing by improvement of existing affordable housing that is in need of replacement or major renovation;

(-b-) attracting private sector development of housing and/or business;

(-c-) developing health care facilities;

(-d-) providing public transportation;

(-e-) developing significant recreational facilities; and/or

(-f-) 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) up to seven (7) 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 in a resolution by the city or county as contributing more than any other 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. The resolution from the Governing Body of the city or county that approved the plan is required to be submitted in the Application. If multiple Applications submit resolutions under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points.

(III) Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)

(B) For Developments located in a Rural Area.

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction in an location meeting the threshold requirements of the Opportunity Index, §11.9(c)(4)(A) of a development in a rural area that is currently leased at 90% or greater by low income households and which was initially constructed prior to 1980 as either public housing or as affordable housing with support from USDA, the HOME program, or the CDBG program. Demolition and relocation of units must be determined locally to be necessary to comply with the Affirmatively Furthering Fair Housing Rule, or if necessary to create an acceptable distance from Undesirable Site Features or Undesirable Neighborhood Characteristics.

(ii) Applications will receive 3 points for the rehabilitation of a development in a rural area that is currently leased at 90% or greater by low income households and which was initially constructed prior to 1980 as either public housing or as affordable housing with support from USDA, the HOME program, or the CDBG program if the proposed location requires no disclosure of Undesirable Neighborhood Features under Section §10.101(a)(4) or required such disclosure but the disclosed items were found acceptable._

(iii) Applications may receive (2) points in addition to those under subclause (i) or (ii) of this clause if the Development is explicitly identified in a letter by the city or county as contributing more than any other Development 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. The letter from the Governing Body of the city or county that approved the plan is required to be submitted in the Application. If multiple Applications submit valid letters 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 more than any other Development to concerted revitalization efforts.

(iv) Applications may receive (1) additional point if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4).

(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 voluntarily included in eligible basis ("Eligible Hard Cost"), 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 Eligible Hard Cost 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) 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 \$72.80 per square foot;

(ii) the Building Cost per square foot is less than \$78 per square foot, and the Development meets the definition of a high cost development;

(iii) the Eligible Hard Cost per square foot is less than \$93.60 per square foot; or

(iv) the Eligible Hard Cost per square foot is less than \$104 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 \$78 per square foot;

(ii) the Building Cost per square foot is less than \$83.20 per square foot, and the Development meets the definition of a high cost development;

(iii) the Eligible Hard Cost per square foot is less than \$98.80 per square foot; or

(iv) the Eligible Hard Cost per square foot is less than \$109.20 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 \$93.60 per square foot; or

(ii) the Eligible Hard Cost is less than \$114.40 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 Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than \$104 per square foot;

(ii) twelve (12) points for Applications which include Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than \$135.20 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 Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than \$135.20 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) - (H) 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 Pre-Application and full Application are the same or have contiguous borders of at least 10% with the site at full application, and the site at both pre-application and at full application are entirely within the same census tract. The site at full Application may not require notification to any person or entity not required to have been notified at pre-application;

(G) The Development Site does not have Undesirable Neighborhood Characteristics as described in 10 TAC §10.101(a)(4) that were not disclosed with the pre-application; and

(H) The pre-application met all applicable requirements.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least 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 seven (7) percent of the Total Housing Development Cost (3 points); or
- (iii) if the Housing Tax Credit funding request is less than eight (8) percent of the Total Housing Development Cost (2 points); or
- (iv) if the Housing Tax Credit funding request is less than nine (9) 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)) 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. (5 points)

(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 Tex Gov't Code, §2306.6726 and the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).

(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, 2016.

(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 Applicant or Affiliate failed to meet the commitment or expenditure requirements of a HOME or National Housing Trust Fund award from the Department.
- (3) If the Developer or Principal of the Applicant violates the Adherence to Obligations.
- (4) 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 ("RFAD") process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request 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. Staff actions are not subject to RFAD, as the request does not bring new information to staff's attention. 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. A copy of the request and supporting information must be provided directly to the Applicant at the same time it is provided to the Department. Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered. The results of a RFAD may not be appealed by the Requestor.